

**AN tÚDARÁS Náisiúnta Iompair - NATIONAL TRANSPORT AUTHORITY**

**and**

**AN tÚDARÁS UM BÓITHRE Náisiúnta - NATIONAL ROADS AUTHORITY  
(otherwise known as TRANSPORT INFRASTRUCTURE IRELAND)**

**and**

**TRANSDEV DUBLIN LIGHT RAIL LIMITED**

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**CONTRACT  
in relation to the operation and maintenance of  
LUAS  
Light Railway System**

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THIS CONTRACT is made 2019

**BETWEEN:**

- (1) **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 “NTA”);
- (2) **THE NATIONAL ROADS AUTHORITY (OPERATING AS TRANSPORT INFRASTRUCTURE IRELAND)** (or in the Irish language, **AN tÚDARÁS UM BÓITHRE NÁISIÚNTA**) a statutory corporation established under the Roads Act 1993, as amended and having its principal office at Parkgate Business Centre, Parkgate Street, Dublin 8 (“TII”); and
- (3) **TRANSDEV DUBLIN LIGHT RAIL LIMITED**, a company incorporated under the laws of Ireland with registration number 354252 and whose registered office is at Riverside One, Sir John Rogerson's Quay, Dublin 2 (the “Operator”).

**RECITALS**

- (A) NTA was established by the 2008 Act and has, among other things, the function to secure the provision of public passenger transport services.
- (B) Section 48(2)(c) of the 2008 Act requires NTA, when securing the provision of metro and light rail passenger services, to do so following a competitive tendering procedure.
- (C) NTA and TII arranged for the publication of a notice on 23 September 2017 in the Official Journal of the European Communities in relation to the provision of the Services, using the negotiated procedure.
- (D) The Operator has submitted a tender to provide the Services.
- (E) NTA, TII and the Operator have reached agreement in relation to the performance by the Operator of the Services, as set out in this Contract.
- (F) TII is the owner of the System and will perform the Assigned Functions under this Contract.

**NOW IT IS HEREBY AGREED** as follows:



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

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

**"2001 Act"** means the Transport (Railway Infrastructure) Act 2001.

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

**"Acceptable Entity"** means an entity:

- (a) which satisfies the Requisite Rating;
- (b) which is not the subject of an Insolvency Event; and
- (c) which:
  - (i) is authorised to carry on non-life insurance business under the European Union (Insurance and Reinsurance) Regulations 2015 (SI No. 485/2015) (or, in the case of a credit institution, is authorised to provide a guarantee) in the State; or
  - (ii) holds an authorisation from a competent financial regulatory authority in a member state of the European Economic Area and relevant requirements to passport into Ireland on either a freedom of services or freedom of establishment basis under Directive 2009/138/EC of The European Parliament and the Council of 25 November 2009 (as amended from time to time) have been satisfied in full.

**"Actual Waiting Time"** or **"AWT"** has the meaning given to it in Schedule 35 (*Performance Monitoring*).

**"Additional Maintenance Services"** has the meaning given to it in section 17.19 of Schedule 17 (*Infrastructure Maintenance Requirements*).

**"Additional Passenger Services"** has the meaning given to it in clause 32.2 (*Additional Passenger Services*).

**"Additional Replacement Bus Services"** has the meaning given to it in Schedule 4 (*Operations Management*).

**"Adjudication"** has the meaning given to it in Schedule 38 (*Disputes Resolution Procedure*).

**"Adjudicator"** has the meaning given to it in Schedule 38 (*Disputes Resolution Procedure*).

**"Adjusted Reporting Period Amount"** has the meaning given to it in Schedule 37 (*System Charge and Revenue Grant*).

**"AFCS"** means the automatic fare collection system for Luas including the ticket machines, the validators, the hand-held devices for reading smart cards and the central system server.

**"AFCS Annual Maintenance Plan"** has the meaning given to it in the AFCS Maintenance Contract.

**"AFCS Maintenance Contract"** means, at any time:

- (a) the maintenance contract between the Operator and the AFCS Maintenance Contractor, in the approved form, dated on or about the date of this Contract in connection with AFCS maintenance; or
- (b) any maintenance contract entered into in connection with the maintenance of the AFCS which is subsequent to the contract referred to at paragraph (a).

**"AFCS Maintenance Contractor"** means the contractor appointed under the AFCS Maintenance Contract.

**"AFCS Maintenance Fee"** means the fee payable by TII to the Operator calculated in accordance with section 24.6 of Schedule 24 (*Maintenance of Automatic Fare Collection System*).

**"Annual Maintenance Plan"** means any of:

- (a) the AFCS Annual Maintenance Plan;
- (b) the Infrastructure Annual Maintenance Plan;
- (c) the LRV Annual Maintenance Plan, and
- (d) such other annual plan in relation to the scheduling and carrying out of maintenance on the System or any part or component of the System which is required by this Contract.

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

**"Asset Database"** means, at any time, the list (detailed down to the level of Line Replaceable Units) and corresponding description of each of the assets owned by TII in respect of the System (including physical structures, plant, equipment, Control Systems, network(s), facilities, services, appliances, fixtures, fittings, machinery, installations, the LRVs and the AFCS and any tools/equipment required for the maintenance of any of the foregoing).

**"Asset Renewal"** means, in the case of an asset which, in the reasonable opinion of TII, has reached the end of its useful life, the replacement or refurbishment of such asset.

**"Asset Management Plan"** means, at any time, TII's overall strategy regarding the maintenance activities to be undertaken in relation to the Infrastructure over an eleven (11) year period, as set out in, or otherwise in accordance with, Schedule 19 (*Asset Management Plan*).

**"Assigned Functions"** means the functions of NTA assigned to TII pursuant to section 48, 2008 Act, from time to time, in connection with the System, being the functions of NTA under this Contract, other than the NTA Retained Functions.

**"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 Variation”** means a Variation requested by NTA/TII in accordance with clause 34.2 (*Authority Variations*).

**“Automatic Vehicle Location System”** or **“AVLS”** means the system used to locate the position of LRVs on the System, comprising a central control system which interacts with the on-board LRV equipment by radio communication and field equipment through serial line communication to produce a graphical user interface which presents localisation and regularisation information.

**“Background IPR”** means the Intellectual Property Rights of any member of the Operator’s Group used in connection with the provision of the Services which:

- (a) are in existence as of the Commencement Date; or
- (b) are brought into existence after the Commencement Date and which:
  - (i) have been developed independently of this Contract by a person other than the Operator and without any resources of the Operator being used in connection with such development; and
  - (ii) are confirmed, prior to the deployment of the relevant equipment, facilities, hardware or software in the provision of the Services, by NTA/TII to be “Background IPR”.

**Base Reporting Period Amount** has the meaning given to it in section 37.1 of Schedule 37 (*System Charge and Revenue Grant*).

**“Base Yearly Amount”** means an amount identified as such in Table 34-1 of Schedule 34 (*Contract Prices and Indexation*) as may be adjusted from time to time:

- (a) in accordance with section 34.9 of Schedule 34 (*Contract Prices and Indexation*);
- (b) by any Variation Confirmation; and
- (c) otherwise in accordance with this Contract.

**“Break Costs”** means:

- (a) the amount reasonably and properly payable by the Operator to any Sub-Contractor as a direct result of the termination of this Contract, provided that NTA/TII has approved the relevant provision of the Sub-Contract (such approval not unreasonably to be withheld or delayed);
- (b) redundancy payments required under any Legal Requirement (or agreement the relevant provision of which NTA/TII has approved, such approval not unreasonably to be withheld) to be made by the Operator to employees engaged in the provision of the Services as a direct result of the termination of this Contract; and
- (c) other costs (not being amounts payable to Sub-Contractors and employees) reasonably and properly incurred by the Operator in demobilising from the provision of the Services which would not have been incurred if the termination of this Contract not occurred,

but, in each case, shall exclude any costs which would not have been incurred had the Operator used all reasonable endeavours to mitigate the Break Costs.

**“Broombridge Depot”** means the Luas maintenance depot at Broombridge, Dublin 7 and any replacement thereof, whether permanent or temporary.

**“Bus Activation”** means the acceptance of LUAS tickets on scheduled bus services in accordance with clause 19 (*Replacement Bus Services and Bus Activations*).

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

**“Bye-law”** means, at any time, any bye-law for the System made under section 66(1), 2001 Act that is in force at such time.

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

**“Capital Spares”** means the LRV parts (which are substantial in nature or which require a long lead-in time for delivery) specified in Schedule 13 (*Capital Spares, LRV Spare Parts and LRV Special Tools*) together with all other such similar parts to be kept by the Operator for provision of the Services in accordance with the Contract.

**“Central Control Room”** has the meaning given to it in Schedule 1 (*System Description*).

**“Change in Control”** means the circumstance contemplated by clause 56.1 (*Change in Control*).

**“Change of Law”** means, subject to clause 35.4 (*Bye-Laws/Levy Order*), the coming into effect after the Commencement Date of:

- (a) any modification of Legal Requirements (including the introduction of new Legal Requirements), other than modifications of Legal Requirements (including new Legal Requirements) which on the Commencement Date have been officially published in substantially the same form as the relevant Legal Requirements finally take when they have legal effect:
    - (i) in a draft bill as part of a published Government or Department paper; or
    - (ii) in a bill; or
    - (iii) in a draft statutory instrument; or
    - (iv) as a Common Position adopted by the European Parliament;
  - (b) a change in applicable guidance or directions (including the introduction of new Legal Requirements) in relation to the operation of light railways in the State issued after the Commencement Date, by:
    - (i) the Minister for Transport, Tourism and Sport;
    - (ii) the Commission for Railway Regulation; or
    - (iii) any other Competent Authority; or
  - (c) any judgment or ruling which changes a binding precedent,
- but only to the extent:

- (A) in the case of paragraphs (a), (b) and (c), with which:
  - (I) NTA, TII or the Operator is bound to comply; or
  - (II) NTA, TII or the Operator must comply in order to obtain or retain any Necessary Consent or Consent to Operate; or
  - (III) any such modification or change is not as a consequence of acts or omissions of the Operator; or
- (B) in the case of paragraph (b):
  - (I) such change in guidance or directions were not reasonably foreseeable (substantially in the form in which they finally have effect) at the Commencement Date; and
  - (II) such change in, guidance, directions or other requirements amount to a nationally applicable change in (or in the interpretation or application of) such applicable guidance, directions or other requirements.

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

**“Code of Practice for working on, near or adjacent to the Luas Tramway”** means the code of practice to be applied by the Operator and complied with by third parties in respect of working on or near any of the Lines.

**“Collateral Warranty”** means a collateral warranty entered into by the Operator, a Principal Sub-Contractor, TII and NTA, substantially in the form set out in Schedule 42 (*Form of Collateral Warranty*).

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

**“Commercial Third Party Software”** means software used by, or on behalf of, the Operator in the performance of its obligations under this Contract which is owned by third parties and available on the open market from third party suppliers.

**“Commission for Railway Regulation”** means the Commission for Railway Regulation and any other Competent Authority concerned with railway safety.

**“Competent 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 legal jurisdiction over the subject matter of this Contract.

**“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 NTA/TII (acting reasonably) to be frivolous or vexatious.

**“Computerised Maintenance Management System” or “CMMS”** means the computerised maintenance management information system to be provided and maintained by the Operator in accordance with Schedule 9 (*Computerised Maintenance Management System*) and incorporating the Asset Database.

**“Confidential Information”** means:

- (a) all information relating to the design of the System or to any Intellectual Property Rights of NTA, TII, the System Contractors or the Operator; or
- (b) any other information of a confidential or proprietary nature which relates to the undertaking or finances of any of the Parties and which is identified by the Party releasing such information as being of a confidential or proprietary nature and the release of which is made in connection with this Contract,

but not any information relating to the performance by the Operator under the Performance Monitoring System or to information relating to Patronage Revenue.

**“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 Competent Authority in connection with the provision of the Services, including:

- (a) any Necessary Consent that may need to be obtained or renewed during the Operating and Maintenance Period;
- (b) any consent required for the provision of Replacement Bus Services;
- (c) acceptance by the Commission for Railway Regulation of stages 5 and 6 of the RSA-APIS-NW (Authorisation for Placing in Service of New Works according to the Railway Safety Act 2005) for any new Works; and
- (d) acceptance by the Commission for Railway Regulation of stages 5 and 6 of the RSA-APIS-NRS (Authorisation for Placing in Service of New Rolling Stock according to the Railway Safety Act 2005) for any new LRVs.

**“Consumer Price Index”** means the monthly Consumer Price Index (all items) of Ireland (base December 2016 = 100) published by the Central Statistics Office or such other index as may from time to time replace it.

**“Contract”** means this Contract, including the Schedules.

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

**“Contract Year”** means a period commencing on the Operating Commencement Date or any anniversary thereof and ending twelve (12) months thereafter or (if earlier) on the Expiry Date.

**“Control Systems”** means the supervisory control and data acquisition system (referred to as SCADA), the automatic LRV Location system (referred to as the AVL system) and the other control systems described in Schedule 16 (*Description of the Infrastructure*) and as may be amended from time to time.

**“Controlled Function”** means, in relation to the AFCS Maintenance Contract, any function or right or entitlement of the Operator specified therein as requiring the consent or approval of TII.

**“Corrective Maintenance”** means all activities to be performed and/or measures to be taken by the Operator to rectify and remedy Faults and Failures and impending Faults and Failures which could have safety and/or operational implications, in order that the System is properly

repaired and safely maintained in good working order in accordance with the requirements of the Contract and with the purpose of achieving the Performance Standards at all times during the Contract Period.

**“Customer Charter”** means the customer charter provided by the Operator outlining the expectations which passengers may have of passenger services on the System and a procedure for passenger complaints.

**“Customer Service Deduction”** has the meaning given to it in section 35.6 of Schedule 35 (*Performance Monitoring*).

**“Customer Service Policy”** means the Operator’s policy for customer service as required under Schedule 28 (*Customer Service*) as may be amended from time to time in accordance with this Contract.

**“Damage to the System”** means any physical loss or damage (including accidental loss or damage and loss or damage caused by vandalism (including graffiti)) of or to any part of the System, except for:

- (a) System Contractor Damage;
- (b) damage caused by NTA or TII; and
- (c) Defects.

**“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 data protection law including the GDPR and the Data Protection Acts 1988 - 2018 and the terms ‘personal data’, ‘controller’, ‘processor’ and ‘process’ shall each have the meanings given to it under Data Protection Law.

**“Deemed Authority Variation”** means any Variation arising pursuant to a provision of this Contract referred to in clause 34.10 (*Deemed Authority Variation*) and implemented in accordance with that clause.

**“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.

**“Defect”** means, in respect of the System or any part thereof, any fault or defect therein or malfunction thereof which is attributable to design, construction, materials or workmanship not arising from or attributable to fair wear and tear, collision, deliberate or accidental damage, acts of vandalism or terrorism, and which would not otherwise have become apparent to the Operator any earlier had it been properly performing its obligations under this Contract, provided that:

- (a) the matters that have been identified as Defects under the Prior Operating Contract but have not been completely rectified (being the matters referred to in section 10.4 of Schedule 10 (*Defects in and Damage to the System*)) shall constitute Defects; and
- (b) the matters that have been identified as potential Defects under the Prior Operating Contract but have not been agreed or determined to be Defects under the Prior Operating Contract (being the matters referred to in section 10.4 of Schedule 10 (*Defects in and Damage to the System*)), shall not be excluded from being Defects under this Contract solely on the basis of:
  - (i) the point in time at which such potential Defects became apparent or would have become apparent; and/or
  - (ii) the Operator's prior knowledge (if any) of such potential Defects.

**"Defect Notice"** means a notice issued by the Operator pursuant to Schedule 10 (*Defects in and Damage to the System*).

**"Departure Time"** means the time of departure for a LRV from a Stop as set out in the Timetable.

**"Depots"** means the Red Cow Depot, the Sandyford Depot and the Broombridge Depot.

**"Depot Equipment"** means the plant and equipment specified in Schedule 14 (*Depots and Depot Equipment*), together with any other such similar plant and equipment which are installed and/or located at the Depots in connection with the provision of the Services in accordance with the Contract.

**"Depot Equipment Manuals"** means the instructions, maintenance manuals and workshop manuals at any time, specifying the scope, activity and timing of maintenance and proper operation and use of the Depot Equipment.

**"Disclosed Data"** means all materials, documents and data which were provided, or made available, to the Operator in connection with the invitation to tender in respect of the Services or in connection with this Contract.

**"Discriminatory Change of Law"** means a Change of Law being a change of Legal Requirements the terms of which apply expressly to:

- (a) the Services but not to similar services; and/or
- (b) the Operator but not to other persons; and/or
- (c) persons operating light rail concessions under contractual arrangements similar to this Contract but not other persons.

**"Dispute"** has the meaning given to it in Schedule 38 (*Disputes Resolution Procedure*).

**"Disputes Resolution Procedure"** means the procedure for the avoidance and resolution of Disputes set out in Schedule 38 (*Disputes Resolution Procedure*).

**"Early/Late Departure Deduction"** has the meaning given to it in section 35.3 of Schedule 35 (*Performance Monitoring*).



**“Early/Late Departure Standard”** has the meaning given to it in section 35.3 of Schedule 35 (*Performance Monitoring*).

**“Employee Representatives”** means, for the purposes of clause 52.8 (*Operator’s Employees*), the **“representatives of the employees”** as defined in the Transfer Regulations.

**“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 (including the air within any building or the air within any other man-made or natural structure above or below ground), water (including inland waters and groundwater and water in drains and sewers), land and any ecological systems and living organisms (including human beings) supported by those media.

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

**“Environmental Legislation”** means any Legal Requirement concerning matters relating to the Environment, and includes the Inland Fisheries Acts 1959 to 2017, the Dangerous Substances Acts 1972 and 1979, the Local Government (Planning and Development) Acts 1963 to 1999, the Planning and Development Acts 2000 to 2018, the European Communities Acts 1972 to 2012, the Local Government (Water Pollution) Acts 1977 to 2007, the Water Services Act 2007 to 2017, the Air Pollution Acts 1987 and 2011, the Safety Health and Welfare at Work Acts 2005 to 2014, the Radiological Protection Acts 1991 to 2014, the Environmental Protection Agency Acts 1992 to 2011, the Waste Management Acts 1996 to 2011 and secondary legislation made under any of them.

**“Excess Waiting Time”** or **“EWT”** has the meaning given to it in Schedule 35 (*Performance Monitoring*).

**“Excess Waiting Time Bonus”** or **“EWT Bonus”** has the meaning given to it in section 35.4 of Schedule 35 (*Performance Monitoring*).

**“Excess Waiting Time Deduction”** or **“EWT Deduction”** has the meaning given to it in section 35.4 of Schedule 35 (*Performance Monitoring*).

**“Excess Waiting Time Standard”** or **“EWT Standard”** has the meaning given to it in section 35.4 of Schedule 35 (*Performance Monitoring*).

**“Expiry Date”** means:

- (a) 30 November 2025;
- (b) if TII exercises its right under clause 5.1 (*Contract Period Extension*), the date specified by TII in accordance with clause 5.1 (which shall be no later than nine (9) years after the Operating Commencement Date);

- (c) if TII exercises its right under clause 5.2 (*Further Contract Period Extension*), the date specified by TII in accordance with clause 5.2 (which shall be no later than eleven (11) years after the Operating Commencement Date); or
- (d) if earlier, the date upon which this Contract is terminated in accordance with its provisions.

**"Failures" or "Faults"** means all faults and failures affecting the System or any component part thereof.

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

**"Fare Evasion Survey"** means a survey of Fare Evasion to establish the Fare Evasion Rate as more particularly described in Schedule 6 (*Revenue Protection*).

**"Fare Evasion Survey Report"** means a report issued by TII pursuant to section 6.10 of Schedule 6 (*Revenue Protection*).

**"Fare Evasion Bonus"** has the meaning given to it in section 6.11 of Schedule 6 (*Revenue Protection*).

**"Fare Evasion Deduction"** has the meaning given to it in section 6.11 of Schedule 6 (*Revenue Protection*).

**"Fare Evasion Rate"** has the meaning given to it in section 6.9 of Schedule 6 (*Revenue Protection*).

**"Fare Loss"** has the meaning given to it in section 6.8 of Schedule 6 (*Revenue Protection*).

**"Force Majeure"** means any of the following events and circumstances:

- (a) war (whether declared or undeclared), armed conflict, invasion or act of foreign enemy in each case within and affecting Ireland;
- (b) rebellion, revolution, insurrection or acts of terrorism causing physical damage to the System or the threat of such acts 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 System 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.

**"GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679).

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

**"Government"** means, at any time, the government of Ireland at that relevant time.

**“Green Line”** means the light railway line between Broombridge and Bride’s Glen.

**“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.

**“Guarantee”** means the guarantee provided by the Guarantor, substantially in the form set out in Schedule 41 (*Form of Security*).

**“Guarantor”** means Transdev Group SA, a company incorporated under the laws of France with registration number 521 477 85 and whose registered address is at Immeuble Crystal, 3 allée de Grenelle, 92130 Issy-les-Moulineaux, France.

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

**“Health and Safety Authority”** means the body established under the Safety, Health and Welfare at Work Acts 2005 to 2014.

**“holding company”** has the meaning given to it in section 8 of the Companies Act 2014. Notwithstanding anything to the contrary in this Contract, this definition shall not be changed in the event of an amendment to the definition of “holding company” contained in the Companies Act 2014.

**“Indemnified Liabilities”** means any Losses and/or Claims (including such amounts as are necessary to compensate the applicable Party for the salary and other costs incurred by it in providing the services of its employees and other resources in respect of the relevant matter).

**“Indemnified Property Losses”** has the meaning given to it in clause 45.1 (*Operator’s General Indemnities*).

**“Indexed”** means, except where otherwise expressly provided, the adjustment to any amount on each Review Date referred to in this Contract during the Contract Period in accordance with Schedule 34 (*Contract Prices and Indexation*).

**“Informal Procedure”** has the meaning given in Schedule 38 (*Disputes Resolution Procedure*).

**“Infrastructure”** means the physical structures, plant, equipment, control systems, networks, facilities, services, appliances, fixtures, fittings, machinery, installations and hard and soft landscaping of the System as described in Schedule 16 (*Description of the Infrastructure*).

**“Infrastructure Annual Maintenance Plan”** has the meaning given to it in Schedule 17 (*Infrastructure Maintenance Requirements*).

**“Infrastructure Maintenance Deduction”** has the meaning given to it in section 21.2 of Schedule 21 (*Performance Standards for Infrastructure Maintenance*).

**“Infrastructure Maintenance Manuals”** means the instructions, maintenance manuals and workshop manuals specifying the scope, activity and timing of proper maintenance in respect of the Infrastructure.

**“Infrastructure Spare Parts”** means the parts specified in Schedule 18 (*Infrastructure Spare Parts and Infrastructure Special Tools*) relating to the Infrastructure together with all other parts obtained and used by the Operator in connection with the operation and maintenance of the Infrastructure.

**“Infrastructure Special Tools”** means the tools relating to the Infrastructure as specified in Schedule 18 (*Infrastructure Spare Parts and Infrastructure Special Tools*) together with any other tools which are obtained and used by the Operator in connection with the operation and maintenance of the Infrastructure in accordance with the Contract.

**“Infrastructure Special Tools Manuals”** means the instructions, maintenance manuals and workshop manuals at any time, specifying the scope, activity and timing of maintenance and proper operation and use of the Infrastructure Special Tools.

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

- (a) a meeting of its shareholders, directors or other officers is convened for the purpose of considering:
  - (i) any resolution for;
  - (ii) to petition for;
  - (iii) to file documents with a court or a registrar for,its winding-up, examinership, administration or dissolution or any resolution approving any of the foregoing is passed; or
- (b) the presentation of a petition for winding-up and which petition is not dismissed within twenty-eight (28) days of its presentation; or
- (c) the presentation of a petition to appoint an examiner and which petition is not dismissed within ten (10) days of its presentation; or
- (d) 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 NTA and TII (such approval not to be unreasonably withheld or delayed); or
- (e) the making of an order for the appointment or other duly authorised appointment of an examiner, receiver, trustee, liquidator or similar officer for such person or any of its assets; or
- (f) the making of an order for the appointment of an examiner to a related company in accordance with section 517 of the Companies Act 2014 of such person; or
- (g) the making of an order for the appointment of an encumbrancer, receiver or other similar officer taking possession of the whole or any part (which is material in the context of the performance of such person's obligations under the Project Documents to the extent applicable) of such person's undertaking, property or assets; or
- (h) the making of a composition with creditors generally; or
- (i) being unable to pay its debts as they fall due.

**“Intellectual Property Rights” or “IPR”** 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.

**“Invasive Alien Plant Species”** means any species which is included in Part 1 of the Third Schedule of the European Communities (Birds and Habitats) Regulations 2011 (S.I. No 477 of 2011).

**“Leap”** means the integrated ticketing scheme for the greater Dublin area which enables passengers to access one or more public transport services, including Luas, using contactless smart cards as a commonly accepted ticketing medium.

**“Legal Requirements”** means any legislation, constitutions, acts, statutes, laws, bye-laws, rules, or subordinate legislation and any enforceable EU legislation 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.

**“Levy Order”** means, from time to time, any order made under section 26 of the Railway Safety Act 2005 that imposes a levy on the Operator.

**“Light Rail Order”** means any of the following:

- (a) in relation to the Red Line:
  - (i) Transport (Dublin Light Rail) Act 1996 (Line A – Tallaght to Abbey Street Light Railway) Order 1999 (SI No.59 of 1999);
  - (ii) Dublin Light Rail (Line C – Abbey Street to Store Street) Order 2000 (SI No 370 of 2000) and the Dublin Light Rail (Line C(S) - Store Street to Connolly Station) Order 2000 (SI No 371 of 2000);
  - (iii) Railway (Dublin Light Rail C1 - Connolly to the Point) Order 2006 (S.I. 648 of 2006); and
  - (iv) The Planning and Development (Strategic Infrastructure) Act 2006, (Line A1) Order 2006 (PL06S NA 0002);
- (b) in relation to the Green Line:
  - (i) Transport (Dublin Light Rail) Act 1996 (Line B – St. Stephen’s Green to Sandyford Industrial Estate Light Railway) Order 1999 (SI No. 280 of 1999);
  - (ii) Railway (Dublin Light Rail Line B1 - Sandyford Industrial Estate to Cherrywood) Order 2006 (S.I. 441 of 2006); and
  - (iii) Railway (Luas Broombridge – St. Stephen’s Green to Broombridge) Order 2012 (as amended) issued by An Bord Pleanála pursuant to section 43(2) of 2001 Act.

**“Light Rail Vehicle”** or **“LRV”** means a light rail vehicle made available to the Operator to be used to provide the Services on the System including the CCTV system in the passenger saloons, front facing CCTV system, anti-scuffing strips, decals and the control and communications equipment listed in paragraph 16.8.4 of Schedule 16 (*Description of the Infrastructure*).

**“Light Railways”** means light passenger railways whose design and construction are similar to the System.

**“Line”** means either or both of the Red Line and the Green Line, as appropriate and as the context requires.

**“Line Replaceable Units”** means a component that may be removed and replaced in situ by a skilled and trained operative without the use of specialist equipment.

**“Long Term Roads Change”** means a Relevant Roads Change which is the result of a permanent Traffic Regulation Order, or a permanent reconfiguration of any traffic signals.

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

**“Lost Kilometres Deduction”** has the meaning given to it in Schedule 35 (*Performance Monitoring*).

**“Lost Kilometres Standard”** has the meaning given to it in section 35.2 of Schedule 35 (*Performance Monitoring*).

**“Lost Service Kilometres”** has the meaning given to it in Schedule 35 (*Performance Monitoring*).

**“LRV Annual Maintenance Plan”** has the meaning given to it in Schedule 12 (*LRV and Depot Equipment Maintenance Requirements*).

**“LRV Maintenance Deduction”** has the meaning given to it in section 15.2 of Schedule 15 (*Performance Standards for LRV Maintenance*).

**“LRV Maintenance Manuals”** means the instructions and maintenance manuals supplied by the relevant LRV Supplier specifying the scope, activity and timing of maintenance in connection with the LRVs supplied by such LRV Supplier.

**“LRV Spare Parts”** means the parts specified in Schedule 13 (*Capital Spares, LRV Spare Parts and LRV Special Tools*) relating to the LRVs, together with all other parts obtained and used by the Operator in connection with the operation and maintenance of the LRVs.

**“LRV Special Tools”** means the tools relating to the LRVs as specified in Schedule 13 (*Capital Spares, LRV Spare Parts and LRV Special Tools*) together with any other tools which are obtained and used by the Operator in connection with the operation and maintenance of the LRVs in accordance with the Contract.

**“LRV Special Tools Manuals”** means the instructions, maintenance manuals and workshop manuals at any time, specifying the scope, activity and timing of maintenance and proper operation and use of the LRV Special Tools.

**“LRV Supplier”** means, at any time, each person who supplies (or has supplied) LRVs to TII pursuant to a LRV Supply Contract.

**“LRV Supply Contracts”** means,

- (a) the contract between Córas Iompair Éireann and Alstom Transport SA dated 11th May 1999 as transferred to TII pursuant to the 2001 Act;
- (b) the contract between TII and Alstom Transport SA dated 30 March 2007;
- (c) any other contracts between TII and Alstom Transport SA from time to time for the supply or modification of some or all of the LRVs supplied by Alstom Transport SA; and

- (d) any other contract entered into from time to time between TII and a person other than Alstom Transport SA in connection with the supply or modification of LRVs.

**“LUAS tickets”** means tickets issued by the Operator which:

- (a) are issued in connection with the use of the System by a passenger; and  
(b) are evidence of the passenger’s entitlement to use the System,

in each case, in accordance with the Bye-laws and clause 17.1 (*Ticketing Arrangements*).

**“Maintenance Boundary Maps”** means the maps provided, or to be provided, from time to time to the Operator by TII (if applicable) or, alternatively, provided electronically and identified as “Maintenance Boundary Maps” for the purposes of Schedule 22 (*Maintenance Boundary Maps*), as may be modified from time to time, and any similar maps issued to the Operator by TII during the Contract Period.

**“Maintenance Manuals”** means the Infrastructure Maintenance Manuals, the LRV Maintenance Manuals, the Depot Equipment Manuals, the Infrastructure Special Tools Manuals and the LRV Special Tools Manuals or any of them.

**“Metrolink”** means the north-south metro service to be introduced to the Greater Dublin Area, which may, among other things, run on (or otherwise use) part of the Green Line south of Charlemont Bridge.

**“Necessary Consents”** means all approvals, permissions, consents, licences, certificates and authorisations (whether statutory or otherwise) which are required, from time to time, for the purposes of the design and construction of the System, whether required in order to comply with a Legal Requirement or as a result of the legal rights of any third party.

**“Nominating Authority”** has the meaning given to it in Schedule 38 (*Disputes Resolution Procedure*).

**“Non-PMS Breach”** has the meaning given to it in clause 42.2 (*Breach*).

**“Notice of Dispute”** has the meaning given to it in Schedule 38 (*Disputes Resolution Procedure*).

**“Notice of Dissatisfaction”** has the meaning given to it in Schedule 38 (*Disputes Resolution Procedure*).

**“NTA/TII”** shall be construed in accordance with clause 2.1(x)(iii) (*Interpretation*).

**“NTA Default”** has the meaning given to it in clause 51.3 (*NTA Default and TII Default*).

**“NTA IPR”** means Intellectual Property Rights related to Leap, Transport for Ireland and any other public transport brands developed by NTA for public transport services.

**“NTA Retained Functions”** means the functions of NTA specified in clause 3.11 (*NTA System Licence*) and **“NTA Retained Function”** means any of them.

**“Obstructing Roads Change”** means a Relevant Roads Change which either directly or for reasons of safety prevents the passage of LRVs along any part of the System which runs over Roads.

**"Offline Roads Change"** means a Relevant Roads Change which is not an Obstructing Roads Change, nor a Long Term Roads Change.

**"One-off Costs"** has the meaning given to it in clause 37.1 (*One-off Costs*).

**"Operating and Maintenance Period"** means the period from and including the Operating Commencement Date and expiring on the Expiry Date.

**"Operating Commencement Date"** means the date upon which the Operator commences operations provided that NTA/TII has confirmed to the Operator that it has satisfied each of the conditions referred to in clause 4.3 (*Required Documents – Operating Commencement Date*) in form and substance satisfactory to NTA/TII.

**"Operating Cost"** means any cost which the Operator incurs in order to provide the Services during the Operating and Maintenance Period.

**"Operator Default"** means each of the events and circumstances listed in clause 51.1 (*Operator Default*).

**"Operator's Equipment"** means all apparatus, machinery, plant, equipment and other things required for the provision and execution of the Services which are installed and/or located on the System by the Operator, but not anything for which title is vested in TII and any other things intended to form or forming part of the System.

**"Operator's Personnel"** means the Operator's Representative and all personnel whom the Operator utilises in respect of the Contract, including the Staff, labour and other employees of the Operator and of its Sub-Contractors of any tier and any other personnel, servants or agents assisting the Operator in respect of the Contract.

**"Operator's Representative"** means the person appointed from time to time by the Operator to act as its representative in accordance with clause 26.5 (*Operator's Representative*).

**"Operator System Licence Default"** means:

- (a) an Insolvency Event occurs in relation to the Operator;
- (b) any breach by the Operator of its obligations under clauses 3.4 (*Operator System Licence*) and/or Schedule 44 (*System Licence*) of this Contract;
- (c) any event or circumstance, which TII considers (acting reasonably) constitutes a threat to the safe operation of any part of the System;
- (d) the Operator ceases to be authorised to operate the LRVs on the System, including failing to obtain or maintain in effect any Consents to Operate; or
- (e) the Operator fails to pay any sum greater than two hundred and fifty thousand euro (€250,000) due and payable under this Contract within twenty (20) Business Days of the due date for payment.

**"Operator's Variation"** means a Variation proposed by the Operator in accordance with clause 34.9 (*Operator's Variations*).

**"Operator's Variation Response"** has the meaning given in clause 34.4 (*Operator's Response to Authority's Variation Requests*).



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

**“Overhead Conductor System”** means the overhead line equipment which is part of the System.

**“Park and Ride Sites”** means the park and ride sites listed in Schedule 25 (*Management of Park and Ride Sites*).

**“Park and Ride Receipts”** has the meaning given to it in Schedule 25 (*Management of Park and Ride Sites*).

**“Park and Ride Revenue”** has the meaning given to it in Schedule 25 (*Management of Park and Ride Sites*).

**“Parties”** means NTA, TII and the Operator and their permitted assignees and/or successors in title.

**“Patronage Revenue”** means revenue earned by the Operator in respect of carriage of passengers on the System (including concessionary fare schemes, fare sharing or similar schemes in which the System participates from time to time with other public transport services) net of third party agency commissions but does not include Standard Fares.

**“Patronage Revenue Report”** has the meaning given to it in Schedule 5 (*Revenue Collection*).

**“Patronage Revenue Smoothing Amount”** has the meaning given to it in Schedule 37 (*System Charge and Revenue Grant*).

**“Performance Bond”** means the bank guarantee or performance bond provided by an issuer, approved by TII, on behalf of the Operator which is to be in the form set out in Schedule 41 (*Form of Security*), as extended or renewed in terms and by an issuer approved by TII and in accordance with this Contract.

**“Performance Indicator”** means a performance indicator for monitoring the performance of the System as set out in:

- (a) Schedule 15 (*Performance Standards for LRV Maintenance*);
- (b) Schedule 21 (*Performance Standards for Infrastructure Maintenance*); and
- (c) Schedule 35 (*Performance Monitoring*).

**“Performance Monitoring System”** or **“PMS”** means the system described in Schedule 35 (*Performance Monitoring*) as amended from time to time in accordance with this Contract in connection with the monitoring of compliance by the Operator with the Performance Standards and determining the Adjusted Reporting Period Amounts.

**“Performance Standards”** means the requirements for minimum levels of System performance that are set out in, from time to time:

- (a) Schedule 15 (*Performance Standards for LRV Maintenance*);
- (b) Schedule 21 (*Performance Standards for Infrastructure Maintenance*); and
- (c) Schedule 35 (*Performance Monitoring*).

**“Period Report”** means the period report to be provided in accordance with Schedule 32 (*Records and Reporting Requirements*).

**“Plant”** means all plant, machinery, equipment, goods and chattels now or hereafter forming part of the System together with all and any machines, equipment, goods, components parts or other items from time to time installed therein or any replacement or substitute therefor.

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

**“Price per Scheduled Service Kilometre”** means the price identified as such in Table 34.2 of Schedule 34 (*Contract Prices and Indexation*), as adjusted in accordance with section 34.9 of Schedule 34 (*Contract Prices and Indexation*).

**“Principal Sub-Contractors”** means the Sub-Contractors appointed by the Operator which are listed in clause 58.2 (*Principal Sub-Contractors*) and such other Sub-Contractors as may be agreed between TII and the Operator from time to time.

**“Principal Sub-Contracts”** means the Sub-Contracts entered into by the Operator with the Principal Sub-Contractors.

**“Prior Operating Contract”** means the contract dated 1 September 2014 between NTA, the Railway Procurement Agency and Transdev Dublin Light Rail Limited in relation to the operation of the System.

**“Project Documents”** means this Contract, the AFCS Maintenance Contract, the Support Documents, the Sub-Contracts, the Collateral Warranties and such other documents as may be designated by NTA/TII as Project Documents.

**“Project Event”** means any of the events listed in the columns headed **“Project Event”** in Schedule 36 (*Project Events*).

**“Public Event”** means a public event which may affect the provision of tram services by the Operator as set out in Schedule 4 (*Operations Management*).

**“Quality Plans”** means the procedures and instructions setting out the activities to be undertaken by the Operator as required by clause 27 (*Quality Management*).

**“Records”** means those records referred to in Schedule 32 (*Records and Reporting Requirements*).

**“Red Cow Depot”** means:

- (a) the Luas maintenance depot situated at Red Cow, Naas Road, Dublin 22; and
- (b) any replacement of the depot referred to at paragraph (a), whether temporary or permanent.

**“Red Line”** means the light railway line between Tallaght / Saggart and Connolly / The Point.

**“Relevant Employee”** means, for the purposes of clause 52.8 (*Operator’s Employees*), a person engaged from time to time in respect of the provision of the Services or part thereof whose employment would or does transfer (including to NTA or TII) by virtue of the Transfer Regulations or by operation of law at any time.

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

**“Relevant Roads Change”** means, in relation to any part of the System which runs over a Road:

- (a) a physical change to the road or a change to the terms of the legal use of the road (in each case as a result of a permanent Traffic Regulation Order or a temporary Traffic Regulation Order initiated by a Relevant Roads Authority) other than:
  - (i) any Traffic Regulation Order at the request of, or consequential to, any works carried out by a person other than NTA, TII, or a Relevant Roads Authority; or
  - (ii) a temporary Traffic Regulation Order made in connection with a Public Event; or
- (b) a temporary or permanent reconfiguration (including a change to the sequence or periodicity) of any traffic signals in response to traffic conditions as they occur,

in either case, including:

- (i) the consequences of any such physical change, change to the terms of the legal use of the road, or reconfiguration of the traffic signals; and
- (ii) other than for the purposes of Schedule 36 (*Project Events*), a physical change, change to the terms of the legal use of the road, or a reconfiguration, in each case, occurring after the Operating Commencement Date.

**“Replacement Bus Services”** means the provision of Services using buses in substitution for the provisions of Services using LRVs in accordance with clause 19 (*Replacement Bus Services*).

**“Replacement Operator”** means any person appointed to operate and/or maintain the System upon termination or expiry of this Contract or any part of it (including NTA or TII) to whom a Relevant Employee may or does transfer or potentially transfer under the Transfer Regulations or by operation of law at any time including on termination or expiry of this Contract (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 Operating and Maintenance Period provided that:

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

**“Required Documents”** means the documents set out in Schedule 40 (*Conditions Precedent*).

**“Required Insurance Policies”** means the insurance policies required of the Operator as described in Part 2 of Schedule 39 (*Insurances*).

**"Required Records"** means the records specified in clause 31.1 (*Required Records*) and Schedule 32 (*Records and Reporting Requirements*).

**"Requisite Rating"** means the requirement to hold a long term debt rating of investment grade or better from at least two of Fitch Ratings Inc., Moody's Investors Service or Standard & Poor's Financial Services LLC.

**"Revenue Grant"** means an amount payable by TII to the Operator in accordance with this Contract, as determined in accordance with clause 39 (*Revenue Grant*).

**"Revenue Protection Activity"** has the meaning given to it in section 6.1 of Schedule 6 (*Revenue Protection*).

**"Revenue Protection Officer" or "RPO"** means a person who is:

- (a) employed and trained by the Operator, for the purpose of inspecting tickets, providing assistance to customers, otherwise reducing levels of Fare Evasion and vandalism and promoting security and cleanliness; and
- (b) authorised for the purpose of enforcing relevant Bye-laws.

**"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.

**"Routine Maintenance"** means the planned preventative, systematic and day-to-day inspection and detection of incipient Defects and Failures and the precautionary measures and activities to be undertaken by the Operator on a regular basis in anticipation of a Defect or Failure that may arise in order that the System is properly and safely maintained in good working order in accordance with the requirements of the Contract and with the purpose of achieving the Performance Standards at all times during the Contract Period.

**"Running Time"** means the time taken by a LRV in normal service to travel from an Originating Stop to the corresponding Terminating Stop.

**"Safety Acceptance Working Group" or "SAWG"** means the group of persons nominated from time to time by TII to participate in SAWG meetings.

**"Safety Management Document"** means the document or documents to be produced by the Operator for acceptance by the Commission for Railway Regulation and, on being accepted, to be thereafter maintained and implemented by the Operator in connection with the safe operation of the System in accordance with the relevant Legal Requirements.

**"Safety Management System"** means the safety management system produced by the Operator in accordance with Schedule 7 (*Safety Management*).

**"Sandyford Depot"** means:

- (a) the Luas maintenance depot situated at Woodford, Sandyford Industrial Estate, County Dublin; and
- (b) any replacement of the depot referred to at paragraph (a), whether temporary or permanent.

**“Scheduled Operating Commencement Date”** means 1 December 2019.

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

**“Scheduled Waiting Time”** or **“SWT”** has the meaning given to it in Schedule 35 (*Performance Monitoring*).

**“Schedules”** means the Schedules to this Contract.

**“Service Affecting Failure”** means any of:

- (a) a failure requiring the LRV to be replaced at the end of the Line;
- (b) a failure requiring the LRV to stop for a time in excess of three (3) minutes;
- (c) a failure requiring the evacuation of passengers, either immediately or at the next Stop, after which the LRV returns empty to the Depot; and
- (d) a failure requiring the LRV to be rescued and/or towed or pushed back to the Depot.

**“Service Control Plan”** means a document or documents prepared by the Operator in accordance with section 4.5 of Schedule 4 (*Operations Management*).

**“Service Interruption”** means any event, other than industrial action by the Staff or a Sub-Contractor’s staff or a System Licence Suspension Event pursuant to clause 3.5(a) (*Right to suspend System Licence*), which directly or for reasons of safety prevents the passage of LRVs along any part of the System.

**“Service Quality Deduction”** has the meaning given to it in Schedule 35 (*Performance Monitoring*).

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

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

**“Spare Part”** means any Capital Spare, LRV Spare Part or Infrastructure Spare Part.

**“Special Tool”** means any LRV Special Tool or Infrastructure Special Tool.

**“Staff”** means the Operator’s staff.

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

**“Standard Fare Commission”** has the meaning given in section 6.3 of Schedule 6 (*Revenue Protection*).

**“Standard Fare Revenue”** has the meaning given to it in paragraph 6.2.6 of Schedule 6 (*Revenue Protection*).

**“Step In”** has the meaning given to it in clause 50.1 (*Step-In*).

**“Step In Services”** has the meaning given to it in clause 50.2 (*Step-Out*).

**“Step Out”** has the meaning given to it in clause 50.2 (*Step-Out*).

**“Stop”** means any place at which passengers are normally permitted to board or leave LRVs.

**“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 or novated (including the AFCS Maintenance Contractor, but not including NTA or TII); 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 52.8 (*Operator’s Employees*), 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 Contract, this definition shall not be changed in the event of an amendment to the definition of “subsidiary” contained in the Companies Acts 2014.

**“Supplementary Invoice”** means an invoice submitted by a Party in accordance with clause 37.8 (*Supplementary Invoices*).

**“Support Document”** means any of the Guarantee and the Performance Bond.

**“Swept Path”** means the extent of the path swept out in plan by the LRVs travelling along the Track, such path having prescribed parameters of curvature and cant and allowing for the dynamic movements of the LRVs (including displacements under credible failure conditions) at all speeds up to the maximum operating speed, under all operational loading conditions from tare to crush, and taking into account all Track positional and wear tolerances relative to the Track's designed alignment.

**“System”** means the light rail system to be operated and maintained pursuant to this Contract, as described in Schedule 1 (*System Description*) and including Spare Parts and Special Tools.

**“System Branding”** means any trademarks and logos relating to the System which are owned by TII or its licensors, the details of which are set out in the System Licence, as amended and updated by TII by written notice to the Operator from time to time.

**“System Charge”** means an amount payable by the Operator under clause 38 (*System Charge*), calculated in accordance with Schedule 37 (*System Charge and Revenue Grant*).

**“System Contractor”** means any of the contractors under the System Contracts.

**“System Contractor Damage”** means any damage to the System (or part of the System) caused by a System Contractor.

**“System Contracts”** means:

- (a) the contracts listed in Schedule 43 (*System Contracts*); and

- (b) any other contract that TII enters into with a party other than the Operator or any Sub-Contractor, for the purpose of carrying out renewal works or improvements to the System and which is notified to the Operator as a "System Contract".

**"System Data"** means all information, data, materials, manuals and documents of any nature acquired or relating to the System or the operation or maintenance of the System, and which would reasonably be required by the Operator to perform the Services or perform any statutory duty relating to the Services, or would reasonably be required by NTA, TII or any other person:

- (a) to operate, maintain or monitor the System (or any interfaces with the System or System Extensions); or
- (b) to carry out functions similar to the Services; or
- (c) to perform any statutory duty related thereto.

**"System Extension"** means any further light rail or Metro systems in Dublin and/or elsewhere physically connecting with the System.

**"System Land"** means the land upon, on, over or under which the System has been constructed and includes any part of it.

**"System Licence"** means the licence granted to the Operator under clause 3.4 (*Operator System Licence*) pursuant to which the Operator is entitled to access the System to enable it to maintain and operate the System and otherwise comply with its obligations and exercise its rights under this Contract.

**"System Licence Suspension Event"** has the meaning given in clause 3.5 (*Right to Suspend System Licence*).

**"System Licence Suspension Notice"** has the meaning given in clause 3.5 (*Right to Suspend System Licence*).

**"System Performance Bonus"** has the meaning given in Schedule 35 (*Performance Monitoring*).

**"System Performance Deduction"** has the meaning given in Schedule 35 (*Performance Monitoring*).

**"Tax"** means all forms of taxation, duties, imposts and levies including income tax, 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, universal social charge, 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.

**"TII Default"** has the meaning given to it in clause 51.3 (*NTA Default and TII Default*).

**"TII IPR"** means the Intellectual Property Rights related to the System, including in respect of the LRVs and the Luas trade mark, but excluding the NTA IPR.

**"Timetable"** means the timetable from time to time in force for the operation of passenger services on the System.

**“Timing Point”** has the meaning given to it in Schedule 35 (*Performance Monitoring*).

**“Track”** means that part of the System used to support and guide the LRVs consisting of one pair of parallel rails (such that each line of the System consists of two (2) Tracks operational in opposite directions), including:

- (a) the rails, rail bearers and fastenings (including, for the avoidance of doubt, the resilient rail-encapsulating medium) and any ballast, substrate, slab, or other component used to support the rail bearers; and
- (b) buffer-stops, switches, crossovers, and other junction configurations used to route the LRVs from one set of rails to the other.

**“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 Activities”** means all those activities and works required to be undertaken by the Operator to properly prepare for and achieve full operational readiness in respect of the Services at the end of the Transition Period, including the activities set out in Schedule 3 (*Transition – Plan and Programme*) together with any obligation on the part of the Operator which is expressly stated in the Contract to be carried out during the Transition Period and/or before the Operating Commencement Date.

**“Transition Period”** means the period commencing on the Commencement Date and expiring on the Operating Commencement Date.

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

**“Undisclosed Interest”** means a third party interest affecting the System Land to the extent that such interest is not governed by the provisions of the Light Rail Orders and does not arise by virtue of any default of the Operator in the performance of its obligations under the Contract.

**“Variation”** means any addition, deletion or change to the Operator’s obligations in relation to the Services under this Contract (including a Deemed Authority Variation).

**“Variation Confirmation”** has the meaning given to it in clause 34.6 (*Variation Confirmation*).

**“Variation Notice”** has the meaning given in clause 34.2 (*Authority Variations*).

**“Variation Operating Cost”** means any increase in Operating Cost which will be incurred by the Operator in consequence of the implementation of a Variation, derived, where the Variation relates to the provision of additional Scheduled Service Kilometres, from application of the relevant rates set out in Schedule 34 (*Contract Prices and Indexation*).

**“Variation Operating Saving”** means any Operating Cost which will be saved by the Operator in consequence of the implementation of a Variation, derived, where the Variation relates to the provision of reduced Scheduled Service Kilometres, from application of the relevant rates set out in Schedule 34 (*Contract Prices and Indexation*).



“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).

“Website” means the Luas website with the domain name [www.luas.ie](http://www.luas.ie) or such other website as NTA/TII may designate.

“Working Hour” means, for the purposes of Schedule 6 (*Revenue Protection*) and Schedule 26 (*Management of Security*), an hour worked by a Revenue Protection Officer or member of security staff, for the avoidance of doubt not counting holidays, meal breaks, rest periods and absences due to sickness and other reasons.

“Works” means all works undertaken by System Contractors.

## 2. INTERPRETATION

### 2.1 References

Except to the extent that the context or the express provisions of this Contract 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 Contract;
- (b) all references to clauses and Schedules are references to clauses of and Schedules to this Contract 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 Contract (including any Annexes or Appendices thereto) are an integral part of this Contract and reference to this Contract includes reference thereto and reference to any Schedule includes reference to any Annex or Appendix thereto;
- (d) all references to any agreement (including, without limitation, this Contract), document or other instrument include (subject to all relevant approvals and any other provision of this Contract 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, codes of practice, code of conduct, 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 Contract;

- (h) the words “herein”, “hereto” and “hereunder” refer to this Contract 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) where the Operator consists of two or more persons all the respective covenants by the Operator shall be deemed to be by such persons jointly and severally;
- (n) references to “Parties” mean the parties to this Contract and references to a “Party” mean one of the parties to this Contract;
- (o) all monetary amounts are expressed in Euro;
- (p) any references to NTA shall be deemed to include a reference to the NTA’s, consultants, servants, sub-contractors and/or agents;
- (q) any references to TII shall be deemed to include a reference to TII’s consultants, servants, sub-contractors and/or agents;
- (r) any references to the Operator shall be deemed to include a reference to the Operator’s Representative, the Operator’s consultants, servants, sub-contractors and/or agents;
- (s) any references to Competent Authorities shall be deemed to include a reference to their respective advisers, consultants, servants, contractors and/or agents;
- (t) at any time any reference in this Contract to a sum or amount shall be construed as referring to such sum or amount Indexed for the effects of inflation at such time;
- (u) wherever this Contract obliges the parties to pay any amount to the other Party in respect of any Loss, Claim or other sums incurred by the parties:
  - (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 parties shall, where requested by the other Party, provide supporting evidence of such Loss, Claim or other sums;
- (v) neither NTA nor TII shall 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;

- (w) any reference to the statutory duties or functions of NTA or TII 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);
- (x) references to:
  - (i) NTA shall be construed as referring to NTA;
  - (ii) TII shall be construed as referring to TII (including where it is acting for NTA as contemplated by clause 2.1(x)(iii)(B)); and
  - (iii) NTA/TII shall be construed as:
    - (A) in relation to, or concerning, the System, referring to TII; and
    - (B) in relation to any other matter under this Contract, referring to TII acting for NTA in accordance with clause 3.1 (*Section 48, 2008 Act*)),and “acting for NTA” includes TII providing or disclosing information or data to NTA;
- (y) 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;
- (z) any reference to “day” shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next;
- (aa) any reference to the obligations or responsibilities of the Operator under this Contract shall, where applicable, be deemed to apply to the employees or sub-contractors of the Operator;
- (bb) any reference to “access” in this Contract in the context of documents includes the right to audit and take copies of any such documents;
- (cc) the expiry or termination of the Contract Period shall be without prejudice to, and not affect, the liability or responsibility of the Operator under the Contract for acts or omissions arising during the Contract Period or for any acts to be performed after the expiry or termination of the Contract Period;
- (dd) where the context requires, any reference in this Contract:
  - (i) to “approval” shall include “Approval”,
  - (ii) to “certificate” shall include “Certificate”,
  - (iii) to “acknowledge” shall include “Acknowledged”,
  - (iv) to “notice” shall include “Notice”;
- (ee) any Approval shall be at the absolute discretion of NTA or TII, as applicable, except where expressly stated otherwise in this Contract;

- (ff) “**maintain**” includes inspect, test, repair, adjust, alter, remove and replace and cognate words shall be construed accordingly;
- (gg) 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; and
- (hh) all written matter of any description in connection with and in accordance with the Contract, including notices, maintenance information, and entries on drawings, shall be entirely in the English language.

## 2.2 Ambiguities

In the case of any ambiguity or discrepancy:

- (a) subject to clause 2.2(c), between the provisions in this Contract (excluding for this purpose, the Schedules) and the provisions of any Schedule, the provisions of this Contract (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 NTA/TII (acting reasonably), shall prevail; or
- (c) between the provisions of Schedule 45 (*Operator’s Proposals*) and the other provisions of this Contract (including the other Schedules), the other provisions of this Contract shall prevail save to the extent that the application of the provisions of Schedule 45 (*Operator’s Proposals*) will, in the opinion of NTA/TII, give rise to a higher standard of work or service than that contemplated by this Contract (including the other Schedules) in which case, the provisions of Schedule 45 (*Operator’s Proposals*) shall apply; or
- (d) within or between any documentation forming part of a Schedule, the ambiguity or discrepancy shall be determined and resolved by NTA/TII (acting reasonably).

## 2.3 Conflict

If at any time either Party becomes aware of any conflict between any of the requirements of the Contract or any divergence between any such requirements and activities or operations of the other Party, it shall as soon as reasonably practicable upon becoming aware of such conflict or divergence give notice to the other Party specifying the conflict or divergence.

## 2.4 Technical Terms

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

## 2.5 Operator’s Duties

Unless expressly stated otherwise, the Operator owes duties and obligations under this Contract to NTA and TII.

### 3. TRANSPORT INFRASTRUCTURE IRELAND

#### 3.1 Section 48, 2008 Act

- (a) TII is the owner of the System and is party to this Contract in this regard.
- (b) In accordance with section 48 of the 2008 Act, NTA has assigned to TII its functions in relation to securing the provision of light rail passenger services to the extent relating to Luas on certain terms and conditions and is party to this Contract in this regard.
- (c) TII is exclusively responsible for the performance of NTA's functions in relation to securing the provision of light rail passenger services to the extent relating to Luas under this Contract, except to the extent contemplated by this clause 3.1.
- (d) Subject to clause 3.1(e), the rights and obligations in relation to clause 3.11 (*NTA System Licence*) (including, any defined term to the extent applicable) shall be exercised and /or performed by NTA to the exclusion of TII.
- (e) Notwithstanding anything in this Contract, the rights and obligations in relation to:
  - (i) clause 10.2 (*Consents and Approval to Operate the System*);
  - (ii) clause 42.2 (*Breach*);
  - (iii) clause 62 (*Announcements*); and
  - (iv) clause 67 (*Amendments*),including, any defined term contained therein to the extent applicable, shall be exercised and/or performed by NTA and TII together.
- (f) Notwithstanding anything in this Contract, the rights and obligations in relation to:
  - (i) clause 16.3 (*Authority Consent*);
  - (ii) clause 17.1(a) and 17.1(b) (*Ticketing Arrangements*);
  - (iii) clause 17.3 (*Authority Consent*);
  - (iv) clause 18(c) (*Customer Care and Public Relations*);
  - (v) clause 26.5(a) (*Operator's Representative*);
  - (vi) clause 26.6 (*Change of Operator's Representative*);
  - (vii) in the case of variations of value greater than one hundred thousand euro (€100,000), clause 34.2 (*Authority Variations*);
  - (viii) Claims (other than insurance Claims) arising in connection with this Contract of value greater than one hundred thousand euro (€100,000);
  - (ix) clause 49.9 (*Termination*);
  - (x) clause 50 (*Step In*);

- (xi) clause 51 (*Default*);
- (xii) clause 52 (*Consequences of Termination/Expiry*);
- (xiii) clause 53 (*Transition to Another Operator*);
- (xiv) clause 57 (*Assignment*);
- (xv) clause 58 (*Sub-Contracting*);
- (xvi) clause 68.2 (*Consequences of Prohibited Acts*); and
- (xvii) the rights and obligations in relation to the Support Documents,

including, any defined term contained therein to the extent applicable, shall be performed and/or exercised by TII, having obtained the prior approval of NTA to its exercise of the rights under such clauses.

### 3.2 Assigned Functions

Except as notified by NTA to the Operator in writing, the Operator shall be entitled to treat any act of TII which is authorised by this Contract as being expressly authorised by NTA, and the Operator shall not be required to determine whether an express authority has in fact been given.

### 3.3 Ownership

- (a) Title in the System shall remain in TII continuously during the Contract Period.
- (b) Title in any intellectual property arising under the Contract shall be subject to clause 12 (*Intellectual Property*).
- (c) Subject to clause 52.4(b) (*Transfer of the System*), title in all the Operator's Equipment shall remain in the Operator continuously during the Contract Period.

### 3.4 Operator System Licence

- (a) For the purposes of the Operator providing the Services and otherwise complying with its obligations and exercising its rights pursuant to this Contract, TII hereby grants a licence to the Operator to have access to and to use the System in accordance with clause 11 (*Access to the System*) on the terms and conditions set out in Schedule 44 (*System Licence*) until the Expiry Date.
- (b) The Operator shall be entitled to grant a sub-licence, in terms no better than those granted under the System Licence, to enter on to and/or use the System to the Operator's servants, agents, employees and Sub-Contractors and any other person whom the Operator reasonably requires to allow to enter on to the System in order to operate and maintain the System and otherwise perform or facilitate the performance of the obligations and exercise or facilitate the exercise of the rights of the Operator pursuant to this Contract but shall not otherwise be entitled to or be required to assign, sublet or otherwise deal with the System other than in accordance with this Contract.
- (c) The Operator shall be liable to TII for all acts and omissions of any of its sub-licensees in breach of the System Licence.

- (d) The System Licence is granted to the Operator for the sole purpose of enabling the Operator to meet its obligations under this Contract. Neither the System Licence nor the provision of access to the System by TII to the Operator shall be a demise of the System or any part of it, nor shall the Operator be entitled to any estate, right or interest in the System or any part of it, and the Operator and those authorised by it shall have access to the System as licensees of TII only.
- (e) Except as otherwise provided for under this Contract, TII agrees that, during the term of the System Licence, TII shall not grant a licence to any third party operator (save in respect of the AFCS Maintenance Contractor) to operate or maintain the System for the purpose of providing the Services.
- (f) The System Licence shall immediately determine upon the Expiry Date.

### 3.5 Right to Suspend System Licence

TII may serve a notice (the “**System Licence Suspension Notice**”) on the Operator where:

- (a) TII, a System Contractor and/or their agents or contractors or any other person authorised by TII requires access to the System to carry out the Works or to repair or renew or replace the System (or any part of the System);
  - (b) the Operator or any of their agents or contractors acts in a manner that, in the reasonable opinion of TII, will or is likely to cause a material adverse (physical or commercial) effect (in the opinion of TII, acting reasonably) on the System; or
  - (c) an Operator System Licence Default has occurred and is continuing,
- (each a “**System Licence Suspension Event**”).

### 3.6 Contents of System Licence Suspension Notice

A System Licence Suspension Notice shall specify:

- (a) the nature of the relevant System Licence Suspension Event;
- (b) the date and time at which System Licence suspension is to take effect;
- (c) any reasonable restrictions imposed by TII on the Operator's rights to use the System while the System Licence Suspension Notice is in force, including restrictions on the Operator's use of the track comprised in the Lines or use of the LRVs and whether the Operator will be excluded from any area or areas of the System;
- (d) in respect of a System Licence Suspension Notice pursuant to clauses 3.5(b) or 3.5(c) (*Right to Suspend System Licence*), whether TII reasonably considers that such System Licence Suspension Event is capable of remedy, and where the System Licence Suspension Event is capable of remedy:
  - (i) the steps reasonably required to remedy the System Licence Suspension Event; and
  - (ii) a reasonable grace period for the Operator to remedy it provided that where the System Licence Suspension Event which has occurred is a failure to pay any System Charge or other amount due, the Parties agree that seven days shall be a reasonable grace period.

### 3.7 Effect of System Licence Suspension Notice

Where TII has served a System Licence Suspension Notice on the Operator:

- (a) the Operator shall comply with any restrictions imposed on it by the System Licence Suspension Notice;
- (b) the System Licence 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 TII to the Operator under clause 3.9(c) (*Revocation of Suspension*);
- (c) in respect of a System Licence Suspension Notice pursuant to clauses 3.5(b) or 3.5(c) (*Right to Suspend System Licence*), service of the System Licence Suspension Notice shall not affect the Operator's continuing obligation to pay the System Charge subject to any damage to the System (consequent on the exercise of such rights) being made good; and
- (d) in respect of a System Licence Suspension Notice pursuant to clause 3.5(a) (*Right to suspend System Licence*), the Operator shall be entitled to treat the System Licence Suspension Notice as a Variation Notice and the relevant provisions of clause 34 (*Variations*) shall apply accordingly.

### 3.8 Suspension to be Proportionate

- (a) A System Licence Suspension Notice shall, so far as reasonably practicable, apply only to the parts or part of the System to which the relevant System Licence Suspension Event relates.
- (b) The fact of a System Licence Suspension shall not of itself be regarded as an Operator Default.
- (c) Where a System Licence Suspension Event is capable of remedy by the Operator, the Operator shall:
  - (i) with all reasonable diligence, take such steps as are specified in the System Licence Suspension Notice to remedy the System Licence Suspension Event; and
  - (ii) keep TII fully informed of the progress which is being made in remedying the System Licence Suspension Event.

### 3.9 Revocation of Suspension

- (a) With respect to a System Licence Suspension Notice served under clause 3.5(a) (*Right to suspend System Licence*) on completion of the Works, maintenance or repairs the subject of that System Licence Suspension Notice (whether in whole or in part), provided it is reasonable for the suspension effected by the System Licence Suspension Notice to be revoked (whether in whole or in part), TII shall revoke the suspension to that extent in accordance with clause 3.9(c).
- (b) Where the Operator has complied with its obligations under clause 3.8(c) (whether in whole or in part) and it is reasonable for the suspension effected by the System Licence Suspension Notice to be revoked (whether in whole or in part), TII shall revoke the suspension to that extent in accordance with clause 3.9(c).



- (c) TII shall effect the revocation of a suspension as soon as practicable after cessation of the System Licence Suspension Event (whether in whole or in part) by written notice from TII to the Operator specifying the extent of the revocation and the date on which it is to have effect.

### 3.10 TII's right to terminate the System Licence

If an Operator System Licence Default occurs and is continuing, TII may within three (3) months of such Operator System Licence Default occurring by notice in writing to the Operator immediately terminate the System Licence to the Operator.

### 3.11 NTA System Licence

- (a) For the purposes of NTA complying with its obligations and exercising its rights pursuant to this Contract, TII hereby grants an irrevocable licence to NTA (the "**NTA System Licence**") to have access to the System on the terms and conditions set out in Schedule 44 (*System Licence*) and in accordance with this Contract, until the Expiry Date.
- (b) NTA shall comply with all Bye-laws, the Light Rail Orders, any relevant Consents to Operate and any reasonable direction by TII or the Operator in relation the safe operation of the System.
- (c) NTA shall be entitled to grant a sub-licence, in terms no better than those granted under the NTA System Licence, to enter on to the System to the NTA's servants, agents, employees and sub-contractors and any other person whom NTA reasonably requires to allow to enter on to the System in order to perform or facilitate the performance of the obligations and exercise or facilitate the exercise of the rights of NTA pursuant to this Contract but shall not otherwise be entitled to or be required to assign, sublet or otherwise deal with the System other than in accordance with this Contract.
- (d) The NTA System Licence is granted to NTA for the sole purpose of enabling NTA to meet its obligations under this Contract. Neither the NTA System Licence nor the provision of access to the System by TII to NTA shall be a demise of the System or any part of it, nor shall NTA be entitled to any estate, right or interest in the System or any part of it, and NTA and those authorised by it shall have access to the System as licensees of TII only.
- (e) The NTA System Licence shall immediately determine upon the Expiry Date.
- (f) Subject to the exclusions in clause 47.4 (*Exclusions*), NTA indemnifies and holds harmless on demand TII from and against all:
  - (i) Indemnified Liabilities for or in respect of bodily injury, illness, disease or death of any person whatsoever;
  - (ii) Indemnified Liabilities for or in respect of loss of or damage incurred by TII, their employees, passengers or any other third party (including loss of or damage to property real or personal); and
  - (iii) Indemnified Liabilities for or in respect of any breach of statutory duty,

to the extent that the same arises in connection with the exercise by NTA, its servants, agents, employees and sub-contractors, of its rights pursuant to this clause 3.11 (*NTA System Licence*).

**PART 2 - DURATION****4. EFFECTIVENESS OF THIS CONTRACT****4.1 Commencement of clauses**

(a) The following clauses shall take effect from the Commencement Date:

- (i) clause 1 (*Definitions*);
- (ii) clause 2 (*Interpretation*);
- (iii) clause 3 (*Transport Infrastructure Ireland*);
- (iv) clause 4 (*Effectiveness of this Contract*);
- (v) clause 5 (*Extension*);
- (vi) clause 6 (*Warranties*);
- (vii) clause 7 (*Operator Acknowledgements*);
- (viii) clause 8 (*Project Undertakings*);
- (ix) clause 10 (*Transition*);
- (x) clause 11 (*Access to the System*);
- (xi) clause 12 (*Intellectual Property*);
- (xii) clause 26 (*Relationships*);
- (xiii) clause 27 (*Quality Management*);
- (xiv) clause 28 (*Consents and Approvals*);
- (xv) clause 30 (*Information and Access*);
- (xvi) clause 31 (*Records and Reporting Requirements*);
- (xvii) clause 33 (*Extensions to the System*);
- (xviii) clause 34 (*Variations*);
- (xix) clause 35 (*Change of Law*);
- (xx) clause 36 (*No Better and No Worse*);
- (xxi) clause 37.10 (*Set-off*);
- (xxii) clause 40 (*Rates, Taxes and Charges*);
- (xxiii) clause 41 (*Value Added Tax*);
- (xxiv) clause 45 (*Indemnities*);

- (xxv) clause 47 (*Limitation on Liability*);
- (xxvi) clause 48 (*Project Events*);
- (xxvii) clause 49 (*Force Majeure*);
- (xxviii) clause 51 (*Default*);
- (xxix) clause 52 (*Consequences of Termination/Expiry*);
- (xxx) clause 54 (*Handback of the System*);
- (xxxi) clause 55 (*Employment Issues*);
- (xxxii) clause 57 (*Assignment*);
- (xxxiii) clause 58 (*Sub-Contracting*);
- (xxxiv) clause 59 (*Disputes Resolution Procedure*);
- (xxxv) clause 60 (*Notices*);
- (xxxvi) clause 61 (*Confidentiality*);
- (xxxvii) clause 62 (*Announcements*);
- (xxxviii) clause 63 (*Agency*);
- (xxxix) clause 64 (*Whole Agreement*);
- (xl) clause 65 (*Severability*);
- (xli) clause 66 (*Waiver*);
- (xlii) clause 67 (*Amendments*);
- (xliii) clause 68 (*Corrupt Gifts*);
- (xliv) clause 69 (*Counterparts*); and
- (xlv) clause 70 (*Governing Law and Jurisdiction*).

- (b) The entire of this Contract shall take effect on the Operating Commencement Date

#### 4.2 Required Documents – Commencement Date

On or before the Commencement Date, the Operator shall have provided to NTA/TII each of the Required Documents and shall have satisfied each of the conditions referred to in Part 1 of Schedule 40 (*Conditions Precedent*), which are required as of the Commencement Date, in form and substance satisfactory to NTA/TII.

#### 4.3 Required Documents – Operating Commencement Date

- (a) The Operating Commencement Date shall not occur unless NTA/TII has received each of the Required Documents and the Operator has satisfied each of the conditions

referred to in Part 2 of Schedule 40 (*Conditions Precedent*), which are required as of the Operating Commencement Date, in form and substance satisfactory to NTA/TII.

- (b) NTA/TII shall notify the Operator promptly upon being so satisfied.

#### 4.4 Waiver

The conditions specified in clause 4.2 (*Required Documents – Commencement Date*) and clause 4.3 (*Required Documents – Operating Commencement Date*) may be waived or deferred in whole or in part and with or without conditions by NTA/TII in its absolute discretion.

### 5. EXTENSION

#### 5.1 Contract Period Extension

- (a) On or before the date falling twelve (12) months prior to the then Expiry Date, or such later date as may be agreed by the Parties, NTA/TII shall have the option, on giving written notice to the Operator, to extend the then Expiry Date to a date failing no later than nine (9) years after the Operating Commencement Date.
- (b) Upon NTA/TII exercising its rights under clause 5.1(a), all references in this Contract to “**Expiry Date**” shall be construed as referring to the date contemplated by paragraph (b) of its definition.

#### 5.2 Further Contract Period Extension

- (a) In the event that NTA/TII exercises the option to extend the Contract Period in accordance with clause 5.1 (*Contract Period Extension*), NTA/TII shall, on or before the date falling twelve (12) months prior to the occurrence of the then Expiry Date (as to be construed in accordance with clause 5.1 (*Contract Period Extension*)) or such later date as the Parties may agree, have the option, on giving written notice to the Operator, to further extend such Expiry Date to a date failing no later than eleven (11) years after the Operating Commencement Date.
- (b) Upon NTA/TII exercising its rights under clause 5.2(a), all references in this Contract to “**Expiry Date**” shall be construed as referring to the date contemplated by paragraph (c) of its definition.

**PART 3 - WARRANTIES AND PROJECT UNDERTAKINGS****6. WARRANTIES****6.1 Reliance**

The Operator acknowledges that NTA and TII have entered into this Contract in reliance on the representations and warranties contained in this Contract.

**6.2 General**

The Operator represents and warrants to each of NTA and TII that, as at the Commencement Date (and, as at the Operating Commencement Date, by reference to the facts and circumstances then existing):

- (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 Contract and the Project Documents to which it is a party; and
  - (ii) to comply with the provisions of, and perform all of its obligations and exercise all of its rights under, this Contract and the Project Documents to which it is a party;
- (c) the Operator has taken all necessary action to authorise the execution and delivery of this Contract and the Project Documents to which it is a party and the transactions contemplated hereby and thereby;
- (d) the entry into and performance by the Operator of this Contract and the Project Documents to which it is a party 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; or
  - (iv) any agreement, contract or other undertaking to which the Guarantor is a party or which is binding on the Guarantor or any of its property or assets;
- (e) this Contract and each of the Project Documents to which it is a party constitutes legal, valid and binding obligations of the Operator enforceable in accordance with its terms except as may be limited by any relevant bankruptcy, insolvency, examination or similar laws affecting creditors' rights generally, the principles of equity and equitable remedies, limitation of claims or defences of set-off, counterclaim or similar principles and except for any obligation that purports to confer rights on a person that is not a party to the relevant agreement;

- (f) except to the extent previously disclosed to NTA and TII by or on behalf of the Operator, no action, suit, proceeding, litigation or dispute against the Operator or the Guarantor 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 the Guarantor before any court, arbitrator or other body which, in any case, would be reasonably likely to result in any material adverse change in the business or condition (financial or otherwise) of the Operator and/or to materially adversely affect its ability to perform its obligations under this Contract;
- (g) except to the extent previously disclosed to NTA and TII by the Operator, there has been no material adverse change in the financial condition of either the Operator or the Guarantor 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 Contract;
- (h) having made all due and reasonable enquiries in respect of information sourced from a third party other than any member of its Group, all written information furnished by or on behalf of the Operator in connection with this Contract or the Project Documents or delivered by or on behalf of the Operator to NTA and TII pursuant to this Contract 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; and
- (i) the Operator or the Guarantor is not aware of any material facts or circumstances that have not been disclosed to NTA and TII and which if disclosed would reasonably be expected to materially adversely affect the decision of a prudent person considering whether or not to enter into this Contract with the Operator. For the purpose of this clause 6.2(i), the knowledge and awareness of the Operator or the Guarantor, as the case may be, shall be limited to that of its officers and employees with responsibilities for the Services.

## 7. OPERATOR ACKNOWLEDGMENTS

### 7.1 TII reliance

The Operator hereby acknowledges that NTA and TII are and will be relying on the Operator's knowledge, care, skill, diligence, experience, expertise and competence in providing services of the nature to be performed under this Contract.

### 7.2 Disclosed Data

Subject to clause 7.6 (*System Contracts Warranty*), the Operator acknowledges that NTA, TII and their advisers, consultants, servants, contractors and/or agents have made the Disclosed Data available to the Operator prior to the Commencement Date without any responsibility for such Disclosed Data.

### 7.3 Deficiencies in Disclosed Data

Without prejudice to the other provisions of this clause 7 (*Operator Acknowledgments*), other than clause 7.6 (*System Contracts Warranty*), NTA and TII, their advisers, consultants, servants, contractors and/or agents shall not be liable to the Operator (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of NTA or TII or their respective advisers, consultants, servants, contractors and/or agents) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

#### 7.4 No Warranty on Disclosed Data

- (a) Subject to clause 7.6 (*System Contracts Warranty*), NTA, TII and their respective advisers, consultants, servants, contractors and/or agents give no warranty or undertaking that the Disclosed Data represents all of the information in their possession or power (either during the tender for the Services or at the Commencement Date) relevant or material to the Services or the obligations undertaken by the Operator under this Contract.
- (b) NTA, TII and their respective advisers, consultants, servants, contractors and/or agents shall not be liable to the Operator in respect of any failure to disclose or make available (whether before or after the Commencement Date) to the Operator any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Operator (whether before or after the Commencement Date) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.

#### 7.5 Operator Acknowledgement

The Operator acknowledges and confirms that:

- (a) it has conducted its own analysis and review of the Disclosed Data and has before the Commencement Date satisfied itself as to the accuracy, correctness, sufficiency, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance in connection with this Contract and the performance of the Services;
- (b) it is satisfied that the System is capable of being operated and maintained in accordance with this Contract;
- (c) in relation to the System, it has:
  - (i) inspected and examined to its satisfaction the System as at the date of this Contract;
  - (ii) satisfied itself as to the suitability of the System for the purposes of performing the Services;
  - (iii) satisfied itself as to the suitability of the materials and design of the System for the purposes of performing the Services; and
  - (iv) satisfied itself as to the means of access to the System;
- (d) no term, condition, warranty or representation of any kind whatsoever (express or implied) is or has been given by or on behalf of NTA or TII in respect of the System;
- (e) on and from the Operating Commencement Date, TII shall make the LRVs available to the Operator on the System on an as-is and where-is basis;
- (f) all terms, conditions, warranties and representations (express or implied and whether statutory, collateral hereto or otherwise) relating to the System, including with respect to specification, age, quality, design, operation, condition, description, merchantability or as to their fitness for any purpose or use, are hereby expressly excluded to the extent permissible by law;

- (g) it shall not be entitled to, or have any right to receive, any additional payment under this Contract or otherwise from NTA, TII or their respective advisers, consultants, servants, contractors and/or agents whether in damages or for extensions of time should any item or information contemplated by this clause 7.5 be incorrect or insufficient and/or unsuitable for the Operator's use or any misapprehension by the Operator thereof; and
- (h) it shall not be relieved from any risks or obligations imposed on or undertaken by it under this Contract should any item or information contemplated by this clause 7.5 be incorrect or insufficient and/or unsuitable for the Operator's use or any misapprehension by the Operator thereof,

provided that the acknowledgement and confirmation given in this clause 7.5:

- (i) shall not constitute grounds for bringing an action against the Operator by NTA or TII, or give rise to a right of termination on the part of NTA or TII, but NTA and TII may rely on such acknowledgement and confirmation for the purpose of defending or contesting any action brought against either of them or Claim made by the Operator; and
- (ii) is without prejudice to the Operator's responsibility for Defects in the System being as set out in Schedule 10 (*Defects in and Damage to the System*).

#### 7.6 System Contracts Warranty

NTA and TII warrant that, as at the Commencement Date, the copies of the System Contracts disclosed as part of the Disclosed Data are complete and up to date copies of such System Contracts reflecting all amendments agreed up to the Commencement Date which affect the Services to be performed by the Operator.

#### 7.7 TII to Provide

The Parties acknowledge that the following have been made available by TII to the Operator:

- (a) the Capital Spares as set out in Schedule 13 (*Capital Spares, LRV Spare Parts and LRV Special Tools*);
- (b) the Infrastructure Spare Parts as set out in Schedule 18 (*Infrastructure Spare Parts and Infrastructure Special Tools*);
- (c) the LRV Spare Parts as set out in Schedule 13 (*Capital Spares, LRV Spare Parts and LRV Special Tools*);
- (d) the Infrastructure Special Tools as set out in Schedule 18 (*Infrastructure Spare Parts and Infrastructure Special Tools*);
- (e) the LRV Special Tools as set out in Schedule 13 (*Capital Spares, LRV Spare Parts and LRV Special Tools*);
- (f) the Maintenance Boundary Maps as set out in Schedule 22 (*Maintenance Boundary Maps*);
- (g) the Depot Equipment as set out in Schedule 14 (*Depots and Depot Equipment*); and



- (h) the Maintenance Manuals listed in Schedule 20 (*Infrastructure Maintenance Manuals and Special Tools Manuals*).

## 8. PROJECT UNDERTAKINGS

### 8.1 Operator Obligations

The Operator shall:

- (a) comply with the Contract and shall procure that the Contract is complied with;
- (b) perform and shall procure that the Services are performed:
  - (i) in accordance with this Contract during the Contract Period;
  - (ii) in full compliance with all applicable Legal Requirements;
  - (iii) in full compliance with all Necessary Consents, Consents to Operate and the Safety Management System; and
  - (iv) to the extent not contemplated by the foregoing, so that Services are provided and the System is available during the Contract Period,at its own cost and risk; and
- (c) fill all staff vacancies arising using open, transparent and fair policies.

### 8.2 Standard of Performance

The Operator shall perform and shall procure that the Services are at all times performed:

- (a) in an efficient, effective and safe manner and in accordance with Good Industry Practice (save where a lesser specification or standard of performance is expressly required under this Contract);
- (b) in accordance with accepted professional standards, codes of practice and regulations which are consistent with Good Industry Practice;
- (c) in a manner that
  - (i) does not prejudice in any way whatsoever the safety of the System, any item, part or component of the System, any Spare Part, any Special Tool, passengers using the System or the public, and
  - (ii) does not materially diminish the efficiency and/or operational life (being that specified by the manufacturer thereof, and otherwise that to be reasonably expected of such an item according to Good Industry Practice) of the System, any item, part or component of the System, any Spare Part or any Special Tool;
  - (iii) optimises the expected whole life of the System or any item, part or component of the System, any Spare Part or any Special Tool; and
  - (iv) ensures, in accordance with the Good Industry Practice, that the System, Spare Parts and Special Tools are handed back to TII on the applicable Expiry Date

in materially the same or better condition (subject to fair wear and tear) as those items were on the Operating Commencement Date;

- (d) with all due skill, care and diligence;
- (e) by appropriately experienced, qualified and trained personnel; and
- (f) in such manner as would not be likely to materially detract from the image and reputation of NTA or TII.

### 8.3 General Obligations

- (a) Without limitation to clause 8.2 (*Standard of Performance*), the Operator will, at all times:
  - (i) assist and facilitate NTA and TII in carrying out, and shall take all reasonable steps necessary to ensure that NTA and TII are each able to comply with their respective duties under any Legal Requirements (insofar as the duties relate to the operation and maintenance of the System and the provision of the Services).
  - (ii) perform the Services so as to ensure:
    - (A) the proper performance by NTA or TII of its obligations under the 2008 Act, the 2001 Act and the Light Rail Orders insofar as they relate to the operation and maintenance of the System and the provision of the Services;
    - (B) that it shall not hinder or prevent NTA or TII from enjoying its property rights, or exercising its rights and powers under the 2008 Act, the 2001 Act and the Light Rail Orders; and
    - (C) that it shall not carry out or permit any act or omission which would put NTA or TII in breach of its obligations under the 2008 Act, the 2001 Act and the Light Rail Orders.
- (b) The Operator, at all times, shall comply with the requirements of NTA/TII (acting reasonably and insofar as relates to the subject matter of this Contract) 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 Contract and the Project Documents (or any obligations contemplated herein or therein) will be obtained in a timely manner;
  - (ii) procure that to the extent within its control all consents and licences remain in full force and effect and it shall comply, and shall procure compliance, with the terms and requirements of each of the consents and licences;
  - (iii) obtain all Consents to Operate (including procuring the acceptance by the Commission for Railway Regulation of the Operator's Safety Management System) and the Necessary Consents;

(iv) fulfil any conditions in such Necessary Consents and Consents to Operate so that:

(A) the Services may be provided; and

(B) the System may be operated and maintained,

provided that NTA or TII shall give such reasonable assistance as the Operator may request in relation to its obligations under this clause 8.3(c)(iv) provided that, to the extent NTA or TII incurs third party costs in connection with such reasonable assistance, the Operator shall reimburse such third party costs to the extent they were reasonably and properly incurred.

(d) The Operator shall procure that all of its necessary returns will be delivered by or on behalf of the Operator to the relevant taxation authorities, that the Operator is not in default in the payment of any taxes save in respect of any liability to Tax which is disputed in good faith by the Operator, and that no Claim will be asserted with respect to taxes which has not been disclosed to NTA/TII (except where the Operator is reclaiming VAT).

(e) The Operator shall not interfere unnecessarily or improperly with:

(i) the convenience of the public, or

(ii) the access to, and use and occupation of, all public or private roads and footpaths, or properties in the possession of any person,

except as required in order to perform its obligations under this Contract.

#### 8.4 Operator's Equipment

(a) The Operator shall be responsible for all Operator's Equipment.

(b) When brought on to the System, Operator's Equipment shall be deemed to be exclusively intended for the provision, performance and execution of the Services.

#### 8.5 Support Documents

(a) The Operator shall provide:

(i) the Guarantee from the Guarantor; and

(ii) the Performance Bond from an Acceptable Entity,

and, in each case,

(A) in the case of the Guarantor or the Acceptable Entity, in respect of which no Insolvency Event has occurred or occurs for so long as the relevant Support Document is required to be in full force and effect in accordance with clause 8.5(b); and

(B) which otherwise satisfies the requirements of this Contract.

(b) Each of the Support Documents shall be, and the Operator shall procure that each Support Document, is in full force and effect, and capable of enforcement at least:

- (i) in the case of the Guarantee, until the day after all obligations of the Operator under the Project Documents to NTA and TII are performed and discharged; and
- (ii) in the case of the Performance Bond, until the day falling one hundred and eighty (180) days after the applicable Expiry Date.

#### 8.6 No Relief

Unless expressly stated to the contrary in the Contract, in no event including by reason of:

- (a) any insufficiency or deficiency in the System, any Spare Part or Special Tool;
- (b) any insufficiency or deficiency in the Disclosed Data or any other items provided to the Operator;
- (c) any dispute or difference between the Parties which may arise during the Contract Period; or
- (d) any notice, consent, approval, certificate, determination or decision by NTA or TII or the doing or avoidance of doing anything by NTA or TII under this Contract,

shall the Operator be relieved of its obligations to properly perform the Services, to perform the obligations assumed by the Operator under and in accordance with the Contract and to achieve the Performance Standards.

#### 8.7 Negative Pledge

The Operator hereby undertakes to each of NTA and TII that it shall not (without the prior Approval of NTA/TII create, nor permit to subsist, any Encumbrance on or over the System or any part of it.

#### 8.8 Data Protection

- (a) Each Party will comply with its obligations under Data Protection Law in respect of its processing of personal data under this Contract.
- (b) The Operator acknowledges that, with the exception of the processing described at clause 8.8(c) below, it processes any personal data in connection with the provision of the Services under this Contract in its capacity as a controller, including:
  - (i) personal data relating to employees of the Operator,
  - (ii) personal data relating to customers/members of the public which are processed in connection with the operation of the System, and
  - (iii) personal data processed in connection with the prosecution by the Operator of alleged fare evaders.
- (c) The Operator will, from time to time, process personal data in order to provide email updates to users of the System and, depending on the preferences expressed by the data subject when the data is collected, to send marketing communications or promotional offers by email on behalf of NTA and/or TII. In such circumstances, the Operator acknowledges that NTA and/or TII is the controller and the Operator is the processor and the Operator agrees that:

- (i) the Operator processes the following personal data on behalf of NTA and/or TII relating to data subjects who are passengers on the System in the context of providing the Services described in the clause 8.8(c) under this Contract, for the duration of the Contract:
- full name;
  - email address;
  - age;
  - location;
  - whether the data subject is over 18 years old;
  - whether the data subject is resident in Ireland;
  - whether the data subject consents to receive marketing communications by email;
  - whether the data subject accepts competition terms and conditions; and
  - the date of entry into any competition.

The obligations and rights of the Operator are as set out in this Contract;

- (ii) it shall process such personal data only in accordance with the instructions of NTA and/or TII and solely as strictly necessary for the performance of its obligations under this Contract, except where otherwise required by Legal Requirements (in such circumstances the Operator shall inform the NTA and/or TII of the relevant Legal Requirement before processing the personal data, unless prohibited by such Legal Requirements);
- (iii) it shall ensure that the persons authorised by NTA and/or TII to process such personal data are bound by appropriate confidentiality obligations;
- (iv) it shall implement and maintain such security measures as are required to comply with the data security obligations of Data Protection Law;
- (v) subject to clause 58 (Sub-Contracting), it shall not engage any sub-processor without the prior written consent of NTA and/or TII and where NTA and/or TII 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 NTA and/or TII;
- (vi) subject to clause 58 (Sub-Contracting), where any sub-contractor of the Operator will be processing such personal data on behalf of NTA and/or TII, the Operator shall ensure that a written contract exists between the Operator and the sub-contractor containing clauses equivalent to those imposed on the Operator in this clause 8.8. In the event that any sub-processor fails to meet its data protection obligations, the Operator shall remain fully liable to NTA and/or TII for the performance of the sub-processor's obligations;
- (vii) NTA and/or TII (or its authorised representative(s)), acting reasonably, shall be entitled, at reasonable times and on reasonable notice, to audit the security

measures adopted by the Operator to ensure that such measures comply with the data security obligations of Data Protection Law. The Operator shall inform NTA and/or TII promptly if, in its opinion, it receives an instruction from NTA and/or TII in the course of an audit which infringes Data Protection Law;

- (viii) it shall:
  - (A) inform NTA and/or TII promptly in the event of receiving a request from a data subject to exercise their rights under Data Protection Law,
  - (B) provide such co-operation and assistance as may be required to enable NTA and/or TII to deal with such request in accordance with the provisions of Data Protection Law; and
  - (C) assist NTA and/or TII by implementing appropriate technical and organisational measures to allow NTA and/or TII to comply with requests from data subjects to exercise their rights under Data Protection Law;
- (ix) it shall report any incident which gives rise to a risk of unauthorised disclosure, loss, destruction or alteration of such personal data to NTA and/or TII without undue delay upon becoming aware of such an incident and provide NTA and/or TII with such assistance as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such incident;
- (x) the Operator shall make available to NTA and/or TII all information necessary to demonstrate compliance with the obligations laid down in this clause 8.8 and assist NTA and/or TII in ensuring compliance with its obligations in respect of security of personal data, data protection impact assessments and prior consultation requirements under Data Protection Law;
- (xi) when the Operator ceases to provide Services relating to data processing, it shall:
  - (A) at the choice of NTA and/or TII, delete or return all such personal data to NTA and/or TII; and
  - (B) delete all existing copies of such personal data unless EU law or the laws of an EU Member State require storage of the personal data;
- (xii) it shall inform NTA and/or TII immediately if, in its opinion, it receives an instruction from NTA and/or TII which infringes Data Protection Law;
- (xiii) it will not transfer any personal data outside the European Economic Area:
  - (A) without the prior written consent of NTA and/or TII; and
  - (B) without ensuring that one of the exceptions to the prohibition on transfer set out in Chapter V of the GDPR applies to the transfer in question.
- (d) In circumstances where the parties identify further circumstances where the Operator processes personal data on behalf of NTA and/or TII, the parties shall document in

writing the type of personal data, categories of data subjects and the nature and purpose of the processing and the provisions of Clause 8.8(c)(ii) to (xiii) shall apply to such processing.

## 9. SYSTEM CONTRACTS

### 9.1 System Contracts

- (a) To the extent that the Operator has been supplied with copies of the agreements referred to in paragraph (a) of the definition of System Contracts, the Operator shall be deemed to have full notice, knowledge and understanding of all their provisions and to be fully aware of the obligations, risks and liabilities contemplated by such agreements.
- (b) TII shall consult with the Operator in relation to:
  - (i) any amendment to a System Contract referred to in Schedule 43 (*System Contracts*); and
  - (ii) any new System Contract (being a System Contract not referred to in Schedule 43 (*System Contracts*) prior to entering into such new System Contract,

where such amendment or new System Contract, as the case may be, is likely to have a material effect on the provision of the Services.

- (c) The Operator shall perform its obligations under this Contract in such a way as to avoid interfering with TII's performance of any of TII's obligations or rights under any System Contract.
- (d) The Operator shall perform its obligations under this Contract in such a way as to avoid placing TII in breach of any System Contract of which the Operator is aware or on notice.
- (e) Without prejudice to any other obligations of the Operator with regard to the System Contracts, the Operator shall:
  - (i) cooperate with TII and the System Contractors in relation to the System Contracts;
  - (ii) use reasonable endeavours to assist TII in the performance of its obligations under the System Contracts (so far as is reasonably practicable); and
  - (iii) shall take all reasonable steps to mitigate any foreseeable losses and liabilities of TII that are likely to arise as a consequence of the Operator's failure to perform its obligations under this clause 9.1.
- (f) Subject to clause 9.1(h), TII shall use reasonable endeavours to procure, on behalf of the Operator, the performance by the counterparties to the System Contracts of their obligations under the System Contracts to the extent that such obligations affect the Operator.
- (g) To the extent that in performing its obligations under clause 9.1(f) it is necessary for TII to:

- (i) conduct any disputes in accordance with the terms of the applicable System Contracts; and/or
- (ii) commence and pursue any proceedings against parties to the System Contracts,

then clause 9.1(h) shall apply.

- (h) In relation to any disputes or proceedings under clause 9.1(g):

- (i) without prejudice to its obligations under clause 9.1(d), the Operator shall provide TII (at the Operator's cost) with all information and support that TII reasonably requests; and
- (ii) TII shall notify the Operator on a regular basis in reasonable detail of progress of such disputes or proceedings.

- (i) If TII (acting reasonably) determines that:

- (i) it is unlikely that proceedings commenced by it in accordance with clause 9.1(g)(ii) would be successful; or
- (ii) the cost of such proceedings or the potential adverse publicity for the System arising from such proceedings would be disproportionately high in all the circumstances,

then:

- (A) TII shall not be required to commence and/or pursue such proceedings (in which case, clause 45.3(a) (*Notification of Claims procedures and assistance in defending Claims*) shall apply); and
- (B) the particular failure of the System Contractor which was to be the subject of the proceedings shall be a "Project Event" in accordance with Schedule 36 (*Project Events*).



**PART 4 - TRANSITION AND ACCESS TO SYSTEM****10. TRANSITION****10.1 Transition Services**

The Operator shall:

- (a) undertake the Transition Activities during the Transition Period;
- (b) prepare, submit for Approval, revise, update and comply with the transition plan required under Schedule 3 (*Transition – Plan and Programme*);
- (c) comply with the non-disruption obligations set out in Schedule 3 (*Transition – Plan and Programme*);
- (d) maintain or procure the maintenance of the insurances stipulated in Schedule 3 (*Transition – Plan and Programme*);
- (e) without prejudice to the foregoing, comply with the provisions of Schedule 3 (*Transition – Plan and Programme*) in relation to its transition to the System.

**10.2 Consents and Approval to Operate the System**

The Operator shall not operate the System for the purpose of carrying fare paying passengers until the Operator has:

- (a) secured all Consents to Operate in respect of the System;
- (b) obtained the Approval of NTA and TII (acting together) to the operation of the System (such Approval not to be unreasonably withheld or delayed).

**10.3 Delays to Scheduled Operating Commencement Date**

- (a) If the Operator fails, as a consequence of the acts or omissions of the Operator, to commence operating the System for the purpose of carrying fare paying passengers by the Scheduled Operating Commencement Date, the Operator shall pay to TII by way of liquidated damages an amount equal to forty five thousand euro (€45,000) for each day that such failure continues after the Scheduled Operating Commencement Date until and including the date upon which the Operator commences operating the System for the purpose of carrying fare paying passengers.
- (b) If the Operator has not commenced operating the System for the purpose of carrying fare paying passengers by the date falling six (6) months after the Scheduled Operating Commencement Date, NTA/TII may terminate this Contract immediately by notice in writing to the Operator.

**10.4 Operating Commencement Date – Transfer Regulations**

- (a) It is expressly acknowledged by the Operator that the Transfer Regulations shall apply on the Operating Commencement Date such that persons currently providing the Services or part of the Services may transfer to the Operator or its Sub-Contractors.
- (b) The Operator acknowledges that it shall be liable for all Indemnified Liabilities resulting from the application of the Transfer Regulations and that neither NTA nor

TII has made any representation, warranty or indemnity of any nature regarding any information provided in relation to such persons in advance of the Operating Commencement Date.

- (c) Without prejudice to the foregoing, the Operator shall indemnify, keep indemnified and hold NTA and TII harmless (in each case on an after tax basis) against any and all Indemnified Liabilities by reason of any claim made under the Transfer Regulations or otherwise by such persons:
  - (i) which relates to the period on or after the Operating Commencement Date and, in the case of Relevant Employees, up to and including the Expiry Date; or
  - (ii) which arises from any act or omission of the Operator.

## 11. ACCESS TO THE SYSTEM

### 11.1 System Licence

The Operator shall access the System on the terms, and subject to the conditions, of the System Licence.

### 11.2 Undisclosed Interests

If the Operator is adversely affected in its ability to perform the Services as a result of any Undisclosed Interest, the following provisions of this clause 11.2 shall apply successively in order until either the Operator is able to provide the Services and/or otherwise to perform its obligations and exercise its rights under this Contract or this Contract:

- (a) first, the Operator shall confer with NTA/TII as to the action to be taken;
- (b) second, the Operator shall use reasonable endeavours to perform its obligations and exercise its rights under this Contract in such a way as not to infringe the rights of any third party of which the Operator becomes aware at any time, without incurring any additional cost to the Operator, NTA or TII or suffering any delay;
- (c) third, if, in the reasonable opinion of the Operator, it will be unable to comply with clause 11.2(b) without a Variation, the Operator shall notify NTA/TII accordingly giving reasons for such opinion;
- (d) upon receipt of the Operator's notification under clause 11.2(c):
  - (i) in the event that NTA/TII agrees with the Operator that the Operator will be unable to comply with clause 11.2(b) without a Variation, NTA/TII shall issue a notice to that effect; or
  - (ii) in the event it is determined by means of the Disputes Resolution Procedure that the Operator will be unable to comply with clause 11.2(b) without a Variation, NTA/TII or the Operator may give notice to the other to that effect,

and such notice shall be deemed to be a Variation Notice for a Deemed Authority Variation such that:

- (A) the provisions of clause 34.10 (*Deemed Authority Variation*) shall apply; and

- (B) the Operator shall be entitled to relief, from the date upon which the Operator was first adversely affected by the relevant Undisclosed Interest, from any System Performance Deductions for which it would otherwise be liable arising from the Undisclosed Interest.

### 11.3 LRVs

- (a) The Operator shall not remove, or permit or acquiesce in the removal of any LRVs from the System without the consent of NTA/TII. The Operator shall, as soon as reasonably practicable upon request by NTA/TII provide written confirmation of the current location of each LRV.
- (b) The Operator shall use, operate and store each LRV in compliance with:
  - (i) any recommendations of the manufacturer from time to time; and
  - (ii) Good Industry Practice from time to time.
- (c) The Operator shall ensure that the stabling of the LRVs is at a Depot or at a location agreed with NTA/TII for such purpose.
- (d) The Operator shall (at its own cost):
  - (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 LRVs to penalty, forfeiture, impounding, detention, appropriation, damage or destruction (other than in the course of the provision of normal Services) and without prejudice to the foregoing, if any such situation arises, give NTA/TII prompt notice thereof and use best endeavours immediately to remedy such situation;
  - (ii) except as required to perform its obligations under this Contract, not deliver, transfer or relinquish possession of any LRV for any purpose whatsoever other than with NTA/TII's prior written consent to do so;
  - (iii) obtain and maintain in full force all certificates, licences, permits and authorisations required for the use and operation of the LRVs on the System; and
  - (iv) not make any modification to the LRVs or any part of the LRVs (except as required to comply with its obligations under this Contract) without the prior written consent of NTA/TII and subject to such conditions as NTA/TII at its absolute discretion, considers necessary.
- (e) The Operator shall take all necessary steps to ensure that the operation, use and storage of each LRV is not contrary to any Legal Requirements and the Operator shall use reasonable endeavours to comply at all times with the law in force for the time being applicable to the LRVs and to an operator of such vehicles.

### 11.4 TII Compliance

TII shall, to the extent applicable, comply with the Bye-Laws, the Light Rail Orders, any relevant Consents to Operate and any reasonable direction by the Operator in relation to the safe operation of the System.

## 12. INTELLECTUAL PROPERTY

### 12.1 Licence

The Operator shall comply with its obligations pursuant to the System Licence in relation to Intellectual Property Rights and the System Branding.

### 12.2 Operator's obligations

(a) Subject to clause 12.2(b), the Operator shall ensure that, at no cost to NTA or TII all Intellectual Property Rights in:

(i) System Data acquired, created or brought into existence in any manner whatsoever by or on behalf of the Operator or a Sub-Contractor for the purposes of the Services or this Contract; and

(ii) the CMMS,

(collectively the "**System IPR**") are vested in TII and NTA (or their nominee) at the Expiry Date at no cost to TII or NTA.

(b) To the extent the System IPR includes Intellectual Property Rights in Commercial Third Party Software:

(i) TII and NTA acknowledge that Intellectual Property Rights in such Commercial Third Party Software shall not vest in TII or NTA; and

(ii) the Operator shall ensure, in relation to such Commercial Third Party Software, that:

(A) TII and NTA are each granted a non-exclusive, transferable, royalty-free perpetual licence to use such Commercial Third Party Software; or

(B) if it is not possible to procure a royalty-free perpetual licence in respect of such Commercial Third Party Software and to the extent the System IPR includes Commercial Third Party Software which is required to continue to use the System IPR:

(1) TII and NTA are each granted a licence on the standard terms of the relevant licensor in such Commercial Third Party Software; and

(2) TII and NTA shall assume the obligation to discharge all fees, charges and expenses of any third party supplier in connection with the licensing by TII and NTA of such Commercial Third Party Software (such fees, charges and expenses to be Approved in advance by TII and NTA).

### 12.3 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 12 (*Intellectual Property*).

## 12.4 NTA IPR

- (a) The Operator shall not use the NTA IPR except for the purposes of performing the Services, and shall not use the NTA IPR in any manner which suggests, or may lead people to believe, that it is NTA.
- (b) The Operator shall follow all reasonable directions, instructions and requirements given or made by NTA from time to time with regard to the form and manner of the use of the NTA IPR including, without limitation, any brand guidelines which may be provided to the Operator by NTA from time to time.
- (c) NTA gives no warranty and makes no representation that the NTA IPR, or any part of it is accurate, valid or suitable for the Operator's purposes or that use of the NTA IPR will not infringe the rights of any third party.
- (d) 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 NTA IPR or the reputation or goodwill associated with the NTA IPR, or which may invalidate or jeopardise the registration of any NTA 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 NTA IPR or any part of it.
- (e) The Operator shall not be entitled to use NTA's logo, livery or corporate image and shall not suggest or lead people to believe that it is NTA.

## 12.5 Operator IPR

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

## 12.6 Background IPR/Operator's Equipment

- (a) Subject to clause 12.6(b) and clause 12.6(d), each of NTA and TII acknowledge that it shall not have or acquire any right, title, interest in or to:
  - (i) the Background IPR; and
  - (ii) Intellectual Property Rights relating to Operator's Equipment not acquired by NTA or TII,(collectively, "**clause 12.6 IPR**").

- (b) The acknowledgment by NTA and TII in clause 12.6(a) is conditional on any System Data contained or using any clause 12.6 IPR being:
  - (i) in a format capable of being transferred to, processed by and manipulated by, a replacement system nominated by NTA or TII; and
  - (ii) transferred to such replacement system.
- (c) If, in the case of any clause 12.6 IPR not acquired by NTA or TII, clause 12.6(b) is not satisfied, then the Operator shall ensure the continued access and use by NTA or TII (or any person nominated by them) of the clause 12.6 IPR until clause 12.6(b) is satisfied.
- (d) To the extent the System IPR includes clause 12.6 IPR or the use of clause 12.6 IPR is necessary to enable NTA and TII to use the System IPR, the Operator hereby grants to each of NTA and TII until clause 12.6(b) is satisfied a non-exclusive, transferable, royalty free licence to use such clause 12.6 IPR in connection with the System IPR.

**PART 5 - OPERATIONS AND PASSENGER SERVICES****13. OPERATIONS MANAGEMENT****13.1 General Obligations**

- (a) The Operator shall comply with the requirements of Schedule 4 (*Operations Management*), including, but not limited to, in relation to:
  - (i) maintaining records in relation to the causes of delays, disruptions and other significant events which affect or have a reasonable likelihood of affecting 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 required for the performance of the Services;
  - (iii) co-operating with An Garda Síochána, Dublin Fire Brigade and the Competent Authorities in relation to any emergencies that occur on the System;
  - (iv) ensuring that the Central Control Room at Red Cow Depot is manned twenty four (24) hours a day, three hundred and sixty five (365) days a year;
  - (v) attending meetings with Relevant Road Authorities as may be necessary for the purpose of reviewing the operation and maintenance of the System in relation to other road users;
  - (vi) procuring Replacement Bus Services in the event of a Service Interruption;
  - (vii) maintaining a schedule of all Public Events relevant to the System; and
  - (viii) preparing and implementing a severe weather management plan.
- (b) The Operator shall, in addition and without prejudice to the foregoing:
  - (i) collect revenue in accordance with Schedule 5 (*Revenue Collection*);
  - (ii) provide the Safety Management System in accordance with Schedule 7 (*Safety Management*);
  - (iii) manage and operate the Park and Ride Sites in accordance with Schedule 25 (*Management of Park and Ride Sites*);
  - (iv) manage the security of the System in accordance with Schedule 26 (*Management of Security*);
  - (v) handle complaints in accordance with Schedule 28 (*Customer Service*); and
  - (vi) manage governance, risk, compliance and information security relating to the System and the Services in accordance with Schedule 33 (*Governance, Risk and Compliance*).

### 13.2 Training of Staff

The Operator shall comply with the requirements of this Contract and shall act in accordance with Good Industry Practice in relation to the training of Staff and relevant personnel during the Operating and Maintenance Period to ensure that the Services are performed with and by appropriately qualified and trained personnel in accordance with Schedule 4 (*Operations Management*).

### 13.3 Policing, Emergency Exercises and Enquiries

The Operator shall:

- (a) comply with the requirements of Schedule 4 (*Operations Management*) and Schedule 26 (*Management of Security*) in relation to the security of the System, the Staff and members of the public using the System;
- (b) make agreements with the appropriate members of an Garda Síochána as may be necessary in relation to their policing of the public areas of the System;
- (c) co-operate with NTA/TII in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of Public Events; and
- (d) without prejudice to the generality of the foregoing, comply with the requirements of Schedule 4 (*Operations Management*) in relation to policing, emergency exercises and enquiries that may affect the System and/or the Services.

## 14. UTILITIES

- (a) As from the Operating Commencement Date, the Operator shall be responsible, at its own cost, for:
  - (i) the procurement of energy and power for the operation of the System and to provide the Services;
  - (ii) the operation and maintenance of the power distribution facilities for the System; and
  - (iii) the procurement and maintenance of other utility supplies to the System (including all low voltage electricity, gas, telecommunications, water and sewerage charges in relation to the System).
- (b) The Operator shall:
  - (i) review, revise and maintain, by reference to Good Industry Practice, the Code of Practice for working on, near or adjacent to the LUAS Tramway; and
  - (ii) use all reasonable endeavours to ensure that the utilities companies, their agents and contractors comply with the requirements of the Code of Practice for working on, near or adjacent to the LUAS Tramway.

## 15. MEETINGS WITH LOCAL AUTHORITIES

- (a) The Operator shall attend and participate in such meetings with local authorities as may be necessary for the purpose of reviewing the operation and maintenance of the System in relation to other road users.



- (b) Without prejudice to the generality of clause 15(a), the Operator shall, from time to time, review with the Relevant Road Authority such traffic regulations as are in place and such amendments as may be necessary to ensure that the System is neither hindered nor fettered as a result of other traffic movements.
- (c) The Operator shall notify NTA/TII of any proposed changes, of which it is aware, to the roads or to any traffic signals which might reasonably be expected to affect the System and/or the provision of the Services.

## 16. PASSENGER SERVICES

### 16.1 Timetable

- (a) The Operator shall provide the Services in accordance with the Timetable set out in Schedule 2 (*Service Specification*).
- (b) Without prejudice to the generality of clause 16.1(a), the Operator shall comply with the requirements of:
  - (i) Schedule 2 (*Service Specification*),
  - (ii) Schedule 28 (*Customer Service*), and
  - (iii) Schedule 30 (*Communications and Public Relations*)in relation to the Timetable and the provision of information relating to the Services.

### 16.2 Customer Charter

- (a) The Operator shall review and, if necessary, update the Customer Charter on each anniversary of the Commencement Date.
- (b) The Operator shall provide the Services in accordance with the Customer Charter.

### 16.3 Authority Consent

The Operator shall not make any changes to:

- (a) the Timetable; or
- (b) the Passengers' Charter,

in either case, without the prior consent in writing of TII.

## 17. REVENUE COLLECTION

### 17.1 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 TII from time to time to the Operator, subject to:

- (i) TII providing the Operator with reasonable prior notice in relation to changes to the tickets and the fare levels; and
  - (ii) consultation with the Operator concerning any operational or administrative issues in relation to such changes;
- (b) provide such assistance to TII in establishing the design of tickets to be used on the System as TII may require;
- (c) implement revenue protection measures in accordance with Schedule 6 (*Revenue Protection*) or such other measures as NTA/TII may require from time to time; and
- (d) without prejudice to the generality of the foregoing, comply with:
  - (i) the revenue reporting and audit requirements set out in Schedule 5 (*Revenue Collection*);
  - (ii) the requirements of Schedule 5 (*Revenue Collection*) in relation to ticketing; and
  - (iii) the requirements of Schedule 6 (*Revenue Protection*) in relation to Standard Fares.

#### 17.2 Standard Fares

- (a) The Operator shall be responsible for implementing the 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 6 (*Revenue Protection*).
- (b) The Operator shall keep records of, and provide copies of such records to NTA/TII upon request, all notices issued and demands for payment made in relation to Standard Fares.

#### 17.3 Authority Consent

The Operator shall not make any changes to the revenue collection arrangements contemplated by this clause 17 (*Revenue Collection*) without the prior consent in writing of TII.

### 18. CUSTOMER SERVICE AND PUBLIC RELATIONS

The Operator shall:

- (a) comply with the requirements of Schedule 28 (*Customer Service*) in relation to complaints handling and shall implement a complaints handling system in accordance with such Schedule;
- (b) comply with the requirements of Schedule 29 (*Customer Information*) in relation to the provision of information to customers;

- (c) comply with any reasonable request of TII that the Operator join and participate in such liaison activities or such public liaison groups as TII may require (including by facilitating viewing of the System by such groups); and
- (d) comply with the requirements of Schedule 30 (*Communications and Public Relations*) in relation to public relations and publicity.

## 19. REPLACEMENT BUS SERVICES AND BUS ACTIVATIONS

### 19.1 Replacement Bus Services and Bus Activations

In the event of a Service Interruption, the Operator shall take all reasonable and practical steps to maintain services either side of the affected section of the System and shall secure the provision of substitute bus services for each Trip or part of a Trip affected by such Service Interruption in accordance with Schedule 4 (*Operations Management*).

### 19.2 Operator Relief in relation to Public Events

To the extent that the Operator complies with clause 19.1 (*Replacement Bus Services*), then the Operator shall be entitled to relief in accordance with section 4.9 of Schedule 4 (*Operations Management*).

## 20. PARK AND RIDE SITES

Subject to the System Licence, the Operator shall be responsible for management and operation of the Park and Ride Sites in accordance with the requirements of Schedule 25 (*Management of Park and Ride Sites*).

## 21. ADVERTISING

- (a) The Operator shall not be entitled to any revenue, howsoever arising, from the sale of advertising space in relation to the System.
- (b) Subject to clause 21(c), the Operator shall facilitate such reasonable access to the System (subject to compliance with all reasonable instructions of the Operator with regard to the safety of the System) for TII, its employees, sub-contractors and agents as may be requested by TII in relation to the installation and replacement of advertisements on the System.
- (c) Subject always to the provisions of the 2001 Act and the Light Rail Orders, where TII requires advertising to be placed upon, or removed from, the exterior of LRVs, the Operator shall grant access to the System to such persons as may be required by TII (subject to compliance by such persons with all reasonable instructions of the Operator with regard to the safety of the System), provided that:
  - (i) TII shall give not less than ten (10) Business Days' notice to the Operator; and
  - (ii) TII may not require that:
    - (A) more than one LRV on the Red Line and one LRV on the Green Line is taken out of service at any given time; or
    - (B) an LRV be withdrawn from operational service between 05:00 and 11:00 on any Business Day.

**PART 6 – MAINTENANCE, SAFETY MANAGEMENT AND ENVIRONMENTAL MANAGEMENT****22. MAINTENANCE****22.1 Responsibility**

- (a) The Operator acknowledges that it is responsible for the maintenance of the System and rectification of all Faults, Failures and Damage to the System as and from the Operating Commencement Date.
- (b) Without prejudice to clause 22.1(a), the Operator shall perform and otherwise comply with the requirements of:
  - (i) Schedules 11 (*Light Rail Vehicles (LRVs)*) to 15 (*Performance Standards for LRV Maintenance*);
  - (ii) Schedules 16 (*Description of the Infrastructure*) to 23 (*Third Party Works and Alterations*); and
  - (iii) Schedule 24 (*Maintenance of Automatic Fare Collection Systems*).
- (c) TII acknowledges that, as regards assets which are part of the System, it is responsible for Asset Renewal.

**22.2 Defects**

In relation to Defects, the Operator agrees to perform and comply with Schedule 10 (*Defects in and Damage to the System*).

**22.3 Computerised Maintenance Management System (CMMS)**

- (a) The Operator shall establish, maintain and operate the CMMS with effect from the Operating Commencement Date.
- (b) The Operator shall comply with, and shall ensure that the CMMS complies with, Schedule 9 (*Computerised Maintenance Management System*).

**22.4 Automatic Fare Collection System**

- (a) For so long as there is a contract falling within paragraph (a) of the definition of “AFCS Maintenance Contract”:
  - (i) the Operator shall, at its own cost, perform its obligations under such AFCS Maintenance Contract and shall be responsible for its own costs under such AFCS Maintenance Contract; and
  - (ii) the Operator shall procure the proper performance by the AFCS Maintenance Contractor of its obligations under such AFCS Maintenance Contract.
- (b) Without prejudice to clause 52 (*Consequences of Termination/Expiry*), clause 53 (*Transition to Another Operator*) and clause 54 (*Handback Of The System*), upon termination (for whatever reason) or expiry of this Contract and where the AFCS Maintenance Contract is in force on such expiry, the Operator shall:

- (i) undertake all steps necessary (including the execution of such documents as this may entail) to transfer its rights and obligations under the AFCS Maintenance Contract to TII or such Replacement Operator as NTA/TII may specify; and
- (ii) indemnify NTA, TII and any Replacement Operator and keep NTA, TII and any Replacement Operator indemnified and held harmless against all Indemnified Liabilities arising as a consequence of, or in connection with, any breach of its obligations under:

(A) this clause 22.4; and/or

(B) the AFCS Maintenance Contract,

in each case arising as a result of the acts or omissions of the Operator.

#### 22.5 Controlled Functions within AFCS Maintenance Contract

- (a) The Operator shall not exercise a Controlled Function without TII's prior consent and shall exercise a Controlled Function in accordance with (and only in accordance with) TII's instructions. No such consent shall be implied from, or deemed to have been given in, a Variation or Variation Confirmation under the Contract.
- (b) TII shall not instruct the exercise of a Controlled Function which the Operator notifies TII would prejudice the safety of the System or otherwise put the Operator in breach of the Contract or a Legal Requirement.
- (c) TII shall, in connection with the giving of its approval or consent to the exercise of a Controlled Function, have regard to the extent to which the giving or refusing of its approval or consent to the exercise of such Controlled Function would be reasonably likely to facilitate or frustrate, as the case may be, the performance by the Operator of its obligations under this Contract.

#### 22.6 Disruption to Services

If, at any time, it appears to the Operator likely that any maintenance or repair works to the Infrastructure (including, for the avoidance of doubt, any work required under clause 23 (*Defects in and Damage to the System*) to be carried out) will necessitate an interruption to, or restriction of, passenger services on the System so as to result in passenger services on the System not being provided in accordance with the Timetable, the Operator shall:

- (a) notify NTA/TII, as soon as is practicable (if 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 4 (*Operations Management*), Schedule 29 (*Customer Information*) and Schedule 30 (*Communications and Public Relations*) in relation to notification of passengers and provision of Replacement Bus Services,

provided that such interruption to, or restriction of, passenger services on the System shall constitute a Project Event where the maintenance and repair work giving rise to such interruption or restriction:

- (i) is caused by:
  - (A) a Defect;
  - (B) a System Contractor; or
  - (C) NTA or TII; and
- (ii) is demonstrated by the Operator, to the reasonable satisfaction of NTA/TII, as not being capable of being performed without such interruption or restriction of Services.

## 23. DEFECTS IN AND DAMAGE TO THE SYSTEM

### 23.1 Operator's General Obligations

As part of its obligation to operate and maintain the System from the Operating Commencement Date, the Operator shall:

- (a) bear all risk of loss, theft and Damage to the System, including the LRVs, from any cause whatsoever;
- (b) be responsible for monitoring the performance of the System;
- (c) be responsible for identifying Defects in and Damage to the System;
- (d) be responsible for notifying NTA/TII of Defects; and
- (e) comply with the provisions of Schedule 10 (*Defects in and Damage to the System*).

### 23.2 Damage to the System

- (a) The Operator shall be responsible for identification, notification and rectification of any Damage to the System.
- (b) On the occurrence of Damage to the System, the Operator shall rectify such Damage to the System with all due speed in accordance with Schedule 10 (*Defects in and Damage to the System*) and, subject to clauses 45.2 (*Extent of indemnities*), shall indemnify and hold harmless NTA and TII in respect of such rectification.

### 23.3 Defects in and Damage to the System and Performance Monitoring System

Without prejudice to the Operator's obligations under clause 8 (*Project Undertakings*), the Operator shall be liable pursuant to clause 42.1 (*Reporting and monitoring*) for any System Performance Deduction arising as a consequence of Damage to the System or Defects save to the extent provided in Schedule 36 (*Project Events*).

### 23.4 Disputes

In the event of a Dispute in relation to whether or not something is a Defect under this clause 23 (*Defects in and damage to the System*), the onus of proving the existence of a Defect shall rest with the Operator and shall be determined on the balance of probabilities based on all relevant facts and circumstances. NTA/TII shall cooperate in good faith with the Operator in relation to such determination.

### 23.5 TII Damage

If TII exercises any of its rights under clause 50 (*Step-In*) to Step-In and undertake any works, maintenance or repair in relation to the System or provides the Services (or part of the Services), then TII shall ensure that any Damage to the System caused by the exercise of such rights is made good and, if made good by the Operator, that the Operator is entitled to be paid by TII, as the case may be, the reasonable costs of making good such damage.

## 24. SAFETY MATTERS

### 24.1 Safety Management

- (a) The Operator, its directors, management and Staff shall be responsible for all health and safety matters related to the performance of the Services and shall:
  - (i) comply with all applicable Legal Requirements in respect of safety, health and welfare,
  - (ii) take care for the safety of all persons entitled to be in the places where the Services are being performed,
  - (iii) use reasonable efforts to keep the places where the Services are being performed clear of unnecessary obstruction so as to avoid danger to these persons,
  - (iv) take all measures at the places where the Services are being performed which may be necessary for the protection of the public and of occupiers of adjacent areas in accordance with Good Industry Practice, and
  - (v) manage on behalf of NTA and TII all safety requirements related to the System so as to enable NTA and TII to comply with their respective obligations under any relevant Legal Requirements.
- (b) Without prejudice to the generality of the foregoing, the Operator shall comply with the requirements of Schedule 7 (*Safety Management*) in relation to health and safety matters related to the performance of the Services.

### 24.2 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 Contract, the Operator shall, in relation to those activities, be the “client” as that term is used in those regulations, and shall comply with this Contract accordingly.

## 25. ENVIRONMENTAL MANAGEMENT

### 25.1 Operator’s Obligation to Protect the Environment

- (a) The Operator shall protect the Environment at the places where the Services are being performed and shall take whatever action is required to prevent, mitigate or remedy any Environmental Damage in relation to the System and/or performance of the Services that does or may be likely to arise as a results of its activities.

- (b) The Operator shall ensure that any Sub-Contractor engaged by the Operator in the performance of the Services shall be put under an equivalent provision in the relevant sub-contract.

## 25.2 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 NTA, TII or of any other person;
- (b) perform the Services in accordance with the provisions of Schedule 8 (*Environmental Management*) in relation to matters relating to the Environment; and
- (c) comply with any warning letters or notices issued under any Environmental Legislation in connection with the System and/or the Services.

## 25.3 Noise and Noise Pollution

- (a) The Operator shall provide such assistance as NTA/TII may require in relation to the implementation of procedures required pursuant to the Light Rail Orders for the purpose of monitoring noise levels on the System.
- (b) Where, as a consequence of the Operator's failure to perform its obligations under this Contract (except where such failure is caused by a Defect, a System Contractor, NTA or TII), NTA/TII is required to carry out noise attenuation works as a result of:
  - (i) reasonable complaints by third parties; or
  - (ii) it being demonstrated that the noise emissions exceed any noise conditions contained in any Legal Requirements, the Light Rail Orders or any Consents to Operate,

NTA/TII shall be entitled to invoice and recover from the Operator the cost of such works in accordance with clause 37.4 (*Invoices*).

## 25.4 Land Contamination

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



**PART 7 - RELATIONSHIPS, MONITORING AND THIRD PARTIES****26. RELATIONSHIPS****26.1 Instructions in writing**

Instructions given by NTA or TII (as applicable) shall be in writing, provided that if, in the event of an emergency, NTA or TII 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 NTA or TII, as the case may be, as soon as practicable and in any event within two (2) days of the oral instructions being given.

**26.2 Certificates and approvals**

- (a) Where a part of the System is required to be certified or approved by the Commission for Railway Regulation or other Competent Authority (where pursuant to the System Contracts or any Legal Requirements), neither NTA nor TII shall be obliged to issue any certificate or approval under this Contract in respect of such part of the System unless it is reasonably satisfied that the required certificates or approvals have been given by the Commission for Railway Regulation or other Competent Authority, as the case may be.
- (b) NTA and TII shall not be liable for any delay or disruption to the Services as a result of NTA or TII, before issuing a certificate or approval, as the case may be, making reasonable enquiries to establish in accordance with clause 26.2(a) whether a certificate or approval has been given by the Commission for Railway Regulation or other Competent Authority.

**26.3 Operator's notice**

- (a) If, in the opinion of the Operator, any instruction by NTA or TII:
  - (i) is likely to prevent or prejudice the Operator from complying with any of its obligations under this Contract;
  - (ii) would place the Operator in a position where it would be unable to comply with its obligations under this Contract for reasons beyond its control,the Operator shall notify NTA or TII, as the case may be, as soon as reasonably practicable after receipt of the instruction, giving reasons for its opinion.
- (b) Upon receipt of notice under clause 26.3 (*Operator's Notice*) in relation to an instruction, NTA or TII, as the case may be, shall (acting reasonably) confirm, withdraw or vary such instruction.

**26.4 Issues or matters raised by the Operator**

- (a) If the Operator raises issues or matters in relation to any instruction, decision, or notice of NTA or TII (as applicable), it shall notify NTA or TII, as the case may be, and in each case, as soon as reasonably practicable (and in any event within five (5) Business Days of such instruction, decision or notice), who shall within five (5) Business Days of such notification provide a written response to the Operator.

- (b) If the Operator is dissatisfied with a written response given under clause 26.4(a), it may not later than five (5) Business Days after receipt of such response, refer the matter for resolution under clause 59 (*Disputes Resolution Procedure*).
- (c) Notwithstanding the referral of a matter for resolution under clause 26.4(b) the Operator shall continue to perform the Services in accordance with the instruction, decision or notice, as the case may be, until the matter is resolved in accordance with clause 59 (*Disputes Resolution Procedure*), unless it is, in the reasonable opinion of the Operator, unsafe or unlawful to do so.
- (d) Where an instruction, decision or notice is subsequently determined, in accordance with clause 59 (*Disputes Resolution Procedure*), to be likely to prevent or prejudice the Operator from complying with any of its obligations under this Contract, then the instruction, decision or notice (as the case may be) shall be withdrawn and any acts or omissions of the Operator in the performance of the Services in accordance with such instruction, decision or notice (as the case may be) shall not be regarded as a breach of its obligations under the Contract.

#### 26.5 Operator's Representative

- (a) The Operator shall appoint a competent, skilled, responsible, trustworthy, experienced and qualified person to act as its agent in connection with this Contract, to which TII has no reasonable objection, and such person shall be the Operator's Representative.
- (b)
  - (i) The Operator's Representative shall be located in Ireland.
  - (ii) If, 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 NTA/TII 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 thirty (30) consecutive Business Days, such nomination shall be deemed to be a termination of the Operator's Representative's appointment and the provisions of clause 26.6 (*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 Contract. NTA and TII shall each be entitled to treat any act of the Operator's Representative in connection with this Contract as being expressly authorised by the Operator, and neither NTA nor TII shall be required to determine whether any express authority has in fact been given.

#### 26.6 Change of Operator's Representative

- (a) Subject to clause 26.5(b) (*Operator's Representative*), save in the case of resignation, death, serious illness or gross misconduct, the Operator shall not, without a minimum of twenty-one (21) Business Days written notice to TII revoke the appointment of the Operator's Representative or appoint a substitute.
- (b) As soon as reasonably practicable upon the Operator's Representative ceasing to act in the case of resignation, death, serious illness or gross misconduct, the Operator shall notify TII in writing of its intention to appoint a substitute.

**26.7 Attendance at Meetings**

- (a) Subject to the giving of not less than five (5) Business Days' notice, the Operator shall attend such meetings at such premises as NTA/TII may require to:
  - (i) review the performance of this Contract;
  - (ii) discuss any changes to this Contract which might be appropriate and desirable; and
  - (iii) resolve disputes between the Parties in accordance with Schedule 38 (*Disputes Resolution Procedure*).
- (b) The Operator shall ensure that sufficient representatives of the Operator attend meetings required under this clause 26.7 to constructively address any issues raised.
- (c) Minutes of all meetings between the Parties shall be taken by a representative of NTA/TII or the Operator and copies shall be circulated to NTA/TII and the Operator within five (5) Business Days of the meeting.
- (d) The Operator shall liaise with NTA or TII as and when required by NTA or TII, and to deal with general enquiries of NTA and TII in a prompt and efficient manner.

**27. QUALITY MANAGEMENT**

- (a) The Operator shall, in performing its obligations under this Contract, comply at all times with the requirements of Schedule 31 (*Quality Management*) in relation to Quality Plans and systems.
- (b) The Operator shall implement quality assurance system(s) and will ensure that its sub-contractors implement an equivalent quality assurance system so as to demonstrate compliance with the requirements of the Contract or the relevant sub-contract, as applicable.

**28. CONSENTS AND APPROVALS****28.1 Approvals**

- (a) Without limitation to clause 28.2 (*Effect of Consents, Approvals and Inspections*), notwithstanding the Approval of NTA or TII (as the case may be), the Operator shall not be entitled to recover from NTA or TII 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 NTA or TII in the course thereof.
- (b) The Operator shall obtain from the Principal Sub-Contractors, prior to any such party carrying out any part of the Services, waivers of liability in favour of NTA and TII 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 Contract in connection with the Services.

## 28.2 Effect of Consents, Approvals and Inspections

- (a) Neither the giving of any Approval, knowledge of the terms of any agreement or document (including without limitation the Project Documents), nor the review of any document or course of action by or on behalf of NTA or TII shall relieve the Operator of any of its obligations under this Contract 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) Without limitation to clause 28.2(a), no examination or lack of examination by NTA or TII of the Operator's plans, drawings, designs, documents, calculations, or details relating to the Services or otherwise nor any comment, rejection or Approval expressed by such person in regard thereto, either with or without modifications, shall in any respect relieve or absolve the Operator from any obligations or liability under or in connection with this Contract whether in relation to accuracy, safety, suitability, adequacy of performance or practicality of its design or howsoever otherwise arising.
- (c) Without limitation to clause 28.2(a), notwithstanding any inspection by NTA or TII under this Contract or the failure of NTA or TII to make any inspection under this Contract, the Operator's responsibility under this Contract shall not be relieved or absolved or otherwise modified.
- (d) 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 28.3 (*Withdrawal of Approval*) applies; or
  - (iii) in accordance with clause 59 (*Disputes Resolution Procedure*).
- (e) Without prejudice to the preceding provisions of this clause 28.2, any Approval, endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement, or certificate of NTA or TII shall be final, subject to the exercise by either Party of any rights of objection under this Contract and to clause 59 (*Disputes Resolution Procedure*).

## 28.3 Withdrawal of Approval

Without prejudice to clause 28.2 (*Effects of Consents, Approvals and Inspections*), which shall apply whether or not an Approval is withdrawn under this clause 28.3, 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 NTA or TII 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 NTA or TII such facts, information or calculations) having been given to NTA or TII and where, had such facts, information or calculations been given to NTA or TII such Approval would not have been given.

**29. CONSENTS TO OPERATE****29.1 Consents to Operate**

- (a) From the Operating 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 NTA/TII within five (5) Business Days of receipt of such Consent to Operate.

**29.2 Authority Assistance**

NTA and TII shall provide (at the Operator's cost) 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 System (including, the Consents to Operate).

**30. INFORMATION AND ACCESS****30.1 Use of Information**

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

**30.2 Supply of Information and Access to the System**

- (a) The Operator shall at any time throughout the Contract Period:
  - (i) provide to NTA/TII at its own cost such information, records or documents (including details of cost breakdowns or updates to financial models or any copy correspondence) with respect to the Services as NTA/TII may require and within such period as NTA/TII may in each case require and subject to all applicable laws;
  - (ii) inform and keep informed NTA/TII 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
  - (iii) subject to the compliance by NTA/TII with all reasonable instructions of the Operator with regard to the safety of the System, provide access to NTA/TII and its contractors to the System (or any part thereof).
- (b) Without prejudice to the generality of clause 30.2(a), the Operator shall make available to NTA/TII such financial information, documents or accounts as NTA/TII may reasonably require to audit and verify any payments made under this Contract and such as may reasonably be required from time to time to comply with the statutory obligations upon NTA and TII for preparation of accounts.

**30.3 Audit by TII**

- (a) NTA/TII shall have a right to audit all aspects of the Operator's performance under the Contract at any time.

- (b) The Operator shall use all reasonable endeavours to procure that the Operator's Personnel shall provide to the representatives of NTA/TII conducting any such audit all such assistance and access to facilities and records as they may reasonably require in order to discharge their audit function in a proper manner.
- (c) The Operator shall comply with any recommendations regarding the performance of its obligations arising from any such audit, subject to any dispute which shall be subject to clause 59 (*Disputes Resolution Procedure*).
- (d) To the extent that the Operator incurs any additional costs and expenses in implementing such recommendations, unless such recommendations result from a breach by the Operator of its obligations hereunder, the Operator shall be entitled to propose a Variation in accordance with clause 34 (*Variations*).

#### 30.4 Oireachtas Questions and Issues

- (a) Without prejudice to clause 30.2 (*Supply of Information and Access to the System*) the Operator shall, at its own cost and within the timescale from time to time prescribed by NTA/TII 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 NTA/TII in relation to its statements 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) Notwithstanding the provisions of clause 61 (*Confidentiality*), each of NTA and TII shall be entitled to disclose in the course of carrying out its public functions any information to which clause 30.4 applies to the extent that it deems necessary or appropriate and shall not be obliged to keep any such information confidential.

#### 30.5 Access to Information

- (a) The Operator shall provide NTA/TII or (subject to a confidentiality undertaking in such form as may be specified by NTA/TII, acting reasonably, being provided by the participant) any person (each a "**participant**") participating in a competition consequent on an invitation to potential successor contractors to tender for the right and obligation to provide or operate all or any part of the Services on the expiration or earlier termination of the Contract Period with access to:
  - (i) the employees;
  - (ii) the System; and
  - (iii) the books, records, data and other material kept by or on behalf of the Operator in connection with the Services.
- (b) The Operator shall make available to NTA/TII or, with the consent of NTA/TII, 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) NTA/TII or such participant, as the case may be, shall comply with all reasonable instructions of the Operator with regard to the safety of the System.

### 30.6 Competent 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 Competent Authority.

## 31. RECORDS AND REPORTING REQUIREMENTS

### 31.1 Required Records

- (a) The Operator shall maintain and update true and accurate records relating to the Services.
- (b) Without prejudice to the generality of clause 31.1(a), the Operator shall:
  - (i) ensure that it maintains separate profit and loss accounts and balance sheets in relation to the Services from any other business of the Operator;
  - (ii) furnish to NTA/TII, 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 (or such other later date as may be Approved by NTA/TII):
    - (A) a copy of its audited financial statement, 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, to the extent that they are different;
    - (B) the accounts referred to in clause 31.1(b)(i);
  - (iii) ensure that the cost accounting principles according to which separate accounts are maintained are clearly established; and
  - (iv) maintain its accounts in accordance with generally accepted accounting principles, practices and policies in Ireland and ensure that all accounting principles are clearly stated.

### 31.2 Audit

The Required Records referred to in clause 31.1 (*Required Records*) shall be kept in good and safe order and in such form as to be capable of audit (including by electronic means) by NTA/TII or any person authorised in this regard by NTA/TII.

### 31.3 Availability

- (a) The Operator shall make the records referred to in clause 31.1 (*Required Records*) available for access and inspection by or on behalf of NTA/TII at all reasonable times and shall assist NTA/TII in respect of any accounting queries.
- (b) NTA/TII shall be entitled at all reasonable times, with or without notice, to free and full access to inspect examine and/or copy any books, files, records, data, and/or documents relating to the subject matter of this Contract 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) legal advice or legally privileged documents, belonging to or maintained by or on behalf of the Operator.

#### 31.4 Retention of Records

- (a) Without prejudice to any Legal Requirement, all Required Records shall be:
  - (i) retained for and stored on a computer system; and
  - (ii) shall be archived,in accordance with the provisions of, and for not less than the periods specified in, Schedule 32 (*Records and Reporting Requirements*).
- (b) Where the period for the retention of any records has expired, then the Operator shall notify NTA/TII 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 NTA/TII, and if NTA/TII shall within forty (40) days of such notice elect to receive those records or any part of them the Operator, at its own cost, shall deliver up such records to NTA/TII in the manner and at such location as NTA/TII shall reasonably specify.
- (c) At the end of the Contract Period, the Operator shall, at its own cost, deliver up to NTA/TII, in the manner and at such location as NTA/TII shall reasonably specify, all such records as are referred to in clause 31.1 (*Required 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 NTA/TII may by notice to the Operator specify.
- (d) The Operator shall retain in safe storage at a location to be identified by the Operator and agreed by NTA/TII for a period of not less than that specified in Schedule 32 (*Records and Reporting Requirements*) following the end of the Contract Period all such records as are referred to in clause 31.4(c) which NTA/TII does not require to be delivered up to it. The costs of retaining those records in safe storage shall be borne:
  - (i) by the Operator, in the case of termination as a result of an Event of Default;
  - (ii) in cases other than those governed by clause 31.4(d)(i) by the Operator and NTA/TII in equal proportions.

#### 31.5 Protection of Data

- (a) All data or information generated or acquired as a consequence of, or in connection with, this Contract shall be stored by or on behalf of the Operator such that it is segregated and kept separate from all other data or information generated or acquired by the Operator in some other capacity.
- (b) The Operator shall 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.



### 31.6 Computer Records

- (a) In respect of all records of the Operator that are to be created or maintained on a computer or other electronic storage device, the Operator shall comply with the reasonable requirements of NTA/TII in relation to the back-up and adjacent storage of copies of such records and shall adhere to such agreed procedure and shall cause the Principal Sub-Contractors and their sub-contractors to implement and adhere to such agreed procedure.
- (b) In this regard, the Operator shall establish and maintain separate and distinct series of computer records and databases (together with all related records and information) in connection with the performance of its obligations under this Contract 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 31.6, each series of computer records and databases (together with all related records and information) shall be identified as such and shall be capable of being transferred to a third party, separately to the transfer of any other database or other system maintained by the Operator.

### 31.7 Applicable Laws

Without prejudice to clause 8.1(b)(ii) (*Operator Obligations*) or clause 8.8 (*Data Protection*), the Operator acknowledges that the performance by the Operator of its obligations under this Contract (including this clause 31 (*Records and Reporting Requirements*)) shall comply with, and satisfy, all the Legal Requirements applicable to data protection and data storage (including Data Protection Law).

### 31.8 Reporting requirements

The Operator shall submit to NTA/TII the reports contemplated by Schedule 32 (*Records and Reporting Requirements*), at the times and in such numbers as provided therein, and such reports shall, at NTA/TII's request, be accompanied by a copy of such report or any part thereof on CD-ROM or other electronic storage device in such form and compatible with such software as NTA/TII shall reasonably require.

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**PART 8 - CHANGES, VARIATIONS AND CHANGE IN LAW****32. OPERATOR SERVICES****32.1 Provision of Services**

The Operator shall use the System exclusively in the provision of Services, and for no other purpose.

**32.2 Additional Passenger Services**

- (a) The Operator may, at its own cost, from time to time prepare and submit to NTA/TII proposals for services which it proposes to introduce as additions to the Services ("**Additional Passenger Services**").
- (b) Any proposal for Additional Passenger Services shall satisfy the requirements of section 4.10 of Schedule 4 (*Operations Management*).
- (c) Section 4.10 of Schedule 4 (*Operations Management*) shall apply to any Additional Passenger Services.

**33. EXTENSIONS TO THE SYSTEM****33.1 Provision of information**

- (a) The Operator shall, subject always to clause 12 (*Intellectual Property*), provide to NTA/TII such information as NTA/TII may reasonably require concerning:
  - (i) the System; and/or
  - (ii) the operation of passenger services on the System; and/or
  - (iii) the maintenance of the System,that NTA/TII believes to be required to allow it to specify the terms of any contract for the design, construction, operation and/or maintenance of any System Extension.
- (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 NTA/TII to be provided pursuant to clause 33.1(a) shall be provided by the Operator within such time period as NTA/TII may reasonably require.

**33.2 Construction of System Extensions**

- (a) TII may require the Operator to:
  - (i) liaise with any contractor (and its consultants and advisers) engaged by NTA/TII to perform any aspect of the design and/or construction of any

System Extension, in accordance with the reasonable requests of NTA/TII 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 NTA/TII to those parts of the System to which access is required for the efficient carrying out of such design and/or construction; and
  - (iii) provide to NTA/TII and/or to any such contractor such information concerning the design and/or construction of the System which is at its unrestricted disposal and is reasonably required by NTA/TII and/or such contractor to enable the efficient interfacing and integration of the System with the System Extension.
- (b) Without prejudice to Schedule 36 (*Project Events*), the Operator shall use all reasonable endeavours (without incurring additional cost) to ensure that during the construction of any System Extension there is minimum disruption to the passenger services being provided on the System.

### 33.3 Metrolink

- (a) The Operator acknowledges that Metrolink may:
- (i) involve inspections, works, tests and other activities being carried out to part of the Green Line to facilitate the provision of metro services on such part of the Green Line (the “**Metrolink works**”), with construction potentially commencing 2021 and metro services potentially commencing 2027;
  - (ii) involve disruption 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 Contract to facilitate the Metrolink works and the provision of metro services on part of the Green Line.
- (b) In relation to Metrolink, the Operator shall:
- (i) attend such meetings as notified by NTA or TII;
  - (ii) provide NTA and TII with written comments upon the operational impact of any Metrolink design proposals provided by TII;
  - (iii) make available personnel, at such times and levels as reasonably required by NTA or TII; and
  - (iv) otherwise liaise and cooperate with NTA, TII and the contractors and consultants involved in Metrolink (the “**Metrolink contractors**”).
- (c) The Operator shall take all steps:
- (i) as may be reasonably required by TII, in co-ordinating its own working arrangements with those of the Metrolink contractors; and
  - (ii) to manage and minimise the disruption to the Services caused by the development and construction of Metrolink to the Services.

- (d) NTA/TII shall liaise with the Operator to co-ordinate the Metrolink works so as to ensure that the disruption to the Services is minimised.
- (e) Any disruption of the Services directly consequent on the Metrolink works shall be treated as a Project Event in accordance with clause 48 (*Project Events*).
- (f) Any alteration of the Services directly consequent on the Metrolink works and the provision of metro services on part of the Green Line shall be the subject of a Variation Notice and treated as an Authority Variation in accordance with clause 34 (*Variations*).

## 34. VARIATIONS

### 34.1 Variations – General

- (a) All Variations must be implemented in accordance with this clause 34 (*Variations*).
- (b) The Operator acknowledges that any proposed Variation that is identified by NTA/TII as one that requires urgent attention (including any Variation arising from an amendment to the Safety Management System or from any Change of Law) must be expedited and prioritised.
- (c) Subject to clause 34.5(d)(i) (*Variation negotiations and agreement of terms of Variation*), a Variation does not have effect until such time as a Variation Confirmation has been issued by NTA/TII and, until such time, the parties shall continue to perform their obligations in accordance with this Contract.
- (d) Except in the case of a Deemed Authority Variation and subject to clause 34.5(d) (*Variation negotiations and agreement of terms of Variation*), any costs reasonably and necessarily incurred by NTA/TII as a direct result of the Operator undertaking work in connection with any proposed Variation which has not been agreed to by NTA/TII, as the case may be, in accordance with this clause 34 (*Variations*), shall, unless otherwise agreed, be borne by the Operator.
- (e) Unless otherwise agreed, any out of pocket design and other costs properly incurred by the Operator as a direct result of the Operator implementing an Authority Variation in accordance with NTA/TII's instructions shall be reimbursed by TII, provided that the Operator shall:
  - (i) provide such information as may be required by NTA/TII in order to evaluate the Operator's out of pocket design costs and other costs reasonably and properly incurred in connection with such work;
  - (ii) use its reasonable endeavours to minimise any costs arising in connection with such Variation Notice; and
  - (iii) notify TII of the amount that the Operator considers would be recoverable under this clause 34.1(e) if it will exceed €5,000 (Indexed) before incurring costs in excess of this amount.
- (f) Any discussions, negotiations or other communications that may take place between NTA/TII and the Operator in connection with any proposed Variation, including but not limited to the submission of any written communications, prior to the issue of a

Variation Confirmation by NTA/TII shall be without prejudice to the rights of the Parties.

#### 34.2 Authority Variations

- (a) Subject to the provisions of this clause 34 (*Variations*), TII (with the consent of NTA to the extent required) may by notice to the Operator at any time request the Operator to make any Variation in connection with modifications or alterations to the Services and/or the System (such notice being a “**Variation Notice**”).
- (b) A Variation Notice shall specify the nature and extent of the proposed Variation in sufficient detail to enable the Operator to conduct a detailed service impact analysis and provide the Operator’s Variation Response.

#### 34.3 Operator’s Right to Refuse

Without prejudice to its other rights under this clause 34 (*Variations*), the Operator may refuse to implement any Variation where:

- (a) any Consent to Operate will not be obtainable or will not be obtainable without onerous conditions or within a reasonable period; or
- (b) any existing Consents to Operate will be revoked or adversely affected; or
- (c) the Variation would, if implemented, give rise to a breach of any Legal Requirement, Consent to Operate, Necessary Consent; or
- (d) the Variation would, to the extent that it could not adequately be reflected in any payments and/or adjustments to the Performance Standards, adversely affect the ability of the Operator to exercise its rights and powers or perform its obligations under this Contract or would prevent such exercise or performance; or
- (e) NTA or TII does not have the power to implement the Variation; or
- (f) the Variation would, if implemented, invalidate any insurance effected or to be effected by the Operator or make such insurance unavailable; or
- (g) the Variation would cause the Operator to breach the AFCS Maintenance Contract.

#### 34.4 Operator’s Response to Authority’s Variation Requests

- (a) The Operator shall issue a response in writing to NTA/TII (the “**Operator’s Variation Response**”):
  - (i) subject to clause 34.4(a)(ii), as soon as reasonably practicable but in any event no later than thirty (30) Business Days of the receipt by the Operator of a Variation Notice from NTA/TII or such longer period as NTA/TII may agree; or
  - (ii) where NTA/TII has identified the proposed Variation as one that requires urgent attention, as soon as reasonably possible having regard to the urgency of such Variation (and, in any event, sooner than the period referred to in clause 34.4(a)(i)).
- (b) The Operator’s Variation Response shall include the Operator’s assessment of:

- (i) in relation to the non-financial effects of the proposed Variation:
  - (A) the Consents to Operate which will need to be obtained or modified to give effect to the Variation;
  - (B) any effect on the Services or the Performance Standards and any amendments thereto that may be required;
  - (C) any effect on the availability and/or cost of any insurance effected or to be effected by the Operator;
  - (D) the impact of the proposed Variation on the provision of the services being delivered by any other service providers of NTA or TII in connection with the System;
  - (E) any other amendments which may be required to this Contract or a Party's obligations or rights hereunder or any other agreements relating to the Services in the event that the Variation is implemented; and
  - (F) the Operator's plan to implement the Variation;
- (ii) in relation to the financial effects of the proposed Variation:
  - (A) any Variation Operating Cost or Variation Operating Saving calculated in accordance with the rates in the tables set out in Schedule 34 (*Contract Prices and Indexation*);
  - (B) the estimated Capital Expenditure, including any estimated capital replacement costs, required to implement the proposed Variation;
  - (C) any taxation consequences for the Operator (including the loss of any benefits for taxation such as relief or allowances);
  - (D) any effect on the cost and timing of asset renewals;
  - (E) any estimated change to:
    - (1) the Base Yearly Amount; or
    - (2) any other payment due to the Operator under this Contract,including, in each case, appropriate provision for any irrecoverable amounts in respect of VAT.
- (c) In developing an Operator's Variation Response, the Operator will liaise as appropriate with interested parties in order to assist them in determining and agreeing the impact of the proposed Variation (if any) on the provision of the services being delivered from or to the interested parties.
- (d) The Operator shall use its reasonable endeavours to minimise any increase in costs arising from any Variation.

## 34.5 Variation negotiations and agreement of terms of Variation

- (a) As soon as reasonably possible after the issue of the Operator's Variation Response, the Parties shall endeavour to have the terms of the Variation resolved.
- (b) If requested by NTA/TII, the Operator shall:
  - (i) provide details of reasonable benchmark pricing information for products or services being purchased from third parties similar to those being proposed by the Operator in the Operator's Variation Response; and
  - (ii) where NTA/TII requests, provide such additional information as may be required by NTA/TII in order to evaluate the Operator's Variation Response fully.
- (c) If the Operator does not intend to use its own resources to implement any Variation, it shall comply with Good Industry Practice with the objective of ensuring that it obtains good value for money when procuring any work, services, supplies, materials or equipment required in relation to the Variation. This provision shall not apply to the extent that the Operator is obliged under the AFCS Maintenance Contract, or so as not to invalidate any warranty, to procure the required work, services, materials or equipment from a particular party.
- (d) If any matters covered by the Operator's Variation Response cannot be agreed within a reasonable period having regard to the nature of the Variation from the date of the Operator's Variation Response, then such matters shall be determined in accordance with the Disputes Resolution Procedure and NTA/TII may:
  - (i) require the Operator to proceed to implement expeditiously the Variation on the basis set out in the Variation Notice notwithstanding that the determination pursuant to the Disputes Resolution Procedure is outstanding, except where the Operator can demonstrate to reasonable satisfaction of NTA/TII that the Operator would be entitled to refuse to implement the Variation for the reasons set out in clauses 34.3(c) and 34.3(f) (*Operator's Right to Refuse*); or
  - (ii) require the Operator to await the determination pursuant to the Disputes Resolution Procedure prior to implementing the Variation (in which case clause 34.6 (*Variation Confirmation*) shall apply).
- (e) In the event that the Operator is required to implement the Variation in accordance with clause 34.5(d)(i) and the matter referred to the Disputes Resolution Procedure relates to the cost of implementation of the Variation Notice, NTA/TII shall pay to the Operator the undisputed portion of the cost of implementation of the Variation Notice, and the disputed portion of the cost of implementing the Variation shall be retained by NTA/TII until such time as the matter has been resolved in accordance with the Dispute Resolution Procedure.
- (f) A Variation under clause 34.5(d)(i) only shall be considered "agreed" for the purposes of clause 34.1(d) (*Variations – General*).
- (g) Notwithstanding the requirements of this clause 34 (*Variation*), if the Operator must, in order to comply with Legal Requirements resulting from a Change of Law, proceed with works in relation to a Variation prior to the agreement or determination of the

Operator's Variation Response, it shall do so and shall be reimbursed its costs incurred in accordance with the agreement or determination subsequently reached.

#### 34.6 Variation Confirmation

- (a) Once the terms of a Variation have been agreed or otherwise determined in accordance with the Disputes Resolution Procedure, NTA/TII shall:
  - (i) confirm its acceptance in writing of the terms of the Variation (a "**Variation Confirmation**"); or
  - (ii) withdraw the relevant Variation Notice.
- (b) Until the issue of a Variation Confirmation in respect of any Variation, NTA/TII shall be entitled to withdraw a Variation Notice, at any time, by notice to the Operator to this effect.
- (c) Unless a Variation Confirmation in respect of a Variation is issued as soon as reasonably practicable but in any event within twenty (20) Business Days of such agreement or determination in accordance with the Disputes Resolution Procedure, the Variation Notice for such Variation shall be deemed to be withdrawn.
- (d) Upon receipt of a Variation Confirmation, the Operator shall implement the Variation in accordance with the terms of the agreed Variation and, if relevant, TII shall pay for such Variation in accordance with clause 34.7 (*Form of Payment*).

#### 34.7 Form of Payment

- (a) Where NTA/TII issues a Variation Confirmation to the Operator and it is agreed that the Variation will give rise to Capital Expenditure, NTA/TII (acting reasonably) shall meet the cost of any such Capital Expenditure by means of a single payment or a series of payments for the whole amount.
- (b) Where NTA/TII issues a Variation Confirmation to the Operator and it is agreed or determined that the Variation gives rise to a Variation Operating Cost or Variation Operating Saving, the Base Yearly Amount or Park and Ride Yearly Amount shall be adjusted so as leave the Operator in a "no better and no worse" position.

#### 34.8 Implementation of Authority Variations

- (a) Upon receipt of a Variation Confirmation reflecting the terms of the Variation as agreed or determined, the Operator shall implement the Variation.
- (b) The obligations of the Operator to implement any Variation pursuant to clause 34.8(a) shall be subject to it obtaining all Consents to Operate for such Variation, in a form which is acceptable to both Parties (acting reasonably).
- (c) The Operator shall use all reasonable efforts to obtain any Consents to Operate required in respect of any Variation.
- (d) If any Consents to Operate cannot be obtained either at all or in the period or timetable agreed:
  - (i) the requested Variation shall be cancelled; and



- (ii) NTA/TII shall pay to the Operator all reasonable, out of pocket design and other costs and expenses properly incurred by the Operator up to the date of cancellation.

#### 34.9 Operator's Variations

- (a) The Operator may, at any time, by giving notice to NTA/TII, propose a Variation (an "**Operator's Variation**").
- (b) Any notice given under this clause 34.9 shall:
  - (i) specify the proposed Operator's Variation in sufficient detail to enable NTA/TII to evaluate it in full;
  - (ii) specify the Operator's reasons for proposing the Operator's Variation;
  - (iii) include the Operator's assessment of each of the items listed in clause 34.4(b) (*Operator's Response to Authority's Variation Request*).
- (c)
  - (i) An Operator's Variation shall not be implemented without NTA/TII's consent.
  - (ii) Subject to clause 34.9(e), in relation to any proposed Operator's Variation, NTA/TII shall be entitled to:
    - (A) withhold its consent to a proposed Operator's Variation at its absolute discretion; or
    - (B) grant its consent subject to such conditions, including conditions as to consequential financial adjustments between the Parties, as NTA/TII may, at its absolute discretion, specify,
- (d) Except as otherwise agreed, no payments or other financial adjustments shall be made to or by any Party as a consequence of implementation of an Operator's Variation.
- (e) NTA/TII shall not unreasonably withhold or delay its consent to a proposed Operator's Variation where:
  - (i) as a result of NTA/TII withholding its consent, a Consent to Operate will not be obtainable or will not be obtainable without onerous conditions or within a reasonable period; or
  - (ii) as a result of NTA/TII withholding its consent, an existing Consent to Operate will be revoked or adversely affected; or
  - (iii) the Variation is necessary to avoid a breach by the Operator of any Legal Requirement, Consent to Operate, Necessary Consent; or
  - (iv) the Variation is necessary to avoid a breach by the Operator of the AFCS Maintenance Contract.

### 34.10 Deemed Authority Variation

(a) Where a Deemed Authority Variation occurs in accordance with:

- (i) clause 11.2 (*Undisclosed Interests*);
- (ii) clause 35.3 (*Change of Law*);
- (iii) clause 41.3 (*VAT status*); or
- (iv) clause 41.4 (*VAT rates*),

the notice given by NTA/TII or the Operator of the event specified in each of the foregoing clauses shall take effect as if NTA/TII had issued a Variation Notice.

(b) The Parties shall seek to have terms for the implementation of any such Deemed Authority Variation resolved as soon as reasonably practicable and the provisions of this clause 34 (*Variation*) shall apply thereto except that:

- (i) NTA/TII shall not be entitled to withdraw the Variation Notice deemed to be given under clause 34.10(a);
- (ii) in the case of a Deemed Authority Variation arising in accordance with clause 35.3 (*Change of Law*), the costs and amounts payable in connection with such Deemed Authority Variation shall be determined in accordance with clause 35.3(b); and
- (iii) if any matters covered by the Variation Notice deemed to be given under clause 34.10(a) cannot be agreed within a reasonable period having regard to the nature of the Variation from the date of such deemed Variation Notice, then such matters shall be determined in accordance with the Disputes Resolution Procedure.

### 34.11 No relief

For the avoidance of doubt no order of a Variation under the Contract shall relieve the Operator from its obligations to properly perform the Services (as the same may be varied by the Variation), perform the obligations assumed by the Operator under and in accordance with the Contract (as the same may be varied by the Variation) and to achieve the Performance Standards (as the same may be varied by the Variation).

### 34.12 Possible Variations

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

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

in each case, whether prompted by:

- (i) passenger demand and/or travel conditions generally within the Greater Dublin Area having regard to road, rail and other forms of public and private transport;

- (ii) the impact (or anticipated impact) of any planned or actual transport programme, such as Metrolink, or the Bus Connects project;
- (iii) changes to ticketing arrangements (such as, the introduction of integrated ticketing);
- (iv) public policy;
- (v) technological changes and/or improvements;
- (vi) changes in applicable Legal Requirements, including in relation to railway safety;
- (vii) technical or operational difficulties which become apparent during operation or maintenance of the System and /or performance of the Services;
- (viii) changes to the power or energy supply arrangements, including as a consequence of the Climate Action and Low Carbon Development Act 2015 or any other Legal Requirement;
- (ix) the needs of customers and other road users;
- (x) extraordinary interventions that might become necessary in order to ensure continuation of passenger services on the System; or
- (xi) otherwise.

### 35. CHANGE OF LAW

#### 35.1 Operator to minimise impact

- (a) The Operator shall use reasonable endeavours to minimise any additional costs incurred by it in connection with, and amounts recoverable from, NTA/TII as a result of any actual or anticipated Change of Law.
- (b) The Operator's obligations to mitigate pursuant to clause 35.1(a) shall not include measures which might result in reduced Patronage Revenue.

#### 35.2 Discriminatory Change of Law

Any costs directly incurred (or to be incurred) by the Operator arising from a Discriminatory Change of Law shall be borne by TII.

#### 35.3 Variations required as a result of a Change of Law

- (a) If a Change of Law occurs (whether or not the Operator has an entitlement to any compensation under this clause 35 (*Change of Law*)) as a result of which a Variation is necessary:
  - (i) TII or the Operator may give notice to the other to this effect; and
  - (ii) such notice is a Variation Notice for a Deemed Authority Variation and clause 34.10 (*Deemed Authority Variation*) shall apply accordingly.

- (b) The Operator shall bear any costs it incurs by reason of a Change of Law or Deemed Authority Variation consequent on a Change of Law, except for the costs which under clause 35.2 (*Discriminatory Change of Law*) and otherwise under clauses 41.3 (*VAT Status*) and 41.4 (*VAT Rates*) TII is required to pay.

35.4 Bye-Laws/Levy Order

Notwithstanding any provision of this Contract, 'Change of Law' (and any related concept) shall neither include nor extend to any Bye-Laws (or changes to the Bye-Laws) made by the Operator or any Levy Order (or any amendment or modification to a Levy Order).

36. **NO BETTER AND NO WORSE**

Any reference in this Contract to "no better and no worse" or to leaving the Operator in a "no better and no worse position" shall be construed by reference to:

- (a) the Operator's rights, duties and liabilities under or arising pursuant to performance of this Contract;
- (b) the Operator's ability to perform its obligations hereunder and exercise its rights hereunder; and
- (c) the Operating Costs before and after,

so as to ensure that:

- (i) the Operator is left in a position which is no better and no worse than had the Variation or Project Event not occurred; and
- (ii) the ability of the Operator to meet the Performance Standards is not adversely affected or improved as a consequence of the Variation or Project Event; and

except to the extent that the Operator is to meet the costs (in accordance with clause 35 (*Change of Law*)) arising from a Deemed Authority Variation caused by a Change of Law.

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**PART 9 - PAYMENTS AND TAXES****37. PAYMENT****37.1 One-off Costs**

Subject to the terms of this Contract, TII shall pay to the Operator the one-off costs (the “**One-off Costs**”) calculated and payable in accordance with section 34.8 of Schedule 34 (*Contract Prices and Indexation*).

**37.2 System Charge**

The Operator shall pay a System Charge to TII for each Reporting Period, calculated and payable in accordance with Schedule 37 (*System Charge and Revenue Grant*).

**37.3 Revenue Grant**

Subject to the terms of this Contract, TII shall pay to the Operator the Revenue Grant for each Reporting Period in which a Revenue Grant is due, such Revenue Grant to be calculated and paid in accordance with clause 39 (*Revenue Grant*).

**37.4 Patronage Revenue/Standard Fare Revenue**

The Operator shall be entitled to retain all Patronage Revenue and Standard Fare Revenue, in each case, to the extent contemplated by this Contract.

**37.5 Invoices**

A Party may deliver invoices to the other in respect of sums due pursuant to this Contract and where it does so, such invoices shall be supported by such supporting calculations and documentation as are required by this Contract and as may be necessary to show how the sum being invoiced has been calculated.

**37.6 Approval and Payment of Invoice**

- (a) Subject to any applicable Legal Requirement, clause 37.6(b) and (c) and clause 37.7 (*Disputes*), the Party receiving a payment application or invoice for an amount due under this Contract shall pay to the other Party on or prior to thirty (30) days following receipt of the payment application or invoice the sum shown as due;
- (b) The Party receiving a payment application or invoice shall, within five (5) Business Days of receipt of the payment application or invoice delivered pursuant to the Contract, notify the other Party of anything contained in the payment application or invoice in respect of which it has queries. Any such notice shall specify the nature of the query and the amount attributable to it.
- (c) If the Parties cannot agree the sum payable within five (5) Business Days of receipt of the notice given under clause 37.6(b), then any Party may serve notice on the others requesting a meeting and specifying the questions that it wishes to be considered at the meeting. The Parties shall meet within five (5) Business Days of service of notice by any Party under this clause 37.6(c) to consider such questions.

## 37.7 Disputes

- (a) If any question cannot be resolved by the Parties at the meeting referred to in clause 37.6(c) (*Approval and Payment of Invoices*), then such question shall be treated as a Dispute for the purposes of section 3 of Schedule 38 (*Disputes Resolution Procedure*).
- (b) If it is subsequently agreed or determined in accordance with Schedule 38 (*Disputes Resolution Procedure*) that a payment due from one Party to the other should have been greater or less than the amount actually paid then the Party to which additional payment is due or which has made an overpayment (as the case may be) shall be entitled (without prejudice to its other rights and remedies) to invoice the other Party for such sum (together with accrued interest in accordance with clause 37.9 (*Interest*)) in accordance with clause 37.8 (*Supplementary Invoices*) and payment shall then be made by the relevant Party within five (5) Business Days of receipt by the paying Party of the relevant invoice;

## 37.8 Supplementary Invoices

- (a) Each Party may, from time to time, submit an invoice to the other in respect of any additional sums which shall become due in accordance with this Contract and the procedures set out in clauses 37.4 (*Invoices*) to 37.7 (*Disputes*) inclusive shall apply thereto.
- (b) Where additional sums have been agreed by the Parties or determined in accordance with clause 37.7 (*Disputes*) neither Party shall be entitled to dispute such amounts pursuant to clause 37.7.

## 37.9 Interest

- (a) Subject as provided in clause 37.9(c), any amount properly due from one Party to the other pursuant to this Contract (including amounts due on termination) and which remains unpaid after the due date for payment shall bear interest at the Default Rate.
- (b) Any such interest shall accrue from day to day both before and after judgement and shall be compounded for each period of four (4) weeks from, and including, the date when payment was due up to, but excluding, the date of actual payment.
- (c) Interest shall accrue in respect of amounts determined to be payable following a decision of the meeting referred to in clause 37.6(c) (*Approval and Payment of Invoice*) or pursuant to the Dispute Resolution Procedure in accordance with clause 37.7 (*Dispute*) from the due date of the original underpayment or overpayment as the case may be.

## 37.10 Set-Off

- (a) The Operator shall not be entitled to retain or set-off any amount due to it by NTA or TII against any amounts due to NTA or TII by it.
- (b) NTA and TII may retain or set-off any amount due to either of them by the Operator under this Contract and the Project Documents against any amount due by NTA or TII to the Operator under this Contract and the Project Documents.

## 37.11 Method of payment

All payments to be made by a Party to another Party under this Contract 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.

## 37.12 Errors in Reports

- (a) Without prejudice to clause 31.2 (*Audit*), NTA/TII shall be entitled to send any Period Report, Patronage Revenue Report and other records to an independent accountant for examination and scrutiny.
- (b) If, following such examination, scrutiny or otherwise, it is found that a Period Report or a Patronage Revenue Report was erroneous, and as a result a System Charge was underpaid or a Revenue Grant was overpaid, clause 37.7(b) (*Dispute*) shall apply.

38. **SYSTEM CHARGE**

## 38.1 Calculation of System Charge

For each Reporting Period, the amount of the System Charge shall be the greater of:

- (a) €100; or
- (b) an amount such that the System Charge plus the VAT payable by the Operator thereon is equal to the amount of Patronage Revenue plus Standard Fare Revenue earned by the Operator in that Reporting Period minus the Adjusted Reporting Period Amount for that Reporting Period.

## 38.2 Adjusted Reporting Period Amount

For each Reporting Period, the Adjusted Reporting Period Amount shall be equal to:

- (a) the Base Reporting Period Amount for that Reporting Period;
- plus
- (b) the aggregate of:
    - (i) the AFCS Maintenance Fee for that Reporting Period;
    - (ii) any Standard Fare Commission for that Reporting Period;
    - (iii) any Fare Evasion Bonus for that Reporting Period;
    - (iv) any System Performance Bonus for that Reporting Period; and
    - (v) any Patronage Revenue Smoothing Amount for that Reporting Period (which, for the avoidance of doubt, may be a positive or negative amount) ;

less

- (c) the aggregate of:
  - (i) any Fare Evasion Deduction for that Reporting Period; and

- (ii) any System Performance Deduction for that Reporting Period;

and shall further be subject to any adjustments made in accordance with this Contract.

### 39. REVENUE GRANT

#### 39.1 TII Revenue Grant

For each Reporting Period in which the Adjusted Reporting Period Amount is equal to or greater than the aggregate of the amount of Patronage Revenue and Standard Fare Revenue earned by the Operator in that Reporting Period, TII shall pay to the Operator a Revenue Grant calculated and payable in accordance with clause 39.2 (*Amount of Revenue Grant*) and Schedule 37 (*System Charge and Revenue Grant*).

#### 39.2 Amount of Revenue Grant

For each Reporting Period in which a Revenue Grant is due, the amount of the Revenue Grant shall be the difference between the aggregate of the amount of Patronage Revenue and Standard Fare Revenue earned by the Operator in that Reporting Period and the Adjusted Reporting Period Amount for that Reporting Period.

### 40. RATES, TAXES AND CHARGES

#### 40.1 Obligation to Pay Rates, Taxes and Charges

- (a) The Operator shall, subject to clauses 35 (*Change of Law*) and clause 40.1(b), pay:
  - (i) 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 System and the Services (except to the extent that another person is required (pursuant to a Legal Requirement) to pay such taxes, duties, charges, impositions and/or assessments); and
  - (ii) any rates payable in respect of any property owned or (not being the System) occupied by the Operator in connection with the Services.
- (b) TII shall procure that any rates which are payable in respect of the System are paid.

#### 40.2 Deductions and Withholdings

- (a) NTA and TII may make any deduction from a payment to the Operator on account of tax as is required by any Legal Requirement or the practice of the Revenue Commissioners and payment of the net amount after such deduction or withholding shall discharge NTA's and TII's liability as if the deduction or withholding had not been made. Any documentation required by the Revenue Commissioners in support of any tax credit due to the Operator following such deduction shall be provided by NTA or TII to the Operator on request by the Operator.
- (b) As a condition precedent to NTA or TII's obligation to make any payments under this Contract, the Operator shall comply with all relevant obligations referred to in section 1095 of the Taxes Consolidation Act 1997 and any published practice of the Department of Finance in relation to tax clearance certificates, and shall obtain and maintain until the Expiry Date the appropriate tax clearance certificates and/or statements of



suitability/other documentation referred to in that section and any published practice of the Department of Finance in this regard.

- (c) The Operator shall procure that each Sub-Contractor complies with the obligations referred to in clause 40.2(b) and, in the event of a failure to do so, NTA and TII may withhold an appropriate sum from any payment under this Contract.
- (d) NTA and TII shall, at the Operator's cost, give such reasonable assistance as the Operator requests in relation to the obtaining of any necessary tax clearance certificate, statement of suitability or other required documentation by the Operator or a Sub-contractor.

#### 41. VALUE ADDED TAX

##### 41.1 Supplies under this Contract subject to VAT

- (a) This clause 41.1 shall apply in relation to any supplies under this Contract which are subject to VAT.
- (b) Except where otherwise expressly stated in this Contract, all amounts stated to be payable by any Party under this Contract are exclusive of any VAT properly chargeable on the supply for which the payment is or is deemed to be consideration which is payable in addition to it, and each Party must pay to the other Party the amount of VAT properly chargeable to it in respect of any supply made to it by the other Party under this Contract, where that other Party is the person responsible for accounting for such VAT to the relevant taxing authority.
- (c) No payment is to be made under this clause 41.1 in respect of VAT unless the payer has first received from the other Party a valid VAT invoice in respect of such supply.

##### 41.2 Change of Law – VAT

Unless it constitutes a Discriminatory Change of Law, any Change of Law, which for the purpose of this clause 41.2 shall include a change in the published interpretation or practice of the Revenue Commissioners relating to VAT, shall, subject to the provisions of clauses 41.3 (VAT Status) and 41.4 (VAT Rates), not give rise to any remedy for the Operator against TII.

##### 41.3 VAT Status

- (a) Without prejudice to clause 41.1 (*Supplies under this Contract subject to VAT*), it is assumed by the Parties that the provision of public transportation by the Operator is an exempt supply not subject to VAT.
- (b) If pursuant to a Change of Law or otherwise the provision of public transportation is no longer treated as an exempt supply or is treated as subject to VAT, any Party may give notice to the another to this effect and such notice shall be deemed to be a Variation Notice for a Deemed Authority Variation, and clause 34.10 (*Deemed Authority Variation*) shall apply, and the One-off Costs, Base Yearly Amount and any amounts to be paid under this Contract shall be adjusted to reflect any saving resulting from the recoverability of VAT paid which could not have been otherwise recoverable and any irrecoverable VAT the Operator is required to pay, which it would not otherwise have to pay, so that the position of the Operator is no better and no worse than it would have been had the change not occurred.

- (c) The Parties acknowledge that the provision of the Park and Ride services is considered to be subject to VAT.

#### 41.4 VAT Rates

If pursuant to a Change of Law the VAT which the Operator is required to pay in relation to any inputs or supplies or can recover changes, any Party may give notice to the other Party to this effect and such notice shall be deemed to be a Variation Notice for a Deemed Authority Variation, and clause 34.10 (*Deemed Authority Variation*) shall apply, and the One-off Costs, Base Yearly Amount and any amounts to be paid under this Contract shall be adjusted to reflect the increase or decrease in costs resulting from such Change of Law.

#### 41.5 VAT on AFCS Maintenance Contractor's charges

It is assumed by the Parties that the rate of VAT applicable to the provision of the supplies by the AFCS Maintenance Contractor under the AFCS Maintenance Contract for which the Operator is liable is thirteen and one half per cent (13.5%). To the extent that the rate applicable to this supply is found to be different, such difference shall be deemed to have arisen on a Change of Law and clause 41.4 (*VAT Rates*) shall apply accordingly.

**PART 10 – PERFORMANCE STANDARDS****42. PERFORMANCE****42.1 Reporting and monitoring**

- (a) The Operator shall comply with the requirements of:
- (i) Schedule 15 (*Performance Standards for LRV Maintenance*),
  - (ii) Schedule 21 (*Performance Standards for Infrastructure Maintenance*); and
  - (iii) Schedule 35 (*Performance Monitoring*)
- in relation to performance monitoring and inspection.
- (b) The Operator shall record the results of its monitoring of the Performance Standards in the Period Report that it submits to NTA/TII in respect of each Reporting Period in accordance with Schedules 32 (*Records and Reporting Requirements*) and 35 (*Performance Monitoring*).

**42.2 Breach**

- (a) Without prejudice to clause 42.2(b), if the Operator is in breach of any provision of this Contract, and the breach is one which will not result in a System Performance Deduction (a “**Non-PMS Breach**”), then NTA and TII (acting together) shall be entitled to enforce their respective rights in relation to the breach by way of an order for specific performance or an injunction.
- (b) In the event of a Non-PMS Breach (except where NTA or TII has received damages in lieu of specific performance) the Operator shall pay to TII (on behalf of NTA and itself, as the case may be) a sum 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 NTA and TII,
- in each case as a result of the Non PMS-Breach.

**43. PERFORMANCE MONITORING****43.1 Attendance at meetings**

The Operator shall send at its own cost and expense such representatives to meetings as NTA/TII 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.

**43.2 Performance Monitoring System reports**

In addition to the Period Report the Operator shall at its own cost and expense prepare and submit to NTA/TII for approval such Performance Monitoring System reports in such form

and with such content as NTA/TII may reasonably require, detailing the performance of the Operator against the requirements of the Performance Monitoring System.

#### 44. MONITORING AND INSPECTION

##### 44.1 Access to NTA/TII

The Operator shall provide NTA/TII such reasonable opportunity to monitor the Operator's performance of its obligations under this Contract, including allowing NTA/TII 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 NTA/TII; and
- (b) unless it is unsafe to do so, all or any part of the System.

##### 44.2 Effect

- (a) The Operator acknowledges and agrees that, notwithstanding any provision of this Contract which contemplates that NTA or TII will or may from time to time:
  - (i) inspect any part of the System or any records;
  - (ii) check compliance by the Operator with its obligations; or
  - (iii) confirm or indicate approval or non-objection to proposals made by the Operator,

it is and will be the responsibility of the Operator (and not the responsibility of either NTA or TII) to ensure that the Services are provided and performed in all respects in accordance with the Operator's obligations under this Contract.

- (b) If NTA or TII exercises any rights available to either or both of them, it will not in any way limit or affect the Operator's obligations under this Contract.
- (c) Without prejudice to the generality of the foregoing, no such action by or on behalf of NTA or TII will in any way lessen the Operator's responsibility for ensuring that the Services are at all times provided in a manner which complies with all applicable Legal Requirements.

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**PART 11 - LIABILITIES, INDEMNITIES AND INSURANCE****45. INDEMNITIES****45.1 Operator's General Indemnities**

(a) Without prejudice to Schedule 36 (*Project Events*) and subject to this clause 45 (*Indemnities*), the Operator shall indemnify and hold harmless NTA and TII (each an "**Indemnified Person**") from and against:

- (i) all Indemnified Liabilities for or in respect of bodily injury, illness, disease or death of any person whatsoever;
- (ii) all Indemnified Liabilities for or in respect of damage to any property real or personal of NTA or TII or their employees or any third party ("**Indemnified Property Losses**");
- (iii) all Indemnified Liabilities for or in respect of any breach of statutory duty; and
- (iv) third party actions, claims, demands, costs, charges and expenses brought against NTA and/or TII (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 Contract 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 45 shall be paid by it on demand being made of it by the relevant Indemnified Person.

**45.2 Extent of indemnities**

Without prejudice to Schedule 36 (*Project Events*), the indemnities given by the Operator under this Contract shall not apply to any Indemnified Liabilities to the extent that they:

- (a) arise from or are contributed to by a breach of this Contract by NTA or TII or the negligence of NTA or TII or their subcontractors of any tier or their employees or agents; 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 NTA or TII, as the case may be, in respect of the matter and in respect of which the insurer's rights of subrogation have been waived against the Operator.

**45.3 Notification of Claims procedures and assistance in defending Claims**

- (a) NTA or TII (as applicable) shall, as soon as reasonably practicable, notify the Operator of:
  - (i) any determination made by NTA/TII under clause 9.1(i) (*System Contracts*); and

- (ii) the circumstances or incidences or any actual or threatened Claim (of whatever nature) in respect of which it may seek to be indemnified and held harmless by the Operator under the provisions of this Contract.
- (b) The Parties shall give to each other Party and their respective advisers such assistance as each may reasonably require in defending Claims in respect of which a Party seeks to be indemnified under this Contract.
- (c) Subject to the following provisions of this clause 45.3 and to complying with the provisions of the relevant insurances, on the giving of a notice pursuant to clause 45.3(a), the Operator shall be entitled to pursue or resist the Claim in the name of NTA or TII, as the case may be, at its own expense and shall have the conduct of any dispute, compromise or appeal of the Claim and of any incidental negotiations in relation to such Claim.
- (d) With respect to Claims being pursued or resisted by the Operator in accordance with clause 45.3(c):
  - (i) the Operator shall keep NTA or TII, as the case may be, fully informed and consult with it about the conduct of the Claim; and
  - (ii) to the extent that NTA or TII is not entitled to be indemnified by the Operator for all of the liability arising out of the act or omission which is the subject of the Claim, no action shall be taken pursuant to clause 45.3(c) which shall increase the amount of any payment to be made by NTA or TII, as the case may be, in respect of that part of the Claim which is not covered by the indemnity from the Operator.
- (e) Subject to complying with the provisions of the relevant insurances, NTA or TII, as the case may be, may (acting reasonably) pursue or resist any Claim or pay or settle any Claim on such terms as it may, in its absolute discretion, think fit and without prejudice to its rights and remedies under this Contract (including, without limitation, clause 45.1 (*Operator's General Indemnities*)) if:
  - (i) within forty (40) Business Days of the issue date of the notice from NTA or TII under clause 45.3(a) the Operator fails to notify NTA or TII, as the case may be, of its intention to dispute the Claim; or
  - (ii) the Operator fails to comply in any material respect with the provisions of clause 45.3(d).
- (f) Subject to complying with the provisions of the relevant insurances, NTA or TII, as the case may be, may at any time give notice to the Operator that it is taking-over the conduct of any dispute, compromise or appeal of any Claim which is subject to clause 45.3(c) or of any incidental negotiations. Upon receipt of such notice the Operator shall promptly take all steps necessary to transfer the conduct of such Claim to NTA or TII, as the case may be, and shall provide to NTA or TII all reasonable co-operation, access and assistance for the purposes of considering and pursuing or resisting such Claim.
- (g) Where a Party makes a Claim under any indemnity arising under this Contract that Party shall take reasonable steps to avoid or mitigate the loss and/or damage in respect of which such Claim is made and the Party against which such Claim is made shall not be liable in respect thereof to the extent that the Party making such Claim has failed to take such steps.

## 45.4 Savings

The Operator's liability to NTA and TII arising under any indemnity in this Contract shall be without prejudice to any other right or remedy available to NTA or TII and shall be without limitation to any indemnity by the Operator under any other provision of this Contract.

## 45.5 Road Traffic Insurance

Notwithstanding anything else in this clause 45 (*Indemnities*), a Party shall not be entitled to claim an indemnity from another Party in respect of any Indemnified Liabilities for or in respect of any matter for which it is responsible and in respect of which it is required to carry insurance under the Road Traffic Acts 1961 to 2018 and/or section 57, 2001 Act and the Party so required to carry insurance shall indemnify and hold harmless the other Parties in respect of all such Indemnified Liabilities to the extent to which it is required to be so insured.

## 45.6 The Operator's other indemnities

The Operator shall indemnify and hold harmless NTA and TII from and against all Indemnified Liabilities incurred by NTA or TII:

- (a) to or in respect of any employee, agent, officer or director of the Operator or any Sub-Contractor;
- (b) under or as a result of a breach by TII of any System Contract, to the extent that the same arises out of or are contributed to in whole or in part by any breach by the Operator of this Contract, or by the negligence of the Operator or a Sub-Contractor, or its or their agents or employees;
- (c) arising from any strike, work-to-rule, sit-in, go-slow, or any other form of industrial action which shall affect either the provision of the Services, or otherwise arise such that causes direct or indirect loss to NTA or TII (including claims by third parties arising from such industrial action); or
- (d) as a result of any breach by the Operator of the Contract.

46. **INSURANCE**

- (a) The Operator shall from the Operating Commencement Date until the Expiry Date or the date of termination of this Contract, maintain or procure the maintenance of the insurances stipulated and in the manner described in Schedule 39 (*Insurances*) and any other insurances as may be required from time to time by Law.
- (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 Contract 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 Contract, including Schedule 39 (*Insurances*), shall limit or relieve the Operator of its liabilities and obligations under this Contract.

- (e) NTA/TII shall ensure that each System Contract (or in respect of other works or contracts for undertaking extensions or additions to the System instructed by or on behalf of NTA/TII (other than pursuant to this Contract)) shall include the Operator and its sub-contractors as insured each for their own rights and interests under the insurances to be effected by NTA/TII in connection with such works, including a waiver of subrogation rights and inclusion of a multiple insured clause/endorsement and shall provide the Operator with evidence of these insurances prior to the commencement of such works.

#### 47. LIMITATION ON LIABILITY

##### 47.1 Limitation on NTA and TII liability

The combined liability of NTA and TII to the Operator shall be limited to seventeen million euro (€17,000,000).

##### 47.2 Limitation on Operator liability

- (a) Subject to clause 47.2(b):
  - (i) the Operator's maximum liability to NTA and TII in respect of Indemnified Property Losses shall be limited to:
    - (A) in the case of Damage to the System, fifty million euro (€50,000,000) or, if higher, the indemnity limit of the Required Insurance Policy in respect of property damage insurance required under clause 46 (Insurance) and Part 1 of Schedule 39 (*Insurances*); or
    - (B) in the case of any other Indemnified Property Losses, one hundred and twenty million euro (€120,000,000);
  - (ii) the Operator's maximum liability to NTA and TII in respect of its failure to achieve the Performance Standards in respect of which System Performance Deductions may be made shall be limited to the System Performance Deductions; and
  - (iii) the Operator's maximum aggregate liability to NTA and TII for all matters (other than those matters referred to in clause 47.2(a)(i) and clause 47.2(a)(ii)) arising out of, or in connection with, this Contract shall not exceed an amount equal to seventeen million euro (€17,000,000),  
  
(each a "**Liability Cap**" and together the "**Liability Caps**").
- (b) The Liability Caps shall not apply to:
  - (i) any costs or expenses which the Operator is obliged to or does expend in providing the Services;
  - (ii) except for amounts that are expressly subject to a Liability Cap, any payments which the Operator is obliged to or does make to NTA and/or TII under this Contract (including in respect of any Variation);
  - (iii) any Loss recoverable by the Operator under the Required Insurance Policies;



- (iv) any Loss arising under or in respect of any breach by the Operator of the provisions of clause 12 (*Intellectual Property*);
- (v) any liability of the Operator to NTA and/or TII 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 Contract by the Operator;
- (vi) the Operator's liability to refund or reimburse as expressly provided by this Contract;
- (vii) the Operator's liability to pay any Taxes as expressly provided by this Contract or required by any Legal Requirements; or
- (viii) any interest payable by the Operator under this Contract.

#### 47.3 Indexation

The amounts specified in clause 47.1 (*Limitation on NTA and TII liability*) and clause 47.2 (*Limitation on Operator liability*) shall be subject to indexation in accordance with Schedule 34 (*Contract Prices and Indexation*).

#### 47.4 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 loss of business opportunity); or
  - (iv) special, incidental, indirect or consequential damages howsoever caused,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 NTA or TII under, or for breach of, this Contract; nor
  - (ii) raise any excuse, set-off or defence with respect to any debt or Claim made by NTA or TII against the Operator under, or for breach of, this Contract,arising out of any act, default or neglect of NTA or TII, as the case may be, in carrying out obligations imposed on NTA or TII, as the case may be, under any other agreement between NTA or TII, as the case may be, and the Operator.

## 47.5 General Mitigation Obligation

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

**PART 12 – THIRD PARTY EVENTS AND STEP IN****48. PROJECT EVENTS**

- (a) The provisions of Schedule 36 (*Project Events*) shall apply upon the occurrence of a Project Event.
- (b) The Operator's sole remedy in relation to a Project Event shall be as set out in Schedule 36 (*Project Events*).

**49. FORCE MAJEURE****49.1 Application**

- (a) None of the Parties shall be in breach or otherwise be liable to the other Parties in any manner whatsoever for any failure or delay in performing its obligations under this Contract due to the occurrence of Force Majeure on the basis that:
  - (i) subject to clause 49.1(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 49 (*Force Majeure*) 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 Contract by an event of Force Majeure must give notice to the other Parties 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 Contract.
- (c) A Party seeking to rely on the provisions of this clause 49 shall not be entitled to payment from the other Parties in respect of extra costs and expenses incurred by virtue of the Force Majeure event.

#### 49.2 Step-In

If at any time the Operator claims Force Majeure in respect of its obligations under the Contract with regard to the performance of the Services, NTA/TII shall be entitled to perform itself or obtain from any other person such of the Services as the Operator is unable to perform.

#### 49.3 Payments

If, as a result of any Force Majeure event occurring on or after the Operating Commencement Date, the Operator is unable to operate the System as contemplated by this Contract or such operation is disrupted, then the payment by TII to the Operator of any Revenue Grant shall be suspended to the extent that the operation of the System is so affected.

#### 49.4 Issues and Matters

If a Party receiving a notice given under clause 49.1(a)(ii) (*Application*):

- (a) does not agree that an event of Force Majeure has occurred, or
- (b) does not agree on the effect of such event of Force Majeure,

it shall give notice to the Party claiming Force Majeure within fifteen (15) Business Days of the notice given under clause 49.1(a)(ii) (*Application*) stating the grounds on which it disputes such claim and, if neither the notice under clause 49.1(a)(ii) (*Application*) nor the notice of dispute under this clause has been withdrawn within fifteen (15) Business Days of the date of the notice under this clause 49.4, then the Parties agree that the issue which is the subject of the notice under clause 49.1(a)(ii) (*Application*) and/or under this clause 49.4 shall be referred to the Disputes Resolution Procedure.

#### 49.5 Duty to Mitigate

The Party giving the notice under clause 49.1(a)(ii) (*Application*) shall use all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay or suspension of the Services occasioned by any event of Force Majeure.

#### 49.6 Prevention of Harm

Following the occurrence of Force Majeure, the Party who would otherwise be required to manage and/or make safe any part of the System shall manage and/or make safe that part of the System affected so as to prevent physical harm being caused to the System and the System causing physical harm to any person or property, except to the extent that Party is directly prevented by the Force Majeure.

#### 49.7 Non-Application of Exclusion of Liability

The exclusion of liability under this clause 49 (*Force Majeure*) resulting from an event of Force Majeure shall not operate if and to the extent that:

- (a) the affected Party could by the exercise of reasonable foresight and diligence have prevented or reduced the effect of the event of Force Majeure; and
- (b) the affected Party could, whether before or after the occurrence of the event of Force Majeure, have reduced or eliminated the resulting failure to discharge its obligations under the Contract by taking reasonable steps to reduce or eliminate such failure having regard to the circumstances at such time.

## 49.8 No Expenses

Unless otherwise expressly stated in this clause 49 (*Force Majeure*) no Party shall be entitled to any payment from another Party in respect of any costs and/or expenses occasioned by any event of Force Majeure.

## 49.9 Termination

If the Force Majeure event:

- (a) has, or is likely to have, an effect on the rights or obligations of (i) NTA and TII or (ii) the Operator so as to render financially or practicably impossible the performance of this Contract; or
- (b) substantively frustrates the ability of (i) NTA and TII or (ii) the Operator to perform its obligations under this Contract for a period of time in excess of six (6) months,

then TII or the Operator, following consultation with the other Parties to reach a solution acceptable to both Parties for a period of eight (8) months from the date the notice made under clause 49.1(a)(ii)(A) (*Application*), may by notice to the other Parties forthwith terminate this Contract and the provisions of clauses 52.4 (*Transfer of the System*), 52.5 (*Provision of documents*), 52.6 (*Condition of records and systems*), 52.7 (*Continuance of activities and assignment of benefit of this Contract*), 52.8 (*Operator's Employees*), 52.9 (*Saving provisions*), 52.10 (*Transfer of rights*), 53 (*Transition to Another Operator*) and 54 (*Handback of the System*) shall apply.

50. **STEP IN**

## 50.1 Step In

- (a) Without prejudice to clause 51.1 (*Operator Default*), if, in the reasonable opinion of TII, the Operator fails or refuses to provide the Services in accordance with this Contract, TII may (but is not bound to and assumes no liability as a result of any failure to do so), acting reasonably, by giving not less than ten (10) Business Days' notice to the Operator:
  - (i) increase the level of its monitoring of the Operator, or (at TII's option) of the Operator's monitoring of its own performance of its obligations under this Contract until such time as the Operator shall have demonstrated to the reasonable satisfaction of TII that it will perform (and is capable of performing) its obligations under this Contract; or
  - (ii) step in and provide, or procure the provision on its behalf, part or all of the Services (a "**Step In**").
- (b) In the event that TII exercises its rights under clause 50.1(a)(ii):
  - (i) the Operator shall indemnify and keep indemnified each of TII and NTA at all times from and against all reasonable costs and expenses (if any) incurred directly or indirectly by or on behalf of TII and/or NTA in relation to such Step In (including an appropriate sum in respect of general staff costs and overheads); and
  - (ii) TII 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 in accordance with clause 37.4 (*Invoices*).

- (c) The provision of part or all of the Services by (or on behalf of) TII in accordance with this clause 50 (*Step-In*) shall not relieve the Operator from any of its powers, obligations or liabilities under this Contract or affect the rights and powers conferred on NTA or TII under this Contract.

## 50.2 Step Out

In the event that a Step In has occurred and TII 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) TII 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 50.2(a), resume performance of the Step In Services; and
- (c) to the extent that they relate to the Step In Services, the provisions of clauses 50.1 (*Step In*) and 52.10 (*Transfer of Rights*) shall apply, *mutatis mutandis*, to such Step Out, except that:
  - (i) references to "NTA" or "TII" (as applicable) shall be references to "the Operator";
  - (ii) references to "the Operator" shall be references to "NTA" or "TII" (as applicable).

**PART 13 – TERMINATION AND HANDBACK****51. DEFAULT****51.1 Operator Default**

- (a) Subject to the provisions of Schedule 36 (*Project Events*), and without prejudice to the rights and remedies under this Contract, each of the following shall constitute an “Operator Default”:
- (i) any Insolvency Event in relation to the Operator;
  - (ii) any of:
    - (A) subject to clause 51.5 (*Relief from Termination*):
      - (1) the breach by the Operator of this Contract where such breach on its own or together with other breaches has a material adverse effect on the provision of the Services by the Operator; or
      - (2) a breach (on its own or together with other breaches) materially and adversely affects the respective rights, responsibilities and entitlements of NTA or TII under this Contract or in respect of the System (or any part of it);
    - (B) subject to clause 51.5 (*Relief from Termination*), the Operator being in persistent breach of its obligations under this Contract;
    - (C) a failure by the Operator to pay any sum greater than two hundred and fifty thousand euro (€250,000) due and payable under this Contract within twenty (20) Business Days of the due date for payment;
    - (D) the Operator ceases to be authorised to provide the Services, including failing to obtain or maintain in effect any Consents to Operate;
    - (E) the breach by the Operator of the provisions of clause 55 (*Assignment*); or
    - (F) the breach by the Operator of the provisions of any Sub-Contract where:
      - (1) such breach on its own, or together with other breaches, has a material adverse effect on the provision of the Services by the Operator; or
      - (2) such breach (on its own or together with other breaches) materially and adversely affects the respective rights, responsibilities and entitlements of NTA or TII under this Contract;
  - (iii) circumstances entitling termination of this Contract pursuant to, and in accordance with:

- (A) clause 68 (*Corrupt Gifts*); or
- (B) Regulation 98(b) of the European Union (Award of Contracts by Utility Undertakings) Regulations 2016;
- (iv) subject to clause 51.5 (*Relief from Termination*), no LRVs being run on the System in the provision of Services in any period of two (2) consecutive weeks which:
  - (A) by itself would constitute a breach; or
  - (B) arises by reason of matters which constitute a breach by the Operator of its obligations under this Contract; or
  - (C) arises by reason of acts or omissions of the Operator in circumstances for which the Operator is responsible under this Contract;
- (v) if the Performance Bond:
  - (A) ceases to be issued by an Acceptable Entity and is not replaced with a Performance Bond satisfying the requirements of this Contract within twenty (20) Business Days of the original Performance Bond so ceasing to be issued; or
  - (B) has an expiry date on or prior to the applicable Expiry Date and the Operator has not provided a replacement Performance Bond which satisfies the requirements of this Contract, at least, thirty (30) Business Days prior to the expiry of the then Performance Bond;
- (vi) if any of the Support Documents other than the Performance Bond fails to comply with the requirements of this Contract and is not replaced by an equivalent Support Document which satisfies the requirements of this Contract within ten (10) Business Days of such Support Document ceasing to comply with the requirements of this Contract;
- (vii) subject to clause 51.5 (*Relief from Termination*), the occurrence of System Performance Deductions:
  - (A) of an average of twenty five per cent (25%) or more of the Base Reporting Period Amount in any six (6) consecutive Reporting Periods; or
  - (B) of an average of twenty per cent (20%) or more of the Base Reporting Period Amount in any thirteen (13) consecutive Reporting Periods;
- (viii) the abandonment of this Contract or the System by the Operator;
- (ix) the occurrence of Fare Evasion Deductions of an average of eight per cent (8%) or more of Patronage Revenue in any six (6) consecutive Reporting Periods;
- (x) not used;
- (xi) the occurrence of a Change in Control of the Operator; or



- (xii) the occurrence of a Change in Control of the Guarantor which, in the reasonable opinion of TII, is likely to have a material adverse effect on the ability of the Guarantor to meet its obligations under the Guarantee.
- (b) The Operator shall notify NTA and TII forthwith upon becoming aware of the occurrence of an Operator Default and shall provide NTA and TII with full details of all steps which it is taking, or proposes to take, in order to remedy or mitigate the effect of the Operator Default or otherwise in connection with it.

## 51.2 Operator Default - remedies

- (a) If an Operator Default contemplated by clause 51.1(a)(i) (*Operator Default*) or clauses 51.1(a)(iii) to (xii) (*Operator Default*) (inclusive) occurs, TII may within one (1) year of such Operator Default coming to its or NTA's attention by notice to the Operator terminate this Contract forthwith.
- (b) If an Operator Default contemplated by clause 51.1(a)(ii) (*Operator Default*) occurs, TII may, subject to clause 51.2(b)(iii), within six (6) months of such Operator Default coming to its notice, serve notice of such Operator Default on the Operator specifying the breach and requiring the Operator:
  - (i) to provide, within fifteen (15) Business Days, to TII a detailed written rectification plan in respect of the Operator Default demonstrating how the Operator Default will be rectified;
  - (ii) to commence rectification work in accordance with the rectification plan; and
  - (iii) to rectify the Operator Default as soon as possible but, in any event, within fifteen (15) Business Days from the date of the rectification plan referred to in clause 51.2(b)(i).
- (c) In the event that:
  - (i) the Operator fails to provide TII with a rectification plan pursuant to clause 51.2(b)(i); and/or
  - (ii) if, in the reasonable opinion of TII such rectification plan, does not adequately address the Operator Default in question and/or provide for a reasonable timescale for rectification; and/or
  - (iii) the Operator fails to demonstrate to the reasonable satisfaction of TII that it is implementing such rectification plan within the specified timescale,TII may, at any time within three (3) months thereafter, terminate this Contract by giving not less than fifteen (15) Business Days' notice to the Operator.
- (d) In the case of an Operator Default contemplated by clause 51.1(a)(ii) (*Operator Default*) occurring which:
  - (i) is not capable of remedy, or
  - (ii) is not so capable within the period prescribed by clause 51.2(b)(iii),

TII may within twenty (20) Business Days of such Operator Default coming to its notice, terminate this Contract immediately by notice to the Operator.

- (e) Notwithstanding anything in clause 51.1 (*Operator Default*) or this clause 51.2, upon the occurrence of an Operator Default, TII (on behalf of NTA and itself) and may exercise all rights and remedies available under this Contract, or otherwise, including under any Support Document.

### 51.3 NTA Default and TII Default

- (a) The following shall constitute NTA Defaults:
  - (i) the obligations of NTA under this Contract are (without the prior consent of the Operator, such consent not to be unreasonably withheld or delayed) assigned, novated or otherwise transferred (whether by virtue of any Legal Requirement or any scheme pursuant to any Legal Requirement or otherwise) to another person other than:
    - (A) TII; or
    - (B) any department, office, instrumentality or agency of the Government which has sufficient financial standing or resources to perform the obligations of NTA or TII under this Contract; or
    - (C) any person whose obligations under this Contract are validly and enforceably guaranteed by:
      - (1) NTA or the Government; or
      - (2) any department, office, instrumentality or agency of the Government which (in any such case) has sufficient financial standing or resources to perform the obligations of NTA under this Contract,

provided that such obligations shall be deemed to be validly and enforceably guaranteed by NTA or the Government or by any department, office, instrumentality or agency of the Government (as the case may be) if NTA or the Government or any department, office, instrumentality or agency of the Government (as the case may be) has delivered a legal opinion stating that the guarantee is fully valid and enforceable in accordance with its terms subject to customary qualifications and assumptions from a reputable firm of solicitors approved in advance by the Operator (such approval not to be unreasonably withheld or delayed) having appropriate experience of the matters opined upon; or
  - (ii) NTA, TII or any court with the relevant jurisdiction or any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Government or of the European Union expropriates, sequesters or requisitions a material part of the System and/or the issued shares in the Operator.
- (b) A failure by TII to pay any amount or amounts in aggregate equivalent to not less than two hundred and fifty thousand euro (€250,000) due to the Operator under this Contract within ninety (90) days after three (3) Reporting Periods of the due date for such payment (except where the amount of any such payment is the subject of a Dispute between the Parties) shall constitute a “**TII Default**”.

- (c) Other than the events and circumstances described in this clause 51.3 (*NTA Default and TII Default*) above, no other event or circumstance shall constitute an NTA Default or TII Default and the Operator hereby waives any other rights to terminate this Contract (or accept an alleged repudiation) by reason of default of NTA or TII, howsoever arising.

#### 51.4 NTA Default and TII Default - remedies

- (a) Upon the occurrence of an NTA Default contemplated by clause 51.3(a)(i) (*NTA Default and TII Default*), the Operator may within twenty (20) Business Days of such NTA Default coming to its attention terminate this Contract by giving six (6) months' notice to NTA and TII.
- (b) Upon the occurrence of:
  - (i) an NTA Default contemplated by clause 51.3(a)(ii) (*NTA Default and TII Default*), or
  - (ii) a TII Default,

the Operator may within three (3) months of such NTA Default or TII Default occurring, serve notice of such NTA Default or TII Default on NTA and TII, specifying the breach and requiring rectification of the same within thirty (30) Business Days. In the event that NTA or TII, as the case may be, fails to rectify such NTA Default or TII Default within the relevant period the Operator may terminate this Contract by giving three (3) months' notice to NTA and TII.

#### 51.5 Relief from Termination

For the purposes of determining whether an Operator Default under clauses 51.1(a)(ii), 51.1(a)(iv), 51.1(a)(vii) or 51.1(a)(x) (*Operator Default*) has occurred, TII shall not take into consideration any System Performance Deduction and/or failure by the Operator to perform its obligations under this Contract to the extent that the Operator can demonstrate to TII's reasonable satisfaction that such deduction or failure arose as a consequence of:

- (a) a Defect (save in circumstances where such deduction or such failure was caused by the Operator's failure to fulfil any of its obligations under this Contract);
- (b) the occurrence of a National/Industry Wide Strike (as defined in Schedule 36 (*Project Events*)); and/or
- (c) the occurrence of Damage to the System (save in circumstances where such deduction or such failure was caused by the Operator's failure to fulfil any of its obligations under this Contract).

#### 51.6 Non-Fault Termination Events

Where a Party serves on the other a notice pursuant to clause 49.9 (*Termination*), this Contract shall terminate immediately upon service of the relevant notice.

#### 51.7 Procurement Regulations

- (a) TII may, at any time, terminate this Contract early on reasonable notice in the event that:

- (i) a challenge to the award of this Contract to the Operator or to any aspect of the competition leading to award of this Contract is or has been made by any person on the grounds of non-compliance with EU public procurement rules. TII should only exercise such rights if it has obtained an opinion from a reputable senior counsel that there is a substantial risk of a successful action challenging the award of the Contract; or
  - (ii) in TII's reasonable opinion, the circumstances described in Regulation 98(a) or (c) of the European Union (Award of Contracts by Utility Undertakings) Regulations 2016 have arisen.
- (b) If TII exercise the right of termination pursuant to this clause it shall pay (or procure that there is paid to) the Operator:
- (i) for such of the Services as are provided up to the expiry of the Contract Period in accordance with clause 37 (*Payment*);
  - (ii) such vouched third party expenses reasonably incurred as a direct result of such termination; and
  - (iii) to the extent not included in the foregoing, Break Costs.
- The Operator shall not be entitled to any other payment or to any compensation whatsoever as a result or in respect of early termination of this Contract in accordance with this clause.
- (c) In the event that this Contract is declared "ineffective" pursuant to Regulation 9(1)(b) of the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010, neither NTA nor TII shall have any liability to the Operator other than in respect of Services provided prior to the date on which such "ineffectiveness" order takes effect, which cost shall be determined in accordance with clause 37 (*Payment*) and Schedule 34 (*Contract Prices and Indexation*).
  - (d) Under no circumstances shall the Operator be entitled to any payment or compensation for loss of profit for Services not provided consequent on such declaration of ineffectiveness or for loss of opportunity or reputation or breach of statutory duty or otherwise.

## 52. CONSEQUENCES OF TERMINATION/EXPIRY

### 52.1 Obligations on Termination

The Operator shall comply with the provisions of this clause 52 (*Consequences of Termination/Expiry*) upon termination of this Contract (for whatever reason).

### 52.2 Termination as a result of Operator Default

Where this Contract is terminated by TII as a result of an Operator Default:

- (a) NTA and TII shall be entitled to appoint a new operator to operate and maintain the System on its behalf;
- (b) the Operator shall indemnify NTA and TII in respect of all losses, liabilities and costs incurred by NTA and/or TII as a result of such termination including, where a new operator is appointed to operate and maintain the System, any amounts payable by

NTA or TII to such operator in excess of the amounts that, but for such termination, would have been payable by NTA or TII to the Operator under this Contract, less any sums owed to the Operator by NTA or TII under this Contract; and

- (c) neither NTA nor TII shall be required to make any further payment to the Operator after the date of termination of this Contract until any sum due to NTA or TII under this Contract or as damages has been agreed or established in accordance with clauses 37 (*Payment*) and 59 (*Disputes Resolution Procedure*) provided that, upon agreeing or establishing such sum, the Operator shall be entitled to seek payment of any outstanding amounts due to it by NTA or TII, as the case may be, in accordance with this Contract.

#### 52.3 Termination as a result of NTA Default or TII Default

Where this Contract is terminated as a result of an NTA Default or TII Default, NTA/TII, shall pay to the Operator, as the Operator's sole remedy in respect of such termination:

- (a) a sum representing five per cent (5%) of the each Base Yearly Amount for each Contract Year (pro-rated in the case of part of a Contract Year) of the unexpired portion of the period to the Expiry Date, had this Contract not been subject to such termination; and
- (b) Break Costs.

#### 52.4 Transfer of the System

- (a) The Operator shall in accordance with the instructions of TII:
  - (i) execute all documents necessary to procure the transfer of all the Operator's rights in the System to TII free from all liens, charges and encumbrances;
  - (ii) remove from the System all temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by the Operator.
- (b) If the Operator has not complied with an instruction given by TII under clause 52.4(a) within a reasonable time, TII may (without being liable to the Operator or any loss or damage):
  - (i) remove and sell any such property belonging to the Operator; and
  - (ii) hold the proceeds of such sale, less all costs incurred by TII, to the credit of the Operator, which shall be paid to the Operator within twenty (20) Business Days of TII being in receipt of such funds.
- (c) If TII has not given an instruction to the Operator under clause 52.4(a) within ten (10) Business Days of the date of termination of this Contract, the Operator may access the System, subject to TII requirements in relation to the safety of the System, for the purposes of removing therefrom such temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by the Operator.
- (d) In effecting any sale of assets belonging to the Operator under clause 52.4(b), TII shall have the same responsibility as it would have if it was a creditor of the Operator having a security interest in the assets sold.

## 52.5 Provision of documents

Save as otherwise provided in this Contract, the Operator shall provide to TII 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 System including a complete record of the activities relating to safety matters and the Safety Management System undertaken by the Operator throughout 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 Replacement Operator to continue to perform the Services.

## 52.6 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 NTA/TII.
- (b) The Operator shall ensure that the maintenance management systems and procedures are operating effectively.

## 52.7 Continuance of activities and assignment of benefit of this Contract

- (a) Subject to clause 52.2 (*Termination as a result of Operator Default*) and without prejudice to any rights and remedies of any Party, the Operator, NTA and TII shall continue to perform their respective obligations under this Contract until the date of termination of this Contract unless other phased handover procedures are agreed between the Parties.
- (b) The Operator shall:
  - (i) give all reasonable co-operation to NTA and TII to ensure a smooth transition to enable a Replacement Operator to continue to perform the Services with no degradation of the standard of Services; and
  - (ii) at TII's request execute all documents and do all acts which may be necessary to assign the benefit of this Contract to a third party.

## 52.8 Operator's Employees

- (a) The Operator, NTA and TII acknowledge that the Transfer Regulations:
  - (i) will apply upon Services transferring to, or otherwise being taken on by NTA, TII or a Replacement Operator on termination or expiry of this Contract; and
  - (ii) may apply upon Services transferring to, or otherwise being taken on by NTA, TII or a Replacement Operator upon the occurrence of a Step In and/or Step Out.
- (b) Within fifteen (15) Business Days of a request by NTA/TII, the Operator shall give to NTA/TII or shall procure that NTA/TII is given the following information, subject always to the Operator complying with Data Protection Law (having taken all action open to it to be so compliant in connection with the supply of such 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, 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 in excess of current year's entitlement;
  - (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 TII;
  - (viii) such information as may be required to enable NTA and TII to comply with their obligations pursuant to any Legal Requirement.
- (c) The Operator shall inform NTA/TII of all material changes to the information supplied under clause 52.8(b) (other than to age and length of service) within ten (10) Business Days of such change occurring.
  - (d) NTA and TII shall be entitled to copy and give warranties as to the accuracy of all information supplied under clauses 52.8(b) and (c) to the Replacement Operator and any Potential Replacement Operator.
  - (e) The Operator warrants that the information given under clauses 52.8(b) and (c) will be complete and accurate and the Operator shall indemnify and hold harmless:

- (i) NTA on its own account and as trustee for any Replacement Operator or any Potential Replacement Operator; and
  - (ii) TII,

against all and any Indemnified Liabilities awarded against incurred by or paid by NTA or TII or a Replacement Operator as a result of any such inaccurate or incomplete information.
- (f) The Operator shall upon:
  - (i) termination or expiry of this Contract; and
  - (ii) to the extent applicable, Step In under clause 50 (*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). Where any such amounts are accrued but have not yet fallen due in respect of any Relevant Employee and/or any of the Operator's employees (including, in particular, salary for a month, accrued annual leave or public holiday pay) on the Subsequent Transfer Date (or in the case of any employee affected by a Step In, up to date of the Step In), the Operator shall pay a sum equal to the aggregate of such amounts, together with any employer's pay related social insurance (or similar or replacement Tax) which would be due thereon, to NTA, TII or the Replacement Operator.
- (g) The Operator shall indemnify and hold harmless:
  - (i) NTA for itself and as trustee for any Replacement Operator or any Potential Replacement Operator; and
  - (ii) TII,

against all and any Indemnified Liabilities in respect of the period up to and including the Subsequent Transfer Date awarded against, incurred by or paid by NTA or TII in respect of any act or omission of the Operator in respect of any Relevant Employee (including any employee who objects to transferring to a Replacement Operator) and/or any of the Operator's employees, and for the avoidance of doubt, any Claim in respect of the Operator's failure to comply with the Transfer Regulations.
- (h) 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 clauses 52.8(a) to (g).
- (i) The Operator shall procure that there is not, without TII's prior consent, at any time made or promised any change to the terms of employment of any Relevant Employee (including, the engagement, promotion or dismissal of any Relevant Employee) or the engagement of any prospective Relevant Employee in the period:
  - (i) after the Operator has been notified of the termination of this Contract or part thereof; or



- (ii) of six (6) months immediately prior to Expiry Date, up to and including the Expiry Date; or
  - (iii) from the giving of notice for the exercise of, and the duration of, a Step In, other than changes made in the ordinary course of business.
- (j) The Operator shall indemnify and hold harmless:
  - (i) NTA for itself and as trustee for any Replacement Operator; and
  - (ii) TII,against all and any Indemnified Liabilities and any liabilities awarded against, incurred or paid by NTA or TII or any Replacement Operator or replacement contractor in respect of any employee, contractor or worker employed by or contracted to the Operator up to and including the Relevant Transfer Date who is not a Relevant Employee or is not deemed to be a Relevant Employee for the purposes of clause 52.8(b) (and for these purposes “**Indemnified Liability**” shall include those of any Replacement Operator and/or any replacement contractor in relation thereto).
- (k) 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 52.8 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.
- (l) 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 52.8 relates, each Party shall give upon request by the other Party such assistance or information relevant to such Claim as may reasonably be requested.
- (m) Subject to clause 52.8(f), NTA and TII 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 therefor does not arise in or relate to any period before the Subsequent Transfer Date or any event taking place in such period.

#### 52.9 Saving provisions

Termination of this Contract 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.

#### 52.10 Transfer of rights

Without prejudice to the generality of matters dealt with in this clause 52 (*Consequences of Termination/Expiry*), the Operator covenants that, at the request of NTA or TII, it will at all times do all such acts and execute all such documents as may be reasonably necessary to secure the vesting in NTA or NTA's successors or Replacement Operator or TII of any of the Operator's rights to be transferred upon termination of this Contract or upon the occurrence of a Step In.

**53. TRANSITION TO ANOTHER OPERATOR****53.1 General**

During the final twelve (12) months of the Contract Period (where this expires by effluxion of time) or during the period of any notice of termination of this Contract, and in either case for a period of six (6) months thereafter, the Operator shall, at its own cost and in accordance with TII's directions, co-operate in the transfer of responsibility for the Services to any Replacement Operator.

**53.2 Not frustrate**

- (a) The Operator shall use all reasonable endeavours so as to facilitate the transfer of responsibility for the Services to NTA and TII (or either of them) or a Replacement Operator and the Operator shall take no action at any time during the Operating and Maintenance Period or thereafter which is calculated or intended to prejudice or frustrate or make more difficult such transfer.
- (b) Without limitation to the generality of clause 53.2(a), the Operator shall not, during the final eighteen (18) months of the Contract Period (where this expires by effluxion of time) or during the period of any notice of termination of this Contract:
  - (i) without TII's prior consent (which shall not be unreasonably withheld or delayed) make, or promise to make, any material change (whether an improvement or disimprovement, whether on an individual or aggregate basis) in the terms or conditions of employment of any employee of the Operator (including in respect of notice periods, pension benefits and benefits to be provided on termination of employment) which would not reasonably be made by the Operator in the ordinary course of its business of operating the System and acting in accordance with Good Industry Practice;
  - (ii) appoint new employees to be engaged in the operation or maintenance of the System who would not reasonably be appointed by the Operator in the ordinary course of its business of operating the System and acting in accordance with Good Industry Practice;
  - (iii) without TII's prior consent (which shall not be unreasonably withheld or delayed) make any material changes to the provision of the Services otherwise than would be made by the Operator in the ordinary course of its business of operating the System and acting in accordance with Good Industry Practice;
  - (iv) allow the levels of stock including consumable items and replacement parts to fall below levels which would reasonably be expected to prejudice the continued operation and maintenance of the System by a Replacement Operator substantially in accordance with the terms of this Contract;
  - (v) take any steps or make any statements in relation to employees of the Operator or any trade unions representing such employees which are materially likely to give rise to or aggravate a trade dispute (within the meaning of the Industrial Relations Act 1946).

**53.3 Continuing obligation**

The obligations of this clause 53 (*Transition to another Operator*) shall continue in force for the period of six (6) months following the termination of this Contract.

## 53.4 “co-operate”

For the purposes of this clause 53 (*Transition to another Operator*), “co-operate” shall include the following:

- (a) liaising with NTA, TII and any Replacement Operator, and providing reasonable assistance and advice concerning the Services and their transfer to NTA, TII or to any Replacement Operator;
- (b) co-ordinating and co-operating (at reasonable times and on reasonable notice) with NTA, TII and any Replacement Operator granted access to each part of the System by NTA/TII; and
- (c) providing to NTA/TII and to any Replacement Operator such information concerning the System and the Services which is at the Operator’s unrestricted disposal and which is reasonably required for the efficient transfer of responsibility for their performance.

## 54. HANDBACK OF THE SYSTEM

## 54.1 Inspection

At any time following any notice of termination of this Contract or in the period of twelve (12) calendar months prior to the Expiry Date, TII may require an inspection of the System and a report of such inspection to be undertaken (both at the cost of the Operator) by a single independent engineer or an independent firm of engineers (acting as an expert not an arbitrator) to be agreed upon between the Operator and TII or (in default of such agreement) to be selected (at the instance of either the Operator or TII) by the President (or a Vice-President) for the time being of Engineers Ireland.

## 54.2 Purposes and consequences of report

The purpose of the inspection to be carried out pursuant to clause 54.1 (*Inspection*) shall be to ascertain what works (if any) are required to put the System into a state which would constitute compliance at the Expiry Date with all the provisions of this Contract. If any Party disputes the conclusions of such report such Dispute may be referred for resolution pursuant to the Disputes Resolution Procedure.

## 54.3 Works required

The Operator shall, at its own cost, arrange for the performance of any works agreed or determined in accordance with clause 54.2 (*Purposes and consequences of report*).

## 54.4 Failure of the Operator to Comply

If the Operator has not complied with its obligations under clause 54.3 (*Works required*) within such period after the Expiry Date as TII may reasonably require, NTA /TII shall be entitled to arrange for the performance of any works identified as necessary in such report and shall be entitled to recover the reasonable cost of doing so from the Operator.

**PART 14 - MISCELLANEOUS PROVISIONS****55. EMPLOYMENT ISSUES****55.1 General**

- (a) During the Operating and Maintenance Period the Operator shall provide sufficient trained, competent and suitable Staff with the necessary qualifications, skills and experience to fulfil its obligations under the Contract.
- (b) Without prejudice to the Operator's obligations under clause 52.8 (*Operator's Employees*), the Operator shall, upon request, furnish to NTA/TII, in the format requested by NTA/TII details of all employees, agents or any other person whatsoever who will have an involvement in the provision of the Services. The Operator shall also provide the required information in respect of any additional or replacement personnel or any other personnel whatsoever who may in the future provide any or all of the Services.
- (c) The Operator's obligations under clause 55.1(b) are subject to Data Protection Law provided it shall have taken all action open to it to be so compliant in connection with the supply of the information contemplated by clause 55.1(b).

**55.2 Personnel**

- (a) Subject to clause 55.2(b), the Operator shall consider such reasonable representations and objections made by NTA/TII in respect of and shall replace any person employed by the Operator or Sub-Contractors, who in the reasonable opinion of NTA/TII misconducts himself or herself or is incompetent or negligent in relation to the performance of the Services or is otherwise not suitable for the provision of the Services.
- (b) The Operator acknowledges NTA/TII's entitlement to request the removal of any member of the Staff who:
  - (i) is improperly trained or qualified;
  - (ii) persists in any misconduct or lack of care;
  - (iii) carries out duties incompetently or negligently;
  - (iv) persists in any conduct which contravenes any Legal Requirements; or
  - (v) persists in any conduct which is prejudicial to safety, health, or the protection of the environment,

in the event of such request from NTA/TII the Operator shall take immediate steps to arrange for either the removal or re-training of such personnel, provided always that the Operator shall not re-deploy such personnel until it has demonstrated to NTA/TII's reasonable satisfaction that such re-training has been successfully carried out.

- (c) No entitlement to any increase in the charges payable under the Contract shall arise from NTA/TII's reasonable objection (or its timing) to any member of the Staff.

## 55.3 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.

## 55.4 Operator to provide Information on Request

If, so requested by NTA/TII, the Operator shall provide to NTA/TII evidence of the assessment of competence of any member of the Staff including details of previous experience and qualifications.

## 55.5 Employment Conditions

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

## 55.6 Supervision

The Operator shall use its best endeavours to 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.

## 55.7 Safety Requirements

- (a) Where the Staff are engaged in any form of safety critical work, the Operator shall ensure such personnel comply with the relevant Legal Requirements and/or any applicable guidance or directions issued by or other requirements of any Competent Authority (including, the Minister for Transport or the Commission for Railway Regulation or Health and Safety Authority (or the successors of any of them) or any other Competent Authority).
- (b) When requested by NTA/TII, the Operator shall provide evidence to NTA/TII that personnel engaged in safety critical work have been properly assessed as competent to perform their safety critical duties.
- (c) NTA/TII shall have the power to request that the Operator remove any member of the Staff performing safety critical work from the System if NTA/TII has good cause to believe such person:
  - (i) is not competent to perform safety critical duties; or
  - (ii) is not complying with the relevant Legal Requirements and/or any applicable guidance or directions issued by or other requirements of any Competent Authority (including, the Minister for Transport or the Commission for Railway Regulation or Health and Safety Authority (or the successors of any of them) or any other Competent Authority).

NTA/TII shall provide the Operator with prior written notice of such removal, or where prior written notice is not possible, written notice of such removal to the Operator as soon as reasonably practicable.

## 55.8 Disciplinary Action

- (a) NTA/TII may instruct the Operator to procure that appropriate action (to include potential disciplinary action) is initiated against any employee of the Operator or use all reasonable endeavours to procure that appropriate disciplinary action is taken against any employee of any of its contractors or sub-contractors (of any tier) (in accordance with the terms and conditions of employment of the employee concerned and the policies and procedures of the employer) who misconducts himself/herself or is incompetent or negligent in his/her duties. NTA/TII shall co-operate with any such process.
- (b) The Operator shall procure that there are set up and maintained by it and by all contractors and sub-contractors (of any tier), contractors personnel policies and procedures governing all relevant matters (including without limitation discipline, grievances, equality and health and safety). The Operator shall procure that the terms and the implementation of such policies and procedures comply with Legal Requirements and Good Industry Practice.

## 55.9 Fair Wages

- (a) The Operator shall pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trade societies (or in the absence of such recognised wages and hours, those which in practice prevail amongst good employers) in road passenger transport operations in Dublin. Where there are no such wages and hours recognised or prevailing in the district, those recognised or prevailing in the nearest district in which the general industrial circumstances are similar shall be adopted.
- (b) The conditions of employment generally accepted in road passenger transport operations in Dublin shall be taken into account in considering how far the terms of this clause 55.9 are being observed and for this purpose regard shall also be had to the conditions of employment generally used by the Operator.
- (c) The Operator shall be responsible for the observance of the obligations under this clause 55.9 by its Sub-Contractors.

## 55.10 Industrial Relations

- (a) The Operator shall, and shall procure that its Sub-Contractors shall, use all reasonable endeavours to avoid any trade dispute (within the meaning of the Industrial Relations Act 1946), dispute with any employee representative body or trade union, or any form of industrial action.
- (b) The Operator shall immediately notify NTA and TII where it, or any of its Sub-Contractors, are in receipt of any notice of industrial action (whether in respect of the provision of the Services or otherwise).

## 56. CHANGE IN CONTROL

## 56.1 Change in control

- (a) Subject to clause 56.1(b), a Change in Control of a company shall occur whenever a person has control of the company who did not have control of the company on the Commencement Date, or whenever a person ceases to have control of the company, in either case without NTA/TII's consent.

- (b) A change in control of the Operator or any Guarantor which is:
  - (i) a change in legal or beneficial ownership arising from any bona fide open market transactions in any shares or other securities effected on a recognised investment exchange or regulated market (being for this purpose, The Irish Stock Exchange Limited, London Stock Exchange plc or such other stock exchange or any other regulated market as may be agreed from time to time by the parties); or
  - (ii) a re-organisation for *bona fide* fiscal purposes where the ultimate control of the Operator or the Guarantor does not change provided NTA/TII has been given prior notice in writing of such re-organisation,

shall not be regarded as a “Change in Control” for the purposes of clause 56.1(a).

#### 56.2 NTA/TII consent

- (a) NTA/TII shall not unreasonably withhold or delay its consent to a Change in Control of the Operator or the Guarantor.
- (b) It shall be unreasonable to withhold consent in accordance with clause 56.2(a) where:
  - (i) such change in control does not cause, or otherwise is not reasonably likely to result in:
    - (A) a breach of any Law or Legal Requirement applicable to NTA, TII or the Operator;
    - (B) a breach or revocation of any Necessary Consent applicable to the Operator or the System; and
  - (ii) such change in control has no adverse effect:
    - (A) on the ability of the Operator to perform and comply with the Contract;
    - (B) on the ability of the Guarantor to perform and comply with the Guarantee; or
    - (C) without prejudice to sub-paragraph (B), on any of the Support Documents.

#### 56.3 Deemed control

- (a) For the purpose of this clause 56 (*Change in Control*), a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire control, whether direct or indirect, over the company’s affairs, and in particular (but without prejudice to the generality of the foregoing) if he possesses or is entitled to acquire:
  - (i) one third or more of the share capital or issued share capital of the company or of the voting power in the company;
  - (ii) such part of the issued share capital of the company as would, if the whole of the income of the company were distributed among the participators (without

regard to any rights which he or any other person has as a loan creditor), entitle him to receive one third or more of the amount so distributed; or

- (iii) such rights as would, if the company were wound up or in any other circumstances, entitle him to receive one third or more of the assets of the company which would then be available for distribution among the participators.

(b) For the purpose of clause 56.3, the following shall apply:

- (i) a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will be entitled to acquire at a future date;
- (ii) there shall be attributed to any person any rights or powers of his nominee, that is, any rights or powers which another person or persons possess on his behalf or may be required to exercise on his direction or behalf;
- (iii) there shall be attributed to any person all of the rights and powers of:

- (A) any company of which he has, or he and his associates have, control;
- (B) any two or more companies of which he has, or he and his associates have, control;
- (C) any associate of him; or
- (D) any two or more associates of him;

including all the rights and powers attributed to a company or associate under clause 56.3(b)(ii);

- (iv) “**participator**” in relation to a company means a person having a share or interest in the capital or income of the company and, includes:

- (A) any person who is entitled to acquire, share capital or voting rights in the company;
- (B) any loan creditor of the company;
- (C) any person who possesses, or is entitled to receive or participate in distributions of the company or any amounts payable by the company (in cash or kind) to loan creditors by means of premium on redemption; and
- (D) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit;

- (v) references in clause 56.3(b)(iv) to being entitled to do anything apply where a person is entitled to do it at a future date or will be entitled to do it at a future date;

- (vi) clause 56.3(b)(iv) does not prevent a participator in one company being treated also as a participator in another company; and



(vii) in this clause 56.3:

- (A) “**relative**” means husband, wife, ancestor, lineal descendant, brother or sister;
- (B) “**associate**” in relation to a participator means:
  - (1) any relative or partner of the participator; or
  - (2) the trustee or trustees of any settlement as contemplated by Section 433(3)(b)(ii) of the Taxes Consolidation Act 1997; and
- (C) “**loan creditor**” has the meaning given in Sections 433(6) and 433(7) of the Taxes Consolidation Act 1997.

#### 56.4 Change in Operator status

For such period as the Operator or the Guarantor remains a company whose shares are not listed or traded on a recognised investment exchange or regulated market, the Operator shall:

- (a) notify NTA and TII forthwith of becoming aware of any change in the legal and/or beneficial ownership from time to time of the share capital of the Operator and/or the Guarantor; and
- (b) provide to NTA/TII any information which NTA/TII may reasonably require relating to any person which from time to time has acquired or which the Operator is aware proposes to acquire a legal or beneficial interest in the Operator and/or the Guarantor.

### 57. ASSIGNMENT

#### 57.1 Binding on Successors and Assigns

This Contract shall be binding on and shall enure to the benefit of the Operator, NTA and TII and their respective successors and permitted assigns.

#### 57.2 Assignment by the Operator

The Operator shall not, and shall procure that no Principal Sub-Contractor shall, in either case without TII’s prior consent:

- (a) assign, novate, or transfer:
  - (i) this Contract;
  - (ii) the Principal Sub-Contracts; or
  - (iii) any other contract entered into by the Operator in performing its obligations under this Contract 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 or any benefit or interest therein or thereunder.

#### 57.3 Assignment by NTA and TII

- (a) NTA and TII shall be free to assign, novate or transfer all or part of their rights, duties and obligations under this Contract to any public authority with responsibility for the System or the Services.
- (b) If so requested by NTA/TII, the Operator shall enter an agreement assigning, novating or transferring, as the case may be, NTA's rights and/or obligations and/or TII's rights and/or obligations under this Contract to a person described in clause 51.3(a)(i)(A), (B) or (C) (*NTA Default and TII Default*).

## 58. SUB-CONTRACTING

### 58.1 Sub-Contracting Performance

- (a) Save in respect of a sub-contract of value less than two hundred thousand euro (€200,000) per annum which has been notified to, and a copy of the sub-contract provided to, TII, the Operator shall not be entitled to sub-contract performance of the Services in whole or part, except to the parties listed in clause 58.2(c) (*Principal Sub-Contractors*), without the prior Approval of TII (such Approval of TII not to be unreasonably withheld).
- (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 prior Approval of TII.
- (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 TII, the Operator shall not be in breach of this clause 58.1 where it has acted in good faith and either:
  - (i) obtains the Approval of TII; 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 for the provision of the Services in accordance with this Contract notwithstanding any sub-contracting permitted pursuant to the terms of this clause 58 (*Sub-contracting*).
- (e) The Operator shall be responsible for the acts, omissions or defaults of all sub-contractors of any tier, their agents or employees, as if they were the acts or defaults of the Operator.
- (f) The onus is on the Operator to ensure in particular the suitability of any Principal Sub-Contractor it proposes to appoint.

### 58.2 Principal Sub-Contractors

TII's prior Approval (not to be unreasonably withheld) shall be obtained before:

- (a) the engagement or employment of the persons identified in clause 58.2(c) are terminated; or

- (b) the terms of engagement or employment of any proposed substitute are agreed or varied in relation to any Principal Sub-Contractor; or
- (c) the appointment of any proposed substitute is made in relation to:
  - (i) Scheidt & Bachmann GmbH, a company having its registered office at Breite Strasse. 132, D-41238 Mönchengladbach, Germany;
  - (ii) Nationwide Controlled Parking Systems Limited, a company having its registered office at 6 Mount Street Crescent, Dublin2, D2 XT04;
  - (iii) G4S Cash Solutions Ireland Limited, a company having its registered office at Colas House, Bluebell Avenue, Bluebell Industrial Estate, Dublin 12, D12 DR4R;
  - (iv) OCS Ireland, a company having its registered office at Unit 38, Airways Industrial Estate, Dublin 17;
  - (v) SAP Landscapes Limited, a company having its registered office at Garnavilla, Cahir, County Tipperary; and
  - (vi) any other person agreed by TII 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, TII 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.

### 58.3 Details of proposed Sub-Contractors and Suppliers and Collateral Warranties

- (a) The Operator shall, upon reasonable notice from TII, submit to TII such information as TII may reasonably require in respect of Sub-Contractors and suppliers.
- (b) The Operator shall provide to NTA/TII a current tax clearance certificate (pursuant to section 1095 of the Taxes Consolidation Act 1997) for such Sub-Contractor.
- (c) The Operator shall procure that all Sub-Contractors in respect of Sub-Contracts of a greater value than:
  - (i) in the case of a non-recurring cost, two hundred and fifty thousand euro (€250,000); or
  - (ii) in the case of an annual recurring cost, one hundred and fifty thousand euro (€150,000),

shall, where required so to do by TII (on behalf of itself and NTA), enter into a collateral warranty substantially in the form set out in Schedule 42 (*Form of Collateral Warranty*) in favour of NTA and TII.

### 58.4 Replacement of Sub-Contractors

If any of the persons referred to in clause 58.2(c) (*Principal Sub-Contractors*) 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 58.2 (*Principal Sub-Contractors*).

## 58.5 Waiver of Liability – Disclosed Data and Certification Procedure

If requested by TII (on behalf of itself and NTA), the Operator shall 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 NTA and TII in respect of the Losses or Claims referred to in clause 7 (*Operator Acknowledgements*) and clause 28 (*Consents and Approvals*) in a form satisfactory to TII.

## 58.6 Continuing obligations

- (a) In the event of a Sub-Contractor having undertaken towards the Operator in respect of the work executed, or the materials, Plant, or any part thereof or services supplied by such Sub-Contractor, any continuing obligation, the Operator:
  - (i) shall use all reasonable endeavours to procure that such continuing obligation shall be assignable or capable of novation to NTA/TII and thence to any nominee stipulated by NTA/TII; and
  - (ii) shall assign or novate to NTA/TII (or its nominee), at the request of TII, 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 Plant shall be assignable to NTA/TII and thence by NTA/TII to any nominee stipulated by them.

59. **DISPUTES RESOLUTION PROCEDURE**

Except as expressly provided in any other provision of this Contract, all Disputes shall be resolved in accordance with the provisions set out in Schedule 38 (*Disputes Resolution Procedure*).

60. **NOTICES**

## 60.1 Requirement for Writing

Wherever in this Contract 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.

## 60.2 Notice Specify Response Period

Subject to clause 60.4 (*Notices - NTA Retained Functions and NTA/TII*) and clause 60.5 (*Changes*), any Notice issued by the Operator under this Contract which requires a response from NTA or TII within a particular period of time (pursuant to the provisions of this Contract), shall expressly specify the particular period.

## 60.3 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 email transmission to the following addresses:

<b>NTA</b>	
Attention:	Tim Gaston, Director of Public Transport Services
Address:	National Transport Authority, Dún Scéine, Iveagh Court, Harcourt Lane, Dublin 2
Email:	Tim.Gaston@nationaltransport.ie
<b>TII</b>	
Attention:	Donal Dunne, Operations Manager
Address:	Transport Infrastructure Ireland, Parkgate Business Centre, Parkgate Street, Dublin 8
Email:	Donal.Dunne@tii.ie
<b>Operator</b>	
Attention:	Fergus Robertson-Howard
Address:	Transdev Dublin Light Rail Limited, Riverside One, Sir John Rogerson's Quay, Dublin 2
Email:	<a href="mailto:Fergus.Robertson-Howard@Transdevplc.co.uk">Fergus.Robertson-Howard@Transdevplc.co.uk</a>
<b>Operator's Representative</b>	
Attention:	Seamus Egan
Address:	Transdev Dublin Light Rail Limited, Luas Depot, Red Cow, Clondalkin, Dublin 22, D22 C5P3
Email:	Seamus.Egan@transdev.ie

#### 60.4 Notices - NTA Retained Functions and NTA/TII

- (a) Notwithstanding the provisions of clause 2.1(p) (*References*), where this Contract contemplates the service of any Notice on NTA to the extent relating to the NTA Retained Functions, such Notice must be delivered to NTA (with a copy to TII).
- (b) Without prejudice to clause 2.1(x) (*References*), where this Contract contemplates the service of any Notice on NTA/TII, such Notice must be delivered to TII.

## 60.5 Changes

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

## 60.6 Receipt

Save where otherwise provided in this Contract, 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.

## 60.7 Service of Legal Proceedings

Service of any legal proceedings concerning or arising out of the Contract shall be effected by causing the same to be delivered to the Company Secretary of the Party to be served at its registered office set out in clause 60.3 (*Addresses*), or to such other address as may be notified by the Party concerned from time to time.

61. **CONFIDENTIALITY**

## 61.1 Confidential Information

In this clause 61 (*Confidential Information*), “**Confidential Information**” means all information 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 Contract by one Party (the “**Disclosing Party**”) to another Party (the “**Receiving Party**”) whether before or after the date of this Contract including information relating to:

- (a) the design of the System or to any Intellectual Property Rights of any Party or the System Contractors; and
- (b) any other information of a confidential or proprietary nature which relates to the undertaking or finances of any of the Parties.

## 61.2 Obligations

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

- (a) will not use Confidential Information for a purpose other than the performance of its obligations under this Contract;
- (b) will not disclose Confidential Information to any third party except with the prior written consent of the Disclosing Party other than in accordance with clauses 61.3 (*Permitted Disclosures*) and 61.4 (*Exclusion*); and
- (c) shall make every effort to prevent the use or disclosure of Confidential Information.

## 61.3 Permitted Disclosures

- (a) During the term of this Contract, the Receiving Party may disclose Confidential Information to:
  - (i) any of its directors, officers and employees (a “**Recipient**”), or
  - (ii) any of its sub-contractors,to the extent that disclosure is reasonably necessary for the purposes of this Contract.
- (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 Contract as if the Recipient was a party to this Contract.

## 61.4 Exclusion

The obligations of the Parties as to disclosure and confidentiality under this clause 61 (*Confidentiality*) shall not apply:

- (a) to information relating to the performance by the Operator under the Performance Monitoring System;
- (b) to information relating to Patronage Revenue;
- (c) to the extent required by Law or Legal Requirement or by or pursuant to the rules or any order having the force of law of any court or agency of competent jurisdiction or governmental agency;
- (d) to the extent that:
  - (i) the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that Party;
  - (ii) the information has come into the public domain through no fault of that Party;
  - (iii) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid;
  - (iv) the information was obtained by the Receiving Party from a third party who was free to divulge the same; or
  - (v) 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;
- (e) to disclosure between NTA and TII; or
- (f) to the extent otherwise contemplated or required by this Contract.

## 61.5 Ongoing obligations

The obligations of the Parties as to disclosure and confidentiality under this clause 61 (*Confidentiality*) shall continue in force notwithstanding the expiry or termination of this Contract.

**61.6 Duty to Return Confidential Information**

The Receiving Party agrees that if the Contract is terminated or upon written request from the Disclosing Party, the Receiving Party shall immediately return to the Disclosing Party all Confidential Information in any form whatsoever which is in the Receiving Party's possession or control and shall confirm in writing to the Disclosing Party that the provisions of this clause 61 (*Confidentiality*) have been complied with in full.

**62. ANNOUNCEMENTS**

Save as required by any Legal Requirements, no announcement, circular, advertisement or other publicity in connection with the subject matter of this Contract shall be made or issued by the Operator without the prior consent of the NTA and TII and the Operator shall submit a copy of such announcement, circular, advertisement or other publicity to NTA and TII.

**63. AGENCY****63.1 No Delegation**

For the avoidance of doubt, no provision of this Contract shall be construed as a delegation by NTA or TII of any of their respective statutory authority to the Operator.

**63.2 No Agency**

- (a) Except as otherwise provided in this Contract, the Operator shall not be nor be deemed to be an agent of NTA or TII and the Operator shall not hold itself out as having authority or power to bind either NTA or TII in any way.
- (b) For the avoidance of doubt, the Operator shall not have the benefit of any state immunity and, unless otherwise agreed by NTA and TII, 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.

**63.3 Operator Responsibility**

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

**63.4 Operator Knowledge**

Without limitation to its actual knowledge, the Operator shall, for all purposes of this Contract, 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.

**63.5 Independent Operator**

- (a) For the avoidance of doubt, the Operator shall at all times be an independent contractor and nothing in this Contract shall be construed as constituting a partnership, joint venture, agency or relationship of employer and employee between NTA, TII 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 NTA or TII.



- (b) The Operator shall not have any right or authority to act on behalf of TII nor to bind TII by contract or otherwise, and TII shall not have any right or authority to act on behalf of the Operator nor to bind the Operator by contract or otherwise.

64. **WHOLE AGREEMENT**

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

65. **SEVERABILITY**

Each of the provisions of this Contract 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.

66. **WAIVER**

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

67. **AMENDMENTS**

No amendment to this Contract shall be binding unless such amendment is in writing and signed by the duly authorised representatives of NTA, TII and the Operator.

68. **CORRUPT GIFTS**

68.1 **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 NTA or TII 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 Contract or for showing or forbearing to show favour or disfavour to any person in relation to this Contract;
- (b) favour any employee or representative of NTA or TII with gifts or entertainment of significant cost or value; or
- (c) enter into any agreement (including this Contract) with NTA or TII 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 NTA/TII.

#### 68.2 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, with or without the knowledge of the Operator then, subject to clause 68.3 (*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 TII may terminate this Contract 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 TII may give notice to the Operator of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Operator terminates (or procures the termination) of the employment of the Staff (or the relevant member of Staff as the case may be) (which shall (unless otherwise agreed with TII) include the employer of any employee in addition to the relevant employee) and (if necessary) procures the performance of such part of the Operator's obligations under this Contract by another person.
- (c) Any notice of termination under this clause 68 (*Corrupt Gifts*) shall specify:
  - (i) the nature of the Prohibited Act;
  - (ii) the identity of the party whom NTA or TII believes has committed the Prohibited Act; and
  - (iii) the date on which this Contract will terminate, in accordance with the applicable provision of this clause.

#### 68.3 Remedies for Prohibited Acts

- (a) Without prejudice to any other rights under this clause 68 (*Corrupt Gifts*), NTA and TII shall be entitled to recover from the Operator:
  - (i) the amount of any Loss suffered by NTA or TII, as the case may be, resulting from a breach by the Operator of its obligations under this clause 68 (*Corrupt Gifts*); and
  - (ii) the amount or value of any gift or consideration given in breach of this clause 68 (*Corrupt Gifts*).
- (b) In exercising their remedies under this clause 68 (*Corrupt Gifts*), NTA and TII shall:
  - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of the Prohibited Act and the identity of the person committing the Prohibited Act; and
  - (ii) give all due consideration where appropriate to action other than termination including (without being limited to):

- (A) requiring the Operator to procure the termination of a sub-contract where the Prohibited Act is that of a sub-contractor; and
- (B) requiring the Operator to procure the dismissal of an employee (whether its own or that of a Principal Sub-Contractor) where the Prohibited Act is that of an employee.

68.4 Annual Certificate

The Operator shall put in place procedures requiring each of its directors, senior managers and employees to certify on an annual basis that he/she has not offered to give or agreed to give to any person in the employ of NTA or TII any gift, or entertainment of significant value, or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any kindness showing favour or forbearing to show disfavour to any person in relation to this Contract.

69. COUNTERPARTS

This Contract 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.

70. GOVERNING LAW AND JURISDICTION

70.1 Law

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

70.2 Jurisdiction

Subject to the provisions of clause 59 (*Disputes Resolution Procedure*), 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 Contract.

IN WITNESS WHEREOF the Parties have caused this Contract to be duly executed and delivered as a deed the day and year first above written.

**PRESENT** when the Seal of  
**NATIONAL TRANSPORT AUTHORITY**  
was affixed to this deed and this deed  
was delivered:

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**PRESENT** when the Seal of  
**NATIONAL ROADS AUTHORITY**  
(otherwise known as  
**TRANSPORT INFRASTRUCTURE IRELAND**)  
was affixed to this deed and this deed  
was delivered:

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Authorised Person

**PRESENT** when the Common Seal of  
**TRANSDEV DUBLIN LIGHT RAIL LIMITED**  
was affixed to this deed and this deed  
was delivered:

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Director

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Director/Secretary