

An tÚDARÁS Náisiúnta Iompair – THE NATIONAL TRANSPORT AUTHORITY

and

GO-AHEAD TRANSPORT SERVICES (DUBLIN) LIMITED

PUBLIC SERVICE CONTRACT

imposing public service obligations to secure

the provision of certain public bus services

in the

OUTER DUBLIN METROPOLITAN AREA

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THIS AGREEMENT is made _____ 2018

BETWEEN:

- (1) **THE NATIONAL TRANSPORT AUTHORITY** (or in the Irish language, **An tÚDARÁS NÁISIÚNTA IOMPAIR**), a statutory corporation established under the Dublin Transport Authority Act 2008 as amended and having its principal office at Dún Scéine, Iveagh Court, Harcourt Lane, Dublin 2 (the “**Authority**”); and
- (2) **GO-AHEAD TRANSPORT SERVICES (DUBLIN) LIMITED**, a company incorporated in Ireland with registered number 610541 and having its registered office at the offices of Holmes O'Malley Sexton Solicitors, 2-4 Ely Place, Dublin 2, D02FR28 (the “**Operator**”).

RECITALS

- (A) The Authority was established by the 2008 Act and has, among other things, the functions to secure the provision of public passenger transport services, to secure the provision of integrated ticketing and information systems for public transport, to secure the development and implementation of a single public transport brand and the collection of statistical data and information on transport.
- (B) Section 50(1) of the 2008 Act provides that where the Authority proposes to secure public transport passenger services, it may determine that a public service obligation is to be applied in respect of that service.
- (C) The Authority has determined that a public service obligation is to apply in respect of the public passenger transport services contemplated by this Agreement and, in accordance with section 50(2) of the 2008 Act, the Authority wishes to secure such public passenger transport services by means of a public service contract that is subject to section 48 of the 2008 Act.
- (D) The Operator was identified as the successful tenderer for the Services following a competitive tendering procedure and the Authority is proposing to enter into this Agreement with the Operator whereby the Operator will provide the Services in accordance with, and subject to, the terms and conditions of this Agreement and the 2008 Act.
- (E) This Agreement is a public service contract for the purposes of Chapter 2 of Part 3 of the 2008 Act.
- (F) The Operator has performed certain services pursuant to a Letter of Intent dated 18 October 2018. It is agreed that, upon execution of this Agreement, this Agreement shall supersede the Letter of Intent and the terms of this Agreement shall apply to any actions taken by the Operator pursuant to the Letter of Intent.

NOW IT IS HEREBY AGREED as follows:

PART 1 – DEFINITIONS AND INTERPRETATION

PART 1 - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

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

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

“Acceptable Entity” means an entity:

- (a) which has a minimum Standard and Poor credit rating of BBB+; and
- (b) 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.

“Agreement” means this Agreement, including the Schedules.

“Annual Operating Charge” means,

- (a) for each consecutive twelve month period (commencing on the Initial Operating Commencement Date) in the period expiring on the day before the day falling five (5) years after the Initial Operating Commencement Date; € [REDACTED]
- (b) for any subsequent annual period following the exercise by the Authority of its option under clause 4.2 (*Contract Period Extension*) and/or clause 4.3 (*Further Contract Period Extension*); € [REDACTED].

“Annual Contract Review” means the review carried out in accordance with Schedule 17 (*Annual Contract Review*).

“Applicable Factor” means the factor, expressed to three decimal places, determined in accordance with paragraph 20.9 of Schedule 20 (*Contract Charges and Indexation*).

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

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

- (a) a subsidiary; or

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

“Authority Default” has the meaning given to it in clause 44.2(a) (*Authority Default*).

“Authority Network Asset” means any asset used by the Operator in the provision of the Services that, in accordance with Regulation (EC) No. 1370/2007, has been funded or provided, in each case directly or indirectly, by the Authority.

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

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

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

“Authority’s Representative” means the person appointed from time to time by the Authority to act as its representative in accordance with clause 21.5 (*Authority’s Representative*).

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

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

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

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

“Base Daily Initial Operating Charge” means €[REDACTED]

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

“Base Price Date” means 1 January 2017.

“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 Agreement provided that the Authority has approved the relevant provision of the Sub-Contract (such approval not to be unreasonably withheld or delayed);
- (b) redundancy payments required under any Legal Requirement (or agreement the relevant provision of which the Authority 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 Agreement; 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 Agreement had 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.

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

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

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

“Change of Law” means the coming into effect after the Commencement Date of:

- (a) Legal Requirements other than 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 proposal in the Official Journal of the European Union;
- (b) the Bye-Laws to the extent not substantially in the same form as the draft of such Bye-Laws disclosed to the Operator prior to the Commencement Date,

but only to the extent in the case of paragraphs (a) and (b), with which:

- (A) the Operator is bound to comply; or
- (B) the Operator must comply in order to obtain or retain any Consent to Operate.

“Charges” means the charges for the provision of the Services set out in and determined in accordance with Schedule 20 (*Contract Charges and Indexation*) and Schedule 21 (*Payment Mechanism*), including any Milestone Payment, Initial Operating Charge, Operating Charge and Variations.

“CIE” means Córas Iompair Éireann, the State owned holding company of Dublin Bus, Bus Éireann and Iarnród Éireann.

“Claim” means any claim, demand or proceeding.

“Commencement Date” means the later of:

- (a) the date of execution of this Agreement; and

- (b) the date the Authority confirms to the Operator that it has satisfied the conditions specified in clause 3.2 (*Required Documents – Commencement Date*) in form and substance satisfactory to the Authority (acting reasonably).

“Commencement Transferring Employee” means a person employed as a driver and currently engaged in services similar to the Services who transfers to the Operator in accordance with the Transfer Regulations.

“Companies Act” means the Companies Act 2014, as amended from time to time.

“Compensation Event” means:

- (a) failure by the Authority to provide:
- (i) on or prior to the Initial Operating Commencement Date, the Initial Tranche of Authority Network Buses by the later of:
 - (A) the date specified in the Implementation Plan for the provision of such Authority Network Buses; and
 - (B) the Scheduled Operator Property Date; or
 - (ii) on or prior to the Operating Commencement Date, the Authority Network Buses (to the extent not part of the Initial Tranche) by the later of:
 - (A) the date specified in the Implementation Plan for the provision of such Authority Network Buses; and
 - (B) the Scheduled Initial Commencement Date; or
- (b) on or prior to the Initial Operating Commencement Date, if either, to the extent either is provided by the Authority:
- (i) the AVL System; and
 - (ii) the Ticketing System
- are not ready, in the opinion of the Authority (acting reasonably), to process the collection of Fares by the later of:
- (A) the date specified for such in the Implementation Plan; and
 - (B) one (1) month after the Scheduled Operator Property Date;
- (c) a recall notice is issued in respect of more than five percent. (5%) or more of the Network Buses delivered in a particular calendar year, which requires non-routine maintenance to be performed on such Network Buses, to the extent that such failure has a material adverse effect on the Operator’s ability to perform a substantial part of the Services;
- (d) where the Operator demonstrates to the Authority (acting reasonably) that, directly due to a latent defect which could not reasonably be detected during acceptance by the Operator of the Network Buses, more than five percent. (5%) or more of the Network Buses are, at any one time, unavailable to be used in providing Services;

- (e) where the Authority serves a Suspension Notice in relation to more than five percent (5%) or more of the Network Buses in accordance with clause 10.2(a) (*Right to Suspend Network Licence*) and such circumstances do not arise by reason of any act or omission of the Operator; or
- (f) a breach by the Authority of its obligations under this Agreement,

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

"Complaint" means a complaint received by the Operator in relation to the Services except:

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

"Compliance Monitor" has the meaning given to it in clause 47.4(c) (*Pay and Conditions of Employment*).

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

"Consumer Price Factor" means the factor, expressed to three decimal places, determined in accordance with paragraph 20.10 of Schedule 20 (*Contract Charges and Indexation*).

"Consumer Price Percentage" means the percentage of the Annual Operating Charge to be indexed by reference to the Consumer Price Index, namely 19.4%.

"Contract Period" means the period commencing on the Commencement Date and expiring on the Expiry Date.

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

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

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

"Curtailment Event" means where:

- (a) the Operator has been and is complying in full with the requirements of clause 47 (*Employment Issues*); and
- (b) there is a Trade Dispute between Specified Employees and the Operator and:
 - (i) the Trade Dispute is unresolved;

- (ii) there is a Strike by the Specified Employees in relation to the Trade Dispute;
- (iii) the Strike continues for, a minimum, of three (3) days in any period of four (4) weeks;
- (iv) the Operator can demonstrate to the Authority that:
 - (A) it has used best endeavours to resolve the Trade Dispute prior to any such Strike;
 - (B) it has complied with the Code of Practice on Voluntary Dispute Registration under Section 42 of the Industrial Relations Act 1990; and
 - (C) it continues to use best endeavours to resolve the Strike, having regard to its interests as an employer and as Operator;
- (v) the Labour Court has issued a recommendation in connection with such Trade Dispute which has been rejected by the Specified Employees;
- (vi) where any element of the Strike is unlawful, the Operator has taken such lawful steps as are reasonable to restrain such Strike; and
- (vii) the Compliance Monitor has not brought any matter as regards the conduct of the Operator to the attention of the Authority which may be relevant to the origins or cause of the Trade Dispute.

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

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

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

“Daily Initial Operating Charge” means the amount determined in accordance with paragraph 20.3 of Schedule 20 (*Contract Charges and Indexation*) for each day in the Initial Operational Services Period.

“Dangerous Substances” means:

- (a) any pollutant, contaminant, flammable or corrosive or radioactive or otherwise hazardous substance (including petroleum and its derivatives and any other hydrocarbon) and every substance, matter or thing having constituent elements having any of the foregoing characteristics, whether or not the substance, matter or thing is specifically referred to in, or regulated under, the Legal Requirements and which alone or in combination with one or more substances causes or may cause harm to the Environment; and
- (b) Waste.

“Data Protection Acts” means all applicable Legal Requirements relating to data protection including, as of the Commencement Date, the Data Protection Acts 1988 and 2003;.

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

“Deemed Variation” means:

- (a) the transfer to the Operator on or prior to the Operating Commencement Date of a Commencement Transferring Employee;
- (b) a Discriminatory Change of Law;
- (c) the introduction, or modification of, a Sectoral Employment Order in relation to drivers of Buses; or
- (d) the Operator being required in accordance with clause 13.4 (*Maintenance Contracts*) to enter into a Novation Agreement in relation to a Maintenance Contract and being required to be responsible for such Maintenance Contract.

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

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

“Direct Agreements” means the direct agreement in the form of Schedule 29 (*Form of Direct Agreement*) with the Principal Sub-Contractors.

“Disclosed Data” means all materials, documents and data which were provided to the Operator in connection with the invitation to negotiate in respect of the Services.

“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; and/or
- (b) the Operator; and/or
- (c) persons operating public bus passenger services under contractual arrangements similar to this Agreement,

provided that:

- (i) a Legal Requirement which also affects (A) public bus passenger services, (B) road transport or (C) persons other than the Operator shall not be regarded as a Discriminatory Change of Law solely on the basis that its effect on the Services or the Operator is greater than on any such public bus passenger services, road transport or other persons; and
- (ii) the introduction, or modification, of a Registered Employment Agreement or Employment Regulation Order is not a Discriminatory Change of Law.

“Dispute” has the meaning given to it in paragraph 28.4.1 of Schedule 28 (*Disputes Resolution Procedure*).

“DSP” means Department of Social Protection.

“Dublin Metropolitan Bus Network” means the bus routes in the Greater Dublin Area operated by Dublin Bus/Bus Átha Cliath pursuant to a public transport service contract with the Authority.

“Eligible Cost” means any cost and expense directly incurred by the Operator as a consequence of a Compensation Event, including, the cost of any employees who had been employed to perform the Services but who, because of the Compensation Event, are not able to perform such Services.

“Employee Representatives” means, for the purposes of clause 47.8 (*Transfer Regulations*), the employee representatives as defined in the Transfer Regulations.

“Employment Factor” means the factor, expressed to three decimal places, determined in accordance with paragraph 20.11 of Schedule 20 (*Contract Charges and Indexation*).

“Employment Index” means the Quarterly Earnings Hours and Employment Costs Survey (EHECS) Index, published by the Central Statistics Office.

“Employment Percentage” means the percentage of the Annual Operating Charge to be indexed by reference to the average hourly earnings of all employees in the economy, as set out in the Central Statistics Office’s Earning Hours and Employment Costs Survey, namely 64.4%;

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

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

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

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

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

“Event of Default” has the meaning given to it in clause 44.1(a) (*Events of Default*).

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

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

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

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

“Exit Management Plan” means, at any time, the then current plan detailing the exit management and termination assistance services to be provided by the Operator on the expiry or termination of this Agreement in accordance with Schedule 25 (*Exit Management*).

“Expiry Date” means:

- (a) the day before the day falling five (5) years after the Initial Operating Commencement Date;
- (b) if the Authority exercises its right under clause 4.2 (*Contract Period Extension*), the day before the day falling six (6) years after the Initial Operating Commencement Date;
- (c) if the Authority exercises its rights under clause 4.2 (*Contract Period Extension*) and then clause 4.3 (*Further Contract Period Extension*), the day before the day falling seven (7) years after the Initial Operating Commencement Date; or
- (d) if earlier, the date upon which this Agreement is terminated in accordance with its provisions.

“Failed Initial Route” has the meaning given to it in clause 9.8 (*Delays to Initial Operating Commencement Date*).

“Failed Route” has the meaning given to it in clause 9.9 (*Delays to Operating Commencement Date*).

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

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

“Fare Evasion Deduction” has the meaning given to it in Schedule 19 (*Payments and Deductions*).

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

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

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

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

“Fares Revenue” means, in relation to a period, the revenue collected together with any amount deemed to be collected or received (through the use of LEAP) by the Operator in respect of the carriage of passengers on the Network (including revenue related to concessionary fare schemes and any other fare sharing or similar schemes in which the Operator participates from time to time with other public transport services) net of third party agency commissions but does not include Standard Fare Revenue.

“Final Longstop Date” means the date falling thirty (30) months after the date of the Letter of Intent.

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

- (a) war (whether declared or undeclared), civil war, armed conflict, invasion or act of foreign enemy in each case within and affecting Ireland;
- (b) rebellion, revolution, civil disobedience or acts or threats of terrorism in each case within, and affecting, Ireland;
- (c) nuclear explosion, chemical or radioactive contamination or ionising radiation unless the source or cause of the explosion, contamination or radiation is brought to or near the Network Assets by the Party seeking protection as a result of Force Majeure or that Party’s contractors or their sub-contractors of any tier, or exists naturally in situ; or
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed,

provided that such event is not caused or contributed to by the Authority or the Operator.

“Fuel Factor” means the factor, expressed to three decimal points, determined in accordance with paragraph 20.12 of Schedule 20 (*Charging and Indexation*).

“Fuel Percentage” means the percentage of the Annual Operating Charge to be indexed by reference to movement in the ICE Low Sulphur Gasoil futures monthly average rate, namely 16.2%.

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

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

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

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

“Health and Safety Legislation” means the provisions of the Safety, Health and Welfare at Work Acts 2005 and 2010, as amended from time to time.

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

“Implementation Plan” has the meaning given to in clause 9.1(a) (*Implementation Plan*).

“Implementation Programme” has the meaning given to it in clause 9.2(a) (*Implementation Programme*).

“Implementation Stage” means the period from (and including) the Commencement Date to (and including) the Operating Commencement Date.

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

“Index” means the Consumer Price Index, published by the Central Statistics Office.

“Indexation Month” means, in relation to the Base Price Date or a Review Date, the month of November (to which the Index, when published, relates), immediately preceding such Base Price Date or Review Date, as the case may be.

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

“Initial Operating Charges” means the amount, in respect of each Initial Operational Reporting Period during the Initial Operational Services Period, determined in accordance with the provisions of paragraph 20.3 of Schedule 20 (*Contract Charges and Indexation*).

“Initial Operating Commencement Date” means the later of:

- (a) the date upon which the conditions specified in clause 3.3 (*Required Documents – Initial Operating Commencement Date*) are satisfied (or waived by the Authority in accordance with clause 3.5 (*Waiver*)) and the earlier of:
 - (i) the date on which the Operator commences carrying fare paying passengers on all Initial Routes, in accordance with the terms of this Agreement; and
 - (ii) the date upon which the Initial Operating Commencement Date is deemed to have occurred in accordance with clause 9.8(b) (*Delays to the Initial Operating Commencement Date*); and
- (b) the date falling nine (9) months after the date of the Letter of Intent.

“Initial Operational Reporting Period” means each Reporting Period (or part of a Reporting Period) in the Initial Operational Services Period.

“Initial Operational Services Period” means the period from the Initial Operating Commencement Date to the earlier of:

- (a) the Operating Commencement Date; and
- (b) the expiry of the Contract Period.

“Initial Routes” means, subject to clause 9.8(b) (*Delays to the Initial Operating Commencement Date*), the routes that the Operator is to operate for the Initial Operational Services Period as set out in Schedule 4 (*Implementation Stage*) or, if different, as specified in the Implementation Plan (as Approved by the Authority).

“Initial Tranche” means the Authority Network Assets to be provided to the Operator in accordance with Schedule 11 (*Operation and Maintenance of Network Assets*) on or before the date contemplated by paragraph (a)(i) of the definition of “Compensation Event”.

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

- (a) the presentation of a petition for winding-up and which petition is not dismissed within twenty-eight (28) days of its presentation; or
- (b) the presentation of a petition to appoint an examiner and which petition is not dismissed within ten (10) days of its presentation; or
- (c) the making of an order or an effective resolution being passed for winding up except for the purpose of a solvent reconstruction or amalgamation on a basis previously approved by the Authority (such approval not to be unreasonably withheld or delayed); or
- (d) the making of an order for the appointment or other duly authorised appointment of a liquidator, an examiner, receiver, trustee or similar officer for the Operator; or
- (e) the making of an order for the appointment of an examiner to a related company (within the meaning of Part 10 of the Companies Act 2014) of the Operator; or
- (f)
 - (i) the making of an order by a court for the appointment of a liquidator, receiver, examiner or other similar officer taking possession; or
 - (ii) the appointment of a receiver by an encumbrancer or the taking of possession by an encumbrancer,

of the whole or any part (which is material in the context of the performance of the Operator's obligations under this Agreement) of the Operator's undertaking, property or assets; or

- (g) the making of a composition with creditors generally; or
- (h) being unable to pay its debts as they fall due.

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

or not registered or capable of registration and whether subsisting in Ireland or any part of the world.

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

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

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

“Kilometre Charge” means the Annual Operating Charge, Indexed, divided by the number of Scheduled Service Kilometres in a twelve (12) month period (expressed to three (3) decimal places).

“KPI” means key performance indicator.

“Law” means any law which is force in the State (without further enactment).

“LEAP” means the name of the Integrated Ticketing Scheme.

“Legal Requirements” means any legislation, constitutions, acts, statutes, laws, bye-laws, rules, or subordinate 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, and any administrative or other governmental requirement.

“Letter of Intent” means the letter of intent referred to in Recital (F).

“Longstop Date” means any of:

- (a) the Final Longstop Date;
- (b) the Longstop Initial Commencement Date; or
- (c) the Longstop Property Date.

“Longstop Initial Commencement Date” means the date falling twenty one (21) months after the date of the Letter of Intent.

“Longstop Property Date” means the date falling eighteen (18) months after the date of the Letter of Intent.

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

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

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

“Maintenance Contract” means each of:

- (a) the contracts between the Authority and INIT Innovations In Transportation Limited in connection with the AVL System; and
- (b) the contracts between the Authority and Parkeon Transit Ltd in connection with the Ticketing System.

“Maintenance Related Payment” means, in respect of a Reporting Period, the result of the following formula:

$$\left(\text{Base Period Payment} \times RP \times \frac{n_{RE}}{n_{RP}} \right)$$

where:

RP is two thirds of the Consumer Price Percentage, expressed as a decimal to three places;

n_{RE} is the number of days in the relevant Reporting Period for which the Operator has been relieved from its obligation to provide Services on the Network other than those contemplated by clause 41.4 (Maintenance obligation) as a result of the occurrence of a Curtailment Event; and

n_{RP} is the number of days in the relevant Reporting Period.

“Milestone Acceptance Certificate” means a certificate signed by the Authority confirming that a Milestone Event has occurred.

“Milestone Event” means each of the events specified in paragraph 20.2 of Schedule 20 (*Contract Charges and Indexation*) or, if different, as specified in the Implementation Plan (as Approved by the Authority).

“Milestone Payment” means each payment identified in paragraph 20.2 of Schedule 20 (*Contract Charges and Indexation*) in connection with the issue of a Milestone Acceptance Certificate.

“Monthly Fuel Review Date” means in the case of each full calendar month in a Contract Year, other than any months in a Contract Year which occur before commencement of the Initial Operational Services Period, the 16th day of such calendar month in the previous year, or if that is not a Business Day, the next immediately preceding Business Day.

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

“Network” means the Routes operated by the Operator in accordance with this Agreement using the Network Assets.

“Network Assets” means, at any time, any infrastructure and equipment (including the Operator Properties, Authority Network Assets, Network Buses and associated equipment) required by the Operator, and used or managed by the Operator at that time, to provide the Services.

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

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

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

“Network Licence” means the licence granted to the Operator under clause 10.1 (*Network Licence*), pursuant to which the Operator is entitled to access and use the Authority Network Assets to enable it to provide the Services and otherwise comply with its obligations and exercise its rights under this Agreement.

“Non-Authority Network Assets” means any Network Asset used by the Operator in connection with the provision of the Services which is not an Authority Network Asset.

“Non-PMS Breach” has the meaning given to it in clause 34.2 (*Breach*).

“Novation Agreement” means a novation agreement in the form of Schedule 32 (*Form of Novation Agreement*).

“Operational Day” means each period of twenty four (24) hours commencing at 04.30 am.

“Operating Charge” means the amount determined in relation to a Reporting Period during the Operational Period in accordance with paragraph 20.4 of Schedule 20 (*Contract Charges and Indexation*).

“Operating Commencement Date” means, subject to clause 3.4 (*Required Documents – Operating Commencement Date*), the later of:

- (a) the date that is three (3) months after the Initial Operating Commencement Date; and
- (b) the earlier of:
 - (i) the date upon which the Operator commences carrying fare paying passengers on all of the Routes in accordance with this Agreement; and
 - (ii) the date upon which the Operating Commencement Date is deemed to have occurred in accordance with clause 9.9(b)(i) (*Delays to Operating Commencement Date*).

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

“Operational Period” means the period from the Operating Commencement Date until the Expiry Date.

“Operator Parent Company” means The Go-Ahead Group plc, a company incorporated under the laws of England with registered number 02100855.

“Operator Payment” means any of a Milestone Payment or a Period Payment.

“Operator Properties” means the Control Room, the Operator Site and any other premises from which the Operator provides any element of the Services and **“Operator Property”** shall be construed accordingly.

“Operator Property Date” means the date on which

- (a) the Operator provides evidence satisfactory to the Authority that the Operator has the legal right and entitlement to access and use:
 - (i) the Operator Site;
 - (ii) premises suitable for:
 - (A) the carrying out of Maintenance Activities;
 - (B) its staff;
 - (iii) to the extent not contemplated by paragraphs (a)(i) and (a)(ii), the Operator Properties; and,
- (b) in the case of paragraphs (a)(i) and (a)(ii), the Operator demonstrates to the Authority that all necessary works have been completed such that the Operator Site and such premises are ready to be used in connection with the provision of Services.

“Operator’s Representative” means the person appointed from time to time by the Operator to act as its representative in accordance with clause 21.3 (*Operator’s Representative*).

“Operator Site” means the premises at which the Operator securely stores the Network Buses when not in use.

“Operator Site Lease” means a lease of the Operator Site to the Operator which satisfies the requirements of clause 7.10 (*Operator Site*) and which is for a term, at least, equal to or greater than the maximum potential duration of the Contract Period but, in any case, is for a period less than or equal to thirty five (35) years from its commencement.

“Operator Variation Notice” means a notice served by the Operator in accordance with the provisions of paragraph 23.8 of Schedule 23 (*Variations*) in respect of a Variation which the Operator wants to recommend to the Authority.

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

“Outstanding Route Kilometres” means, where the Operator is not providing Services in accordance with this Agreement on a Route on or following the Scheduled Initial Operating Commencement Date or the Scheduled Operating Commencement Date, as the case may be, the total kilometres of the Trips on any day which would have been undertaken on such Route if the Operator had provided Services on such Route on or following the Scheduled Initial Operating Commencement Date or the Scheduled Operating Commencement Date, as applicable.

“Parent Company Guarantee” means a parent company guarantee in the form of Part 1 of Schedule 30 (*Form of Security*).

“Parties” means the Authority and the Operator.

“Pay Review Date” means if a notice under clause 47.11(a) (*Labour Court decision*) has been served on the Authority:

- (a) more than thirty (30) days prior to the expiry of a Quarter, the first day of the immediately following Quarter; or
- (b) on or less than thirty (30) days prior to the expiry of a Quarter, the first day of the Quarter succeeding the immediately following Quarter.

“Performance Bond” means a performance bond in the form of Part 3 of Schedule 30 (*Form of Security*).

“Performance Deduction” means any of:

- (a) Punctuality Performance Deduction;
- (b) Lost Kilometres Deduction; and
- (c) Service Quality Performance Deduction,

and where the context so requires, means the aggregate of each such deduction to be applied to a Period Payment.

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

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

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

“Period” includes a Reporting Period.

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

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

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

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

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

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

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

“Principal Sub-Contractors” means any sub-contractors who may be appointed from time to time by the Operator to perform the Principal Sub-Contractor Roles in accordance with this Agreement.

“Principal Sub-Contractor Roles” means the performance of the following services under the contract:

- (i) operations management;
- (ii) maintenance of network assets;
- (iii) customer service management;
- (iv) ticketing and revenue collection;
- (v) revenue protection; and
- (vi) any other role specified by the Authority.

“Prior Operator” means Dublin Bus.

“Project Documents” means this Agreement, the Support Documents, the Sub-Contracts, the Direct Agreements and such other documents as may be designated by the Authority as Project Documents.

“PSC Passes” means Public Service Cards issued by the Department of Social Protection, which entitle:

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

to free travel on the Services.

“public bus service” has the meaning given to it in section 2 of the 2008 Act.

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

“public passenger transport service” has the meaning given to it in section 2 of the 2008 Act.

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

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

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

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

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

“Punctuality Performance Deductions” means the aggregate of:

- (a) the Punctuality Deduction; and
- (b) the EWT Deduction,

if applicable.

“Punctuality Performance Payment” means the amount payable by the Authority to the Operator in accordance with paragraph 21.8 of Schedule 21 (*Payment Mechanism*).

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

“Quality Management Plans” means the procedures and instructions setting out the activities to be undertaken by the Operator as required by clause 22 (*Quality Management*).

“Quarter” means each **“Quarter”** falling during the Contract Period, as more particularly identified in the calendar in Schedule 22 (*Period Calendar*).

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

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

“Rates” means the rates detailed in paragraph 20.5 of Schedule 20 (*Contract Prices and Indexation*) or such other rates as may be agreed by the Parties.

“Real Time Passenger Information” means the real time information on the arrival time or departure time of Services, as specified in Schedule 14 (*Customer Information*).

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

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

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

“Relevant Employee” means, for the purposes of clauses 47.8 (*Transfer Regulations*), 47.9 (*Pensions – Relevant Employees*), and 47.10 (*Pensions – Staff (Other than Relevant*

Employees)), a person whose employment would or does transfer (including to the Authority) by virtue of the Transfer Regulations or by operation of law at any time.

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

“Relevant Quarter” means in relation to the Base Price Date or a Review Date, the months of July, August and September, commonly known as ‘Q3’ (to which the Employment Index, when published, relates) immediately preceding such Base Price Date or Review Date, as the case may be.

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

“Relief Event” means:

- (a) any wilful or accidental damage to any Network Asset by a person other than the Operator to the extent that such damage has a material adverse effect on the Operator’s ability to perform a substantial part of the Services;
- (b) suicide, fire, earthquake or extraordinary storm, extraordinary flood or extraordinary weather conditions;
- (c) any official or unofficial strike or lockout in relation to a third party on a national basis in the State which:
 - (i) has been or is under way, on a consecutive basis, for more than five (5) Business Days; and
 - (ii) directly prevents the Operator from performing its obligations under this Agreement;
- (d) a Services Interruption of the type described in paragraph 19.8.1 of Schedule 19 (*Performance Payments and Deductions*);
- (e) where:
 - (i) the Operator has proposed one property to satisfy the requirements of this Agreement;
 - (ii) such property requires a permission, licence or consent under Environmental Legislation to allow it to be used; and
 - (iii) a third party objects or appeals such permission; licence or consent, and the Authority has obtained an opinion from an independent and reputable counsel that the Operator has substantive arguments as to why it should prevail over such objection or in such appeal;
- (f) a Curtailment Event;

- (g) failure by the AVL System for more than ten (10) days consecutively on any one occurrence but only where, and to the extent, the total period of such failure or failures in any Contract Year is less than thirty (30) days; or
- (h) failure of the Ticketing System for more than ten (10) days consecutively on any one occurrence but only where, and to the extent, the total period of such failure or failures in any Contract Year is less than thirty (30) days,

provided that:

- (A) subject to (B), in the case of each event listed in this definition, such event has not been caused by any act or omission of the Operator; and
- (B) in the case of paragraph (e), (A) shall not apply in respect of a proposal by the Operator of a property to satisfy the requirements of this Agreement.

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

“Reporting Period” means each successive period of four (4) consecutive weeks ending on a Sunday specified in Schedule 22 (*Period Calendar*) provided that:

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

“Required Document” means each of the documents listed in Schedule 31 (*Condition Precedent*).

“Required Insurances” has the meaning given to it in clause 38 (*Insurance*).

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

“Required Reports” has the meaning given to it in Schedule 18 (*Records and Reporting Requirements*).

“Resource Availability Agreement” means a resource availability agreement between the Operator and the Supporting Entities in the form of Part 2 of Schedule 30 (*Form of Security*).

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

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

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

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

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

“Safety Management System” means the safety management system the Operator is required to implement in accordance with Schedule 6 (*Safety Management*).

“Scheduled Initial Operating Commencement Date” means the date falling fifteen (15) months after the date of the Letter of Intent.

“Scheduled Operating Commencement Date” means the date falling eighteen (18) months after the date of the Letter of Intent.

“Scheduled Operator Property Date” means the date falling twelve (12) months after the date of the Letter of Intent.

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

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

“Schedules” means the Schedules to this Agreement.

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

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

“Service Quality Performance Payment” means the amount payable by the Authority to the Operator in accordance with paragraph 21.11 of Schedule 19 (*Performance Payments and Deductions*).

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

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

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

“Specified Employees” means the employees of the Operator who are drivers of the Network Buses.

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

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

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

“State” means Ireland.

“Step In” has the meaning given to it in clause 43.1 (*Step-In*).

“Step In Services” has the meaning given to it in clause 43.2 (*Step-Out*).

“Step Out” has the meaning given to it in clause 43.2 (*Step-Out*).

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

“Strike” has the meaning given to it in Section 8 of the Industrial Relations Act 1990.

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

“Sub-Contractor” means:

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

“Subsequent Transfer Date” means, for the purpose of clause 47.8 (*Transfer Regulations*), the moment on any date on which a Relevant Employee would or does transfer to a Replacement Operator by virtue of the Transfer Regulations or by operation of law at that time.

“subsidiary” has the meaning given to it in Section 7 of the Companies Act 2014. Notwithstanding anything to the contrary in this Agreement, this definition shall not be changed in the event of an amendment to the definition of “subsidiary” contained in the Companies Act 2014.

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

“Support Document” means any of the Parent Company Guarantee, the Resource Availability Agreement and the Performance Bond.

“Supporting Entities” means:

- (a) The Go-Ahead Group Plc, a company incorporated under the laws of England, with registered number 02100855;
- (b) London General Transport Services Limited, a company incorporated under the laws of England, with registered number 02328489,
- (c) Go North East Ltd, a company incorporated under the laws of England, having its registered office at 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE;
- (d) Brighton and Hove Bus and Coach Company Ltd, a company incorporated under the laws of England, having its registered office at 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE;
- (e) Plymouth Citibus Ltd, a company incorporated under the laws of England, having its registered office at 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE;
- (f) City of Oxford Bus Motor Services Ltd, a company incorporated under the laws of England, having its registered office at 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE;
- (g) Docklands Buses Ltd a company incorporated under the laws of England, having its registered office at 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE;
- (h) Metrobus Ltd, a company incorporated under the laws of England, having its registered office at 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE;
- (i) Blue Triangle Buses Ltd, a company incorporated under the laws of England, having its registered office at 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE,

(each a **“Supporting Entity”**).

“Suspension Event” has the meaning given to it in clause 10.2 (*Right to Suspend Network Licence*).

“Suspension Notice” has the meaning given to it in clause 10.2 (*Right to Suspend Network Licence*).

“Tax” means all forms of taxation, duties, imposts and levies including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property tax, rates, property tax, property related tax, VAT,

customs and other import and export duties, excise duties, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto and any interest, surcharge, penalty or fine in connection therewith, the words **"Taxation"**, **"taxation"**, **"Taxes"**, **"taxes"** and **"tax"** shall be construed accordingly.

"Terminating Stop" means the Stop at which a Trip terminates as set out in the Timetable.

"Ticketing System" means all equipment required for the purposes of ticketing (including, software, hardware, ticket machines (including TGX drivers' consoles and remote Smart Card Validators), local back office equipment and communications networks provided and operated by the Operator for the purposes of:

- (a) collecting Fares Revenue to the extent that it is cash;
- (b) issuing tickets;
- (c) validating LEAP cards;
- (d) validating public service cards;
- (e) reporting cash revenue;
- (f) reporting Integrated Ticket Scheme activities; and
- (g) other ticketing related activities, as more particularly set out in Schedule 8 (*Ticketing and Fares Collection*).

"Timetable" means the timetables from time to time in force for the operation of passenger services on the Network as specified in Annex B of Schedule 2 (*Service Specification*).

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

"Trade Dispute" has the meaning given to it by Section 8 of the Industrial Relations Act 1990.

"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.

"Trigger Date" means the date on which a notice under clause 47.11(a) (*Labour Court decision*) is served.

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

"Twelfth Month Ahead Forward Fuel Price" means, as of close of business on the Monthly Fuel Review Date, the end of day settlement price for a futures contract for a metric tonne on the ICE Futures Europe Exchange in relation to Low Sulphur Gasoil Futures, for delivery in twelve (12) months (namely the same month in the following calendar year), with the underlying physical market for Low Sulphur Gasoil being diesel barges delivered in the ARA (Amsterdam, Rotterdam and Antwerp including Flushing and Ghent) region.

“Variation” means:

- (a) any addition, deletion or change to the Operator’s obligations under this Agreement, including, without limitation;
 - (i) a variation to the Routes;
 - (ii) the omission of one or more Routes (other than where such Routes are Failed Routes) and/or the addition of one or more Routes to the extent permitted by Legal Requirements;
 - (iii) variations associated with the replacement of Authority Network Assets;
 - (iv) variations associated with the modification, installation and operation of equipment on, or refurbishment to, Authority Network Buses;
 - (v) a variation to the Service Specification;
 - (vi) a variation to the Authority Network Bus specification;
 - (vii) the provision of customer information; or
 - (viii) to the extent not contemplated by this Agreement, a variation required in connection with the implementation of measures contemplated by clause 7.5 (*Integration obligations*);
- (b) to the extent not contemplated by the foregoing, any changes contemplated by clauses 29.2(b) and 29.2(c) (*Changes to Services*); and
- (c) any Deemed Variation.

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

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

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

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

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

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

2. INTERPRETATION

2.1 References

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

- (a) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- (b) all references to clauses and Schedules are references to clauses of and Schedules to this Agreement and all references to Parts, sections, paragraphs, Annexes or Appendices are references to Parts, sections and paragraphs contained in and Annexes and Appendices to the Schedules;
- (c) the Schedules to this Agreement (including any Annexes or Appendices thereto) are an integral part of this Agreement and reference to this Agreement includes reference thereto and reference to any Schedule includes reference to any Annex or Appendix thereto;
- (d) all references to any agreement (including, without limitation, this Agreement), document or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document or other instrument) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned;
- (e) all references to any statute or statutory provision (including any subordinate legislation) shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include, without limitation, any statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, rule of court, instrument or delegated or other subordinate legislation made under the relevant statute;
- (f) all references to time of day shall be a reference to whatever time of day shall be in force in the State;
- (g) any reference to “**requirements**” or “**obligations**” shall be to such requirements or obligations as may be subsequently altered or supplemented in accordance with the terms of this Agreement;
- (h) the words “**herein**”, “**hereto**” and “**hereunder**” refer to this Agreement as a whole and not to the particular clause, Schedule, Part, section, paragraph, Annex or Appendix in which such word may be used;
- (i) words importing the singular include the plural and vice versa;
- (j) words importing a particular gender include all genders;
- (k) “**person**” includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association;
- (l) any reference to a public organisation or representative shall be deemed to include a reference to any successor to such public organisation or representative or any

organisation or entity or representative which has taken over the functions or responsibilities of such public organisation or representative;

- (m) references to “**Parties**” mean the parties to this Agreement and references to a “**Party**” mean one of the parties to this Agreement;
- (n) all monetary amounts are expressed in Euro;
- (o) any references to the Authority shall be deemed to include a reference to the Authority’s advisers, consultants, servants, sub-contractors and/or agents;
- (p) any references to the Operator shall be deemed to include a reference to the Operator’s Representative, the Operator’s advisers, consultants, servants, sub-contractors and/or agents;
- (q) wherever this Agreement obliges a Party to pay any amount to the other Party in respect of any Loss, Claim or other sums incurred by the other Party:
 - (i) such obligation shall be construed as applying only to so much of such sums as have been properly incurred on an arm’s length commercial basis or, where not incurred on an arm’s length commercial basis, so much of them as are proper and reasonable; and
 - (ii) the other Party shall, where requested by the other Party, provide supporting evidence of such Loss, Claim or other sums;
- (r) the Authority shall not be imputed with knowledge of any fact, matter or thing merely because that fact, matter or thing is within the knowledge of the State’s servants or agents;
- (s) references to “**damage**” includes damage of whatever nature, whether caused by the act or omission of the Operator or otherwise arising;
- (t) any reference to the statutory duties or functions of the Authority shall be a reference to such duties or functions (including powers and discretions) from time to time and shall include any common law duties and functions (including powers and discretions);
- (u) if the result of any calculation to be rounded up or down to a multiple of a specified figure (after deducting the next lower multiple of the specified figure) is exactly half that specified figure (for example, where amounts are to be rounded up or down to the nearest ten (10), the calculation gives a five (5)), then such result shall be rounded up to the nearest multiple of the specified figure;
- (v) any calculation shall be rounded up or down to three (3) decimal places, or, in the case of monetary amounts, to two (2) decimal places;
- (w) any reference to “**day**” shall, unless otherwise stated, mean the period of time which begins with one midnight and ends with the next;
- (x) where the context requires, any reference in this Agreement:
 - (i) to “**approval**” shall include “**Approval**”;

- (ii) to “**certificate**” shall include “**Certificate**”; and
- (iii) to “**notice**” shall include “**Notice**”;
- (y) any Approval shall be at the absolute discretion of the Authority, as applicable, except where expressly stated otherwise in this Agreement; and
- (z) words preceding “**include**”, “**includes**”, “**including**” and “**included**” shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as *ejusdem generis* shall not apply.

2.2 Ambiguities

In the case of any ambiguity or discrepancy:

- (a) between the provisions in this Agreement (excluding for this purpose, the Schedules) and the provisions of any Schedule, the provisions of this Agreement (excluding for this purpose, the Schedules) shall prevail; or
- (b) between the provisions of particular Schedules, the interpretation which provides the safest and most conservative result, the highest standard of work or service or the latest standard or procedure, as determined by the Authority (acting reasonably), shall prevail; or
- (c) between the provisions of Schedule 33 (*Tender Proposals*) and the other provisions of this Agreement (including the other Schedules), the other provisions of this Agreement shall prevail except to the extent that the application of Schedule 33 (*Tender Proposals*) will, in the opinion of the Authority, give rise to a higher standard of service than that contemplated by this Agreement (including the other Schedules), in which case, the provisions of Schedule 33 (*Tender 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 the Authority (acting reasonably).

2.3 Technical Terms

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

PART 2 – EFFECTIVENESS AND DURATION**3. EFFECTIVENESS OF THIS AGREEMENT****3.1 Commencement of clauses**

- (a) This Agreement shall take effect in accordance with clause 3.1(b) and clause 3.1(c).
- (b) The following clauses shall have effect as of Commencement Date:
 - (i) Clause 1 (*Definitions*);
 - (ii) Clause 2 (*Interpretation*);
 - (iii) Clause 3 (*Effectiveness of this Agreement*);
 - (iv) Clause 4 (*Duration*);
 - (v) Clause 5 (*Warranties*);
 - (vi) Clause 6 (*Disclaimers*);
 - (vii) Clause 7 (*Operator Undertakings*);
 - (viii) Clause 8 (*Intellectual Property*);
 - (ix) Clause 9 (*Transition*);
 - (x) Clause 10 (*Network Licence*);
 - (xi) Clause 11 (*Operations Management*) (to the extent relating to paragraphs 5.1 to 5.4 of Schedule 5 (*Operations Management*));
 - (xii) Clause 12 (*Defects in and Damage to Network Assets*);
 - (xiii) Clause 13 (*Operations and Maintenance*);
 - (xiv) Clause 14 (*Environmental Management*);
 - (xv) Clause 15 (*Safety Management*);
 - (xvi) Clause 18 (*Advertising*);
 - (xvii) Clause 21 (*Relationships*);
 - (xviii) Clause 22 (*Quality Management*);
 - (xix) Clause 23 (*Consents and Approvals*);
 - (xx) Clause 24 (*Consents to Operate*);
 - (xxi) Clause 25 (*Information and Access*);
 - (xxii) Clause 26 (*Records and Reporting Requirements*);

- (xxiii) Clause 27 (*Operator Services*);
- (xxiv) Clause 28 (*Network Infrastructure*);
- (xxv) Clause 29 (*Variations*);
- (xxvi) Clause 30 (*Change of Law*);
- (xxvii) Clause 31 (*Payment*);
- (xxviii) Clause 32 (*Payment Process*);
- (xxix) Clause 33 (*Rates, Taxes and Charges*);
- (xxx) Clause 37 (*Indemnities*);
- (xxxi) Clause 38 (*Insurance*);
- (xxxii) Clause 39 (*Limitation on Liability*);
- (xxxiii) Clause 40 (*Force Majeure*);
- (xxxiv) Clause 41 (*Relief Events*);
- (xxxv) Clause 44 (*Termination*);
- (xxxvi) Clause 45 (*Consequences of Termination*);
- (xxxvii) Clause 46 (*Competitive Tendering*);
- (xxxviii) Clause 47 (*Employment Issues*);
- (xxxix) Clause 48 (*Assignment*);
- (xl) Clause 49 (*Sub-Contracting*);
- (xli) Clause 50 (*Disputes Resolution Procedure*);
- (xlii) Clause 51 (*Set-off*);
- (xliii) Clause 52 (*Notices*);
- (xliv) Clause 53 (*Announcements*);
- (xlv) Clause 54 (*Confidentiality*);
- (xlvi) Clause 55 (*Agency*);
- (xlvii) Clause 56 (*Whole Agreement*);
- (xlviii) Clause 57 (*Severability*);
- (xlix) Clause 58 (*Waiver*);

- (l) Clause 59 (*Amendments*);
 - (li) Clause 60 (*Corrupt Gifts*);
 - (lii) Clause 61 (*Counterparts*); and
 - (liii) Clause 62 (*Governing Law and Jurisdiction*).
- (c) The following clauses shall have effect as of the Operator Property Date:
 - (i) Clause 11 (*Operations Management*) (to the extent not referred to in Clause 3.1(b) above)
 - (ii) Clause 14 (*Environmental Management*); and
 - (iii) Clause 18 (*Advertising*).
- (d) The entire of this Agreement shall have effect on the Initial Operating Commencement Date.

3.2 Required Documents – Commencement Date

On or before the Commencement Date, the Operator shall have:

- (a) provided to the Authority each of the Required Documents which are required as of the Commencement Date; and
- (b) satisfied each of the conditions referred to in Part 1 of Schedule 31 (*Conditions Precedent*),

in form and substance satisfactory to the Authority.

3.3 Required Documents – Initial Operating Commencement Date

The Initial Operating Commencement Date shall not occur unless:

- (a) the Operator Property Date has occurred.
- (b) the Authority has received each of the Required Documents which are required as of the Initial Operating Commencement Date; and
- (c) the Operator has satisfied each of the conditions referred to in Part 2 of Schedule 31 (*Conditions Precedent*),

in form and substance satisfactory to the Authority.

3.4 Required Documents – Operating Commencement Date

The Operating Commencement Date shall not occur unless:

- (a) the Authority has received each of the Required Documents which are required as of the Operating Commencement Date; and

- (b) the Operator has satisfied each of the conditions referred to in Part 3 of Schedule 31 (*Conditions Precedent*),

in form and substance satisfactory to the Authority.

3.5 Waiver

The conditions specified in clauses 3.2 (*Required Documents – Commencement Date*), 3.3 (*Required Documents – Initial Operating Commencement Date*) and 3.4 (*Required Documents – Operating Commencement Date*) may be waived or deferred in whole or in part and with or without conditions by the Authority in its absolute discretion.

4. DURATION

4.1 Contract Period

This Agreement shall remain in effect for the Contract Period.

4.2 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, the Authority shall have the option, on giving written notice to the Operator, to extend the then Expiry Date by a period of twelve (12) months.
- (b) Upon the Authority exercising its rights under clause 4.2(a), all references in this Agreement to “**Expiry Date**” shall be construed as referring to the date contemplated by paragraph (b) of its definition.

4.3 Further Contract Period Extension

- (a) In the event that the Authority exercises the option to extend the Contract Period in accordance with clause 4.2 (*Contract Period Extension*), the Authority shall, on or before the date falling three (3) months prior to the occurrence of the then Expiry Date (as to be construed in accordance with clause 4.2 (*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 by a period of twelve (12) months.
- (b) Upon the Authority exercising its rights under clause 4.3(a), all references in this Agreement to “**Expiry Date**” shall be construed as referring to the date contemplated by paragraph (c) of its definition.

PART 3 – WARRANTIES, DISCLAIMERS AND PROJECT UNDERTAKINGS**5. WARRANTIES****5.1 Reliance**

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

5.2 General

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

- (a) the Operator is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and it has the power and authority to own its assets and to conduct the business and to provide the Services which it conducts or proposes to conduct;
- (b) the Operator has full power and authority:
 - (i) to execute and deliver 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 the Project Documents to which it is a party;
- (c) the Operator has taken all necessary action to authorise the execution and delivery of 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 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 Operator Parent Company is a party or which is binding on the Operator Parent Company or any of its property or assets;
- (e) 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 the Authority by or on behalf of the Operator, no action, suit, proceeding, litigation or dispute against the Operator or the Operator Parent Company 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 Operator Parent Company or before any court, arbitrator or other body which, in any case, would be reasonably likely (in the reasonable opinion of the Operator or the Operator Parent Company, as the case may be) to result in any material adverse change in the business or condition (financial or otherwise) of the Operator and/or to materially adversely affect its ability to perform its obligations under this Agreement or the Project Documents to which it is a party;

- (g) except to the extent previously disclosed to the Authority by the Operator, there has been no material adverse change in the financial condition of either the Operator or the Operator Parent Company, since the date of its latest audited consolidated accounts that would have a material adverse effect on the Operator's ability to perform its obligations under this Agreement;
- (h) having made all due and reasonable enquiries in respect of information sourced from a third party other than any member of its Group, all written information furnished by or on behalf of the Operator in connection with this Agreement or delivered by or on behalf of the Operator to the Authority pursuant to this Agreement was true and accurate in all material respects when given and continues to be true and accurate in all material respects to the extent not subsequently superseded by further written information furnished by or on behalf of the Operator; and
- (i) the Operator or the Operator Parent Company is not aware of any material facts or circumstances that have not been disclosed to the Authority 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 Agreement with the Operator. For the purpose of this clause 5.2(i), the knowledge and awareness of the Operator or the Operator Parent Company, as the case may be, shall be limited to that of its officers and employees with responsibilities for the Services.

6. DISCLAIMERS

6.1 Disclosed Data

The Operator acknowledges that the Authority and its advisers, consultants, servants, contractors and/or agents have made the Disclosed Data available to the Operator prior to the Commencement Date.

6.2 Deficiencies in Disclosed Data

The Authority, its 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 the Authority or its 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.

6.3 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, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance;

- (b) it is satisfied that the Services are capable of being performed in accordance with this Agreement;
- (c) it has:
 - (i) inspected and examined to its satisfaction, and is satisfied in relation to, the Routes;
 - (ii) satisfied itself as to the suitability of the Authority Network Assets for the purposes of performing the Services;
 - (iii) satisfied itself as to the suitability of the materials and design of the Authority Network Assets for the purposes of performing the Services; and
 - (iv) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may affect its use of the Authority Network Assets and performance by it of its obligations in accordance with this Agreement;
- (d) as of the delivery of each Authority Network Asset to it, it has inspected, and is satisfied with the condition of, each such Authority Network Asset;
- (e) no term, condition, warranty or representation of any kind whatsoever (express or implied) is, will be or has been given by or on behalf of the Authority in respect of the Authority Network Assets;
- (f) the Authority shall make the Authority Network Assets available to the Operator on an as-is and where-is basis;
- (g) all terms, conditions, warranties and representations (express or implied and whether statutory, collateral hereto or otherwise) relating to the Authority Network Assets, 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;
- (h) it shall not be entitled to make any Claim against the Authority or its respective advisers, consultants, servants, contractors and/or agents whether in damages or for extensions of time or additional payments under this Agreement on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or clause 6.3(a) above or on the grounds that incorrect or insufficient information relating thereto or to the Authority Network Assets or the Services was given to it by any person, whether or not in the employ of the Authority or its advisers, consultants, servants, contractors and/or agents; and
- (i) it shall not be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on any grounds contemplated by this clause 6.3 (*Operator Acknowledgement*),

provided that the acknowledgement and confirmation given in this clause 6.3 (*Operator Acknowledgement*) shall not constitute grounds for bringing an action against the Operator by the Authority, or give rise to a right of termination on the part of the Authority, but the Authority may rely on such acknowledgement and confirmation for the purpose of defending or contesting any action brought against it or Claim made by the Operator.

7. OPERATOR UNDERTAKINGS

7.1 Operator Obligations

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

7.2 Standard of Performance

- (a) The Operator shall perform and shall procure that the Services are at all times performed:
 - (i) in an efficient, effective and safe manner and in accordance with Good Industry Practice (except where a lesser specification or standard of performance is expressly required under this Agreement);
 - (ii) in accordance with accepted professional standards, codes of practice and regulations applicable in the State which are consistent with Good Industry Practice;
 - (iii) in a manner that is not likely to be injurious to health or to cause damage to property;
 - (iv) by appropriately experienced, qualified and trained personnel; and
 - (v) in such manner as would not be likely to significantly damage the reputation of the Authority.
- (b) Without prejudice to the generality of clause 7.2(a), the Operator agrees and acknowledges that, at all times during the Contract Period:
 - (i) each Network Bus shall satisfy the requirements of Schedule 3 (*Network Bus Specification*);
 - (ii) each Network Bus shall be operated in accordance with Schedule 11 (*Operation and Maintenance of Network Assets*); and

- (iii) the Services shall be provided to satisfy, and in compliance with, the requirements of Schedule 2 (*Service Specification*).

7.3 General Obligations

- (a) Without limitation to clause 7.2 (*Standard of Performance*), the Operator shall, at all times:
 - (i) assist and facilitate the Authority in carrying out, and shall take all reasonable steps necessary to support and facilitate the Authority in complying with its duties under any Legal Requirements (insofar as the duties relate to the operation of the Network and the provision of the Services); and
 - (ii) perform the Services so as to:
 - (A) facilitate the proper performance by the Authority of its obligations under the 2008 Act insofar as it relates to the provision of the Services;
 - (B) ensure that it shall not hinder or prevent the Authority from enjoying its property rights in relation to the Network, Network Assets or Fares Revenue, or exercising its rights and powers under the 2008 Act; and
 - (C) ensure that it shall not carry out or permit any act or omission which would put the Authority in breach of its obligations under the 2008 Act or any other Legal Requirement.
- (b) The Operator, at all times, shall comply with the requirements of the Authority (acting reasonably and insofar as relates to the subject matter of this Agreement) provided they are notified to the Operator and any Legal Requirements.
- (c) The Operator shall:
 - (i) procure that all approvals, consents and licences required by it in connection with the entry into, performance, validity and enforceability of this Agreement (or any obligations contemplated herein or therein) will be obtained in a timely manner, including, all approvals, consents and licences required under the Data Protection Acts to provide information, documents and records to the Authority in connection with the performance of its obligations under this Agreement;
 - (ii) procure that to the extent within its control all consents and licences remain in full force and effect and it shall comply, and shall procure compliance, with the terms and requirements of each of the consents and licences;
 - (iii) obtain all Consents to Operate; and
 - (iv) fulfil any conditions in such Consents to Operate so that the Services may be provided.
- (d) The Operator shall procure that 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, as far as the Operator is

aware (having made all due enquiry), will be asserted with respect to taxes which has not been disclosed to the Authority (except where the Operator is reclaiming VAT).

7.4 Network Buses

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

7.5 Integration obligations

- (a) The Operator, in providing the Services, shall integrate its Services with other public passenger transport services being provided in the Greater Dublin Area.
 - (b) Without prejudice to clause 7.5(a), the Operator shall:
 - (i) participate in and comply with any measures being undertaken or specified by the Authority pursuant to Chapter 3 of Part 3 of the 2008 Act;
 - (ii) support and participate in, using all skill, due care and diligence, the development and operation of:
 - (A) a real time passenger information system,
 - (B) a journey planner; and
 - (C) any other project related to the foregoing,
- in each case, being undertaken or promoted by the Authority and shall comply with the requirements of the Authority in connection with the foregoing; and

- (iii) if required by the Authority, co-operate in the development of a single public transport brand and comply with the requirements of the Authority in connection with the use of such public transport brand.

7.6 Integrated ticketing arrangements

- (a) The Authority and the Operator acknowledge that the Operator shall participate in, and provide all reasonable assistance to the Authority in its participation in, the Integrated Ticketing Scheme to the extent relating to the Services.
- (b) The Operator:
 - (i) shall not operate a smart card system, other than the Authority's smart card system, for the discharge of fares; and
 - (ii) shall comply with Schedule 8 (*Ticketing and Fares Collection*) and with the Integrated Ticketing Scheme.
- (c) The Operator shall participate in any review of the Integrated Ticketing Scheme being undertaken by the Authority.

7.7 Implementation

- (a) The Operator shall prepare, submit for Approval, revise, update and comply with the Implementation Plan required under, and in accordance with, Clause 9 (*Transition*) and Schedule 4 (*Implementation Stage*).
- (b) The Operator shall comply with Schedule 24 (*Implementation Date for Certain Aspects of this Agreement*).

7.8 Negative Pledge

The Operator hereby undertakes to the Authority that it shall not (without the prior Approval of the Authority):

- (a) create, nor permit to subsist, any Encumbrance on or over; or
- (b) transfer or otherwise dispose of any right, title, benefit or interest in,

any Authority Network Asset, the Operator Site, the Operator Lease or, in any case, any part thereof.

7.9 Data Protection

- (a) The Operator and the Authority acknowledge and agree that the Authority is a data controller in respect of all personal data processed by the Operator on behalf of the Authority in the performance of the Services, including all Network Data which constitutes personal data, all personal data relating to users of the Ticketing System, passengers on the Network and any individuals whose personal data may be recorded by any CCTV system operated by the Operator under or in connection with this Agreement.

- (b) To the extent that the provision of the Services by the Operator involves the processing of personal data (as defined in the Data Protection Acts) by the Operator on behalf of the Authority, the Operator agrees that:
- (i) it shall process such personal data in accordance with the instructions of the Authority and the terms of this Agreement;
 - (ii) it shall implement and maintain such security measures as are required to comply with the data security obligations of the Data Protection Acts;
 - (iii) the Authority (or its authorised representative(s)), acting reasonably, shall be entitled, at reasonable times and on reasonable notice, to audit the security measures adopted by the Operator to ensure that such measures comply with the data security obligations of the Data Protection Acts;
 - (iv) it shall report any incident which gives rise to a risk of unauthorised disclosure, loss, destruction or alteration of such personal data to the Authority immediately upon becoming aware of such an incident and shall provide the Authority with such co-operation and assistance as may be reasonably required to mitigate against the effect of the security incident;
 - (v) it shall inform the Authority promptly in the event of receiving a data subject access request in relation to any such personal data and shall provide all such co-operation and assistance as may be required to enable the Authority to deal with any subject access request in accordance with the Data Protection Acts;
 - (vi) it shall not transfer any such personal data outside the European Economic Area:
 - (A) without the prior written consent of the Authority; and
 - (B) without ensuring that such transfer complies with the Data Protection Acts; and
 - (vii) it shall at all times comply with the relevant provisions of the Data Protection Acts including any obligation to register as a data processor (as defined in the Data Protection Acts) with the Data Protection Commissioner.

7.10 Operator Site

If the Operator Site is leased by the Operator from a person other than an Associated Company, the Operator Site Lease shall be on terms:

- (a) which are normal, arm's length and commercial;
- (b) which allow assignment of such lease to the Authority without consent being required from the lessor upon the expiry or termination of this Agreement, to the extent the Operator Site Lease expires after the expiry of the Contract Period;
- (c) which permit the Authority, after any assignment to it, to terminate such Operator Site Lease on notice,
 - (i) at intervals of seven (7) years or at such other times as may be approved by the Authority; and

- (ii) on payment of a premium approved by the Authority;
- (d) which permit the Authority to enter into a sublease, or grant a licence to use, in respect of the Operator Site; and
- (e) which otherwise have been approved by the Authority.

7.11 Supporting Documents

- (a) The Operator shall provide:
 - (i) the Parent Company Guarantee from the Operator Parent Company;
 - (ii) the Resource Availability Agreement from the Supporting Entities;
 - (iii) the Performance Bond from the Acceptable Entity,in each case, which satisfies the requirements of this Agreement.
- (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 Parent Company Guarantee and the Resource Availability Agreement, until the day after all obligations of the Operator under the Project Documents to the Authority 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 Expiry Date.
- (c) Without prejudice to clause 7.11(b), the Performance Bond shall be for an amount not less than (€ [REDACTED])

8. INTELLECTUAL PROPERTY

8.1 Licence

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

8.2 Operator's obligations

- (a) Subject to clause 8.2(b), the Operator shall ensure that all Intellectual Property Rights in Network Data acquired, created or brought into existence in any manner whatsoever by or on behalf of the Operator or a Sub-Contractor for the purposes of the Services are vested in the Authority, at no cost to the Authority, and to give effect to this, the Operator hereby assigns to the Authority absolutely, including by way of present assignment of future rights, its entire right, title and interest in and to all Intellectual Property Rights in Network Data free from all encumbrances, for the full terms thereof throughout the world, including, all statutory and common law rights attaching to the Intellectual Property Rights and the right to bring, make oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement or any other cause of action arising from ownership of the Intellectual Property Rights whether occurring before, on or after the date of this Agreement.

- (b) In the case of software generally available in the market the Operator shall use all reasonable endeavours to ensure that the Authority is granted a non-exclusive, transferable, royalty-free perpetual licence in such Intellectual Property Rights and the Authority shall assume the obligation to discharge all fees, charges and expenses of any third party supplier in connection with the acquisition and use by the Authority of such Intellectual Property Rights.
- (c) The Authority shall act reasonably in relation to the Operator's ability to comply with its obligations under clause 8.2(b).

8.3 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 8 (*Intellectual Property*).

8.4 Authority IPR

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

8.5 Operator IPR

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

or unauthorised use is caused by the Operator using Intellectual Property Rights in accordance with the terms of this Agreement.

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

PART 4 - TRANSITION

9. TRANSITION

9.1 Implementation Plan

- (a) Within ten (10) Business Days of the Commencement Date, the Operator shall prepare and submit for Approval by the Authority a detailed implementation plan in accordance with, and satisfying the requirements of, Schedule 4 (*Implementation Stage*) (the “**Implementation Plan**”) setting out the Operator’s proposals in connection with the transfer of responsibility for the Services to the Operator.
- (b) The Implementation Plan shall be such so that the Operator shall provide the Services by the latest from:
 - (i) in the case of the Initial Routes, the Scheduled Initial Operating Commencement Date; and
 - (ii) in the case of all Routes, the Scheduled Operating Commencement Date.
- (c) Any variations to the Implementation Plan Approved by the Authority shall be made in accordance with clause 29 (*Variations*).

9.2 Implementation Programme

- (a) Within ten (10) Business Days of the Commencement Date, the Operator shall prepare and submit for Approval by the Authority a programme setting out the timetable by which the Operator shall effect the transfer of responsibility for the Services in accordance with the Implementation Plan (the “**Implementation Programme**”).
- (b) The Implementation Programme shall be in accordance with Good Industry Practice and shall specify in sufficient detail the different work streams and timelines required in connection with the Implementation Plan and to satisfy the requirements of Schedule 4 (*Implementation Stage*).

9.3 Approval of Implementation Plan and Implementation Programme

- (a) The Authority shall review the draft Implementation Plan and Implementation Programme and shall provide comments (if any) to the Operator within twenty (20) Business Days of its receipt of the drafts.
- (b) The Operator shall incorporate such comments in the Implementation Plan and/or the Implementation Programme and shall resubmit the Implementation Plan and the Implementation Programme for Approval within ten (10) Business Days of its receipt of the Authority’s comments.
- (c) The Authority shall not unreasonably withhold or delay its Approval of the Implementation Plan or the Implementation Programme. For the avoidance of doubt it shall be reasonable for the Authority to withhold Approval in the event that the Implementation Plan provides a lower level of service than that proposed in the implementation plan proposed in the Operator’s tender.

- (d) Following approval by the Authority of the Implementation Plan, no change may be made to it without consulting with, and obtaining the prior written consent of, the Authority, such Approval not to be unreasonably withheld.

9.4 Implementation Stage Obligations

The Operator shall establish and operate a programme and project management structure to ensure that its obligations under this Agreement during the Implementation Stage proceed in accordance with the Implementation Plan and the Implementation Programme.

9.5 Variations to the Implementation Programme

Should it appear to the Authority's Representative or the Operator at any time that the actual or likely progress of the Implementation Plan does not or will not conform with the Implementation Programme in any material respect then, within twenty (20) Business Days of being so required by the Authority's Representative or (if earlier) becoming aware of the same, the Operator shall:

- (a) submit to the Authority's Representative a report identifying the reasons for such non-conformity; and
- (b) at the same time as submitting the report in accordance with clause 9.5(a) submit to the Authority's Representative, a revised Implementation Programme which shall provide for the Implementation Plan to be pursued diligently in such manner as to enable the Operator to provide the Services:
 - (i) on the Initial Routes from the Scheduled Initial Operating Commencement Date; and
 - (ii) on all Routes from the Scheduled Operating Commencement Date.

9.6 General Obligations

Except to the extent otherwise agreed with the Authority, the Implementation Plan shall be carried out:

- (a) so as to comply with Schedule 4 (*Implementation Stage*);
- (b) without disruption to, or affecting the provision of public bus passenger services by the Prior Operator on:
 - (i) the Initial Routes up to the Initial Operating Commencement Date; and
 - (ii) the Routes (other than the Initial Routes) up to the Operating Commencement Date; and
- (c) otherwise in accordance with this Agreement.

9.7 Delays to Operator Property Date

If the Operator Property Date does not occur on or prior to the Scheduled Operator Property Date, the Operator shall pay to the Authority by way of liquidated damages an amount equal to (€[REDACTED]) for each day that such failure continues after the Scheduled Operator Property Date.

9.8 Delays to Initial Operating Commencement Date

- (a) If the Operator fails, for whatever reason, to commence carrying fare paying passengers on one or more Initial Routes by the Scheduled Initial Operating Commencement Date, the Operator shall pay to the Authority by way of liquidated damages an amount equal to product of (a) (€[REDACTED]) and (b) the Outstanding Route Kilometres for each day that such failure continues after the Scheduled Initial Operating Commencement Date until and including the earlier of:
 - (i) the date upon which the Operator commences carrying fare paying passengers on all such Initial Route(s); and
 - (ii) the Scheduled Operating Commencement Date.
- (b) If the Operator has not commenced carrying fare paying passengers on any Initial Route by the Scheduled Initial Operating Commencement Date, the Authority may by giving notice in writing to the Operator identifying the Routes in respect of which the Operator has failed to commence carrying fare paying passengers by the Scheduled Initial Operating Commencement Date (the “**Failed Initial Routes**”), in which case, subject always to the provisions of clause 3.5 (*Waiver*):
 - (i) the Initial Operating Commencement Date is deemed to have occurred (other than in respect of the Failed Initial Routes) as of the date of receipt of such notice by the Operator; and
 - (ii) the Operator shall take all steps open to it to commence carrying fare paying passengers on the Failed Initial Routes as soon as is possible after the Scheduled Initial Operating Commencement Date.
- (c) As of each day the Operator commences carrying fare paying passengers on a Failed Initial Route such Initial Route shall cease to be regarded as a Failed Initial Route, and be regarded as an “Initial Route” for the purposes of this Agreement.

9.9 Delays to Operating Commencement Date

Subject to clause 41 (*Relief Events*) and clause 42 (*Compensation Event*):

- (a) If the Operator fails, for whatever reason, to commence carrying fare paying passengers on any Route by the Scheduled Operating Commencement Date, the Operator shall pay to the Authority by way of liquidated damages, for each day that such failure continues after the Scheduled Operating Commencement Date until the date upon which the Operator commences carrying fare paying passengers on such Route, an amount equal to the product of:
 - (i) (€[REDACTED]); and
 - (ii) the Outstanding Route Kilometres.
- (b) If the Operator has not commenced carrying fare paying passengers on any Route by the Final Longstop Date, the Authority may by giving notice in writing to the Operator identify the Routes in respect of which the Operator has failed to commence carrying fare paying passengers by the Final Longstop Date (the “**Failed Routes**”), in which case:

- (i) subject always to the provisions of clause 3.5 (*Waiver*):
 - (A) the Operating Commencement Date is deemed to have occurred (other than in respect of the Failed Routes) as of the date of receipt of such notice by the Operator; and
 - (B) the Operator is relieved of any rights, entitlements, obligations and liabilities it may have (including in respect of any payment by the Authority), whether arising under, or in connection with, this Agreement or otherwise, in respect of such Failed Routes; or
- (ii) the Authority may terminate this Agreement immediately by giving notice in writing to the Operator if the Operator has not commenced carrying fare paying passengers on seventy five percent (75%) of the Scheduled Service Kilometrage of the Routes.

9.10 Operator unable to achieve Operating Commencement Date

Subject to clause 41 (*Relief Events*) and clause 42 (*Compensation Event*) if, having used all reasonable endeavours and, through no fault of its own, the Operator has demonstrated to the Authority that:

- (a) it has used all reasonable endeavours to commence carrying fare paying passengers on a Route (a "**Final Failed Route**") by the Final Longstop Date;
- (b) through no fault of the Operator, it is unable to commence carrying fare paying passengers on such Final Failed Route by the Final Longstop Date; and
- (c) it has commenced carrying fare paying passengers on seventy five percent (75%) of the Scheduled Service Kilometrage of the Routes by the Final Longstop Date,

the Authority may decide (in its absolute discretion) to extend the Final Longstop Date in respect of the Final Failed Routes by one (1) or more months up to a total of four (4) months, in which case, the Operating Commencement Date is deemed to have occurred (other than in respect of the Final Failed Routes) as of the date the Operator is notified of the decision of the Authority.

PART 5 – OPERATION AND MAINTENANCE

10. NETWORK LICENCE

10.1 Network Licence

- (a) For the purposes of the Operator providing the Services and otherwise complying with its obligations and exercising its rights pursuant to this Agreement, the Authority hereby grants a licence to the Operator to have access to and to use the Authority Network Assets in accordance with this Agreement.
- (b) The Network Licence shall commence, in the case of each Authority Network Asset, on the delivery of such Authority Network Asset to the Operator and shall end on the Expiry Date.
- (c) The Operator shall be entitled to grant a sub-licence, in terms no better than those granted under the Network Licence, to have access to and/or to use the Authority Network Assets to the Operator's servants, agents, employees and Sub-Contractors and any other person whom the Operator reasonably requires to allow to have access to and/or to use the Authority Network Assets in order to provide the Services and otherwise to perform or facilitate the performance of the obligations and exercise or facilitate the exercise of the rights of the Operator pursuant to this Agreement, provided that the Operator shall not otherwise be entitled to or be required to assign, sublet, part with possession or otherwise deal with the Authority Network Assets other than in accordance with this Agreement.
- (d) The Operator shall be liable to the Authority for all acts and omissions of any of its sub-licensees in breach of the Network Licence.
- (e) The Network Licence is granted to the Operator for the sole purpose of enabling the Operator to meet its obligations under this Agreement. Neither the Network Licence nor the provision of access to the Authority Network Assets by the Authority to the Operator shall be a demise of the Authority Network Assets or any part of them, nor shall the Operator be entitled to any estate, right or interest in the Authority Network Assets or any part of them, and the Operator and those authorised by it shall have access to the Authority Network Assets as licensees of the Authority only.
- (f) The Network Licence shall immediately terminate upon the occurrence of the Expiry Date.

10.2 Right to Suspend Network Licence

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

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

- (c) an Event of Default has occurred and is continuing,
(each a “**Suspension Event**”).

10.3 Contents of Suspension Notice

A Suspension Notice shall specify:

- (a) the nature of the relevant Suspension Event;
- (b) the date and time at which suspension is to take effect;
- (c) any reasonable restrictions imposed by Authority on the Operator’s rights to use the Authority Network Assets (or any of them) while the Suspension Notice is in force, including restrictions on the Operator’s provision of the Services on any particular Route;
- (d) in respect of a Suspension Notice pursuant to clauses 10.2(b) or 10.2(c) (*Right to Suspend Network Licence*), whether the Authority reasonably considers that such Suspension Event is capable of remedy, and where the Suspension Event is capable of remedy:
 - (i) to the extent that the Authority has an opinion on how such should be remedied, the steps reasonably required to remedy the Suspension Event; and
 - (ii) a reasonable grace period for the Operator to remedy it.

10.4 Effect of Suspension Notice

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

- (a) the Operator shall comply with any restrictions and the other requirements imposed on it by the Suspension Notice;
- (b) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Authority to the Operator under clause 10.6(c) (*Revocation of Suspension*).
- (c) in respect of a Suspension Notice pursuant to clause 10.2(a) (*Right to Suspend Network Licence*), the Authority and the Operator shall use all reasonable endeavours to agree any matters consequent on the works or maintenance or repair or renewal or replacement of the Authority Network Assets (or any of them) by the Authority.

10.5 Suspension to be Proportionate

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

- (ii) keep the Authority fully informed of the progress which is being made in remedying the Suspension Event.

10.6 Revocation of Suspension

- (a) With respect to a Suspension Notice served under clause 10.2(a) (*Right to Suspend Network Licence*) on completion of the works, maintenance or repairs or renewal or replacement the subject of that Suspension Notice (whether in whole or in part), provided it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the Authority shall revoke the suspension to that extent in accordance with this clause 10.6.
- (b) Where the Operator has complied with its obligations under clause 10.5(b) (*Suspension to be Proportionate*) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the Authority shall revoke the suspension to that extent in accordance with this clause 10.6.
- (c) The Authority shall effect the revocation of a suspension as soon as practicable after cessation of the Suspension Event to its satisfaction (whether in whole or in part) by written notice from the Authority to the Operator specifying the extent of the revocation and the date on which it is to have effect.

11. OPERATIONS MANAGEMENT

11.1 General Obligations

- (a) The Operator shall comply with the requirements of Schedule 5 (*Operations Management*), including in relation to:
 - (i) procuring such water, sewerage disposal, communications, electricity, gas and any other utility services as the Operator may require;
 - (ii) co-operating with An Garda Síochána, the Dublin Fire Brigade, the relevant Fire Services and the Fire Brigades in each of the counties in which the Services (or any part thereof) are provided and Relevant Authorities;
 - (iii) ensuring that any Control Room is manned in accordance with Schedule 13 (*Customer Care*);
 - (iv) attending meetings with Relevant Authorities in connection with the provision of Services in relation to other road users; and
 - (v) maintaining a schedule of all Public Events relevant to the Network.
- (b) The Operator shall comply with the requirements of Schedule 12 (*Management of Security*).
- (c) The Operator shall comply with the requirements of Schedule 18 (*Records and Reporting Requirements*) in relation to, among other reporting obligations, the plans to be prepared and implemented by the Operator.

11.2 Training of Staff

The Operator shall

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

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

11.3 Operating Plan

The Operator shall comply with the requirements of this Agreement and act in accordance with Good Industry Practice in relation to the preparation of an Operating Plan which is in accordance with and satisfies the requirements of Schedule 5 (*Operations Management*).

11.4 Policing, Emergency Exercises and Enquiries

The Operator shall:

- (a) comply with the requirements of Schedule 5 (*Operations Management*) and Schedule 12 (*Management of Security*) in relation to the security of the Network, the Network Buses, the Operator's staff and members of the public using the Network;
- (b) make arrangements with the appropriate members of An Garda Síochána as may be necessary in relation to their policing of the Network;
- (c) co-operate with the Authority and any other Relevant Authorities in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of special events, including Public Events; and
- (d) without prejudice to the generality of the foregoing, comply with the requirements of Schedule 5 (*Operations Management*) in relation to policing, emergency exercises and special inquiries or investigations that may affect the Network and/or the Services.

12. DEFECTS IN AND DAMAGE TO NETWORK ASSETS

12.1 Operator's General Obligations

The Operator shall:

- (a) bear all risk of loss, theft and damage (save for any loss, theft or damage directly caused by the Authority) to Network Assets from any cause whatsoever, except to the extent expressly contemplated otherwise by this Agreement;
- (b) be responsible for monitoring the performance of the Network Assets in performing the Services; and
- (c) comply with the provisions of Schedule 11 (*Operation and Maintenance of Network Assets*).

12.2 Defects and Damage to Network Assets

- (a) The Operator shall, from the date on which the Operator takes possession of the Network Assets, be responsible for identification, notification and, except to the extent expressly contemplated otherwise by this Agreement, rectification of defects in, and damage to, Network Assets including, where the defect or damage is not capable of rectification, replacement of such Network Assets.
- (b) On the occurrence of damage to a Network Asset which it is required to rectify, the Operator shall rectify such defects and damage with all due speed in accordance with Schedule 11 (*Operation and Maintenance of Network Assets*).

12.3 No Relief

Subject to clause 34.1 (*Reporting and monitoring*) and without prejudice to the Operator's obligations under clause 6 (*Operator Undertakings*), the Operator shall be liable pursuant to clause 34.1 (*Reporting and monitoring*) for any Performance Deduction arising as a consequence of damage to Network Assets or defects, unless relieved by the Authority in accordance with clause 41 (*Relief Events*) or to the extent contemplated by Schedule 19 (*Payment and Performance Deductions*).

13. OPERATIONS AND MAINTENANCE

13.1 Maintenance

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

13.2 General requirement

Without prejudice to clause 13.1 (*Maintenance*), the Operator shall use, operate, maintain and securely store each Network Asset in compliance with:

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

13.3 Disruption to Services

If, at any time, it appears to the Operator likely that any maintenance or repair works (including, for the avoidance of doubt, any work required under clause 12 (*Defects in and Damage to Network Assets*)) to be carried out to Network Assets will necessitate an interruption to, or restriction of, passenger services on the Network so as to result in passenger services on the Network not being provided in accordance with the Timetable, the Operator shall:

- (a) notify the Authority, as soon as is practicable in advance of the carrying out of such work, of:
 - (i) the nature of such work;
 - (ii) the likely effect of such works on passenger services; and

- (b) comply with the requirements of Schedule 5 (*Operations Management*) and Schedule 15 (*Marketing, Communications and Public Relations*) in relation to notification of passengers and provision of replacement bus services.

13.4 Maintenance Contracts

- (a) The Operator shall co-operate with, and shall facilitate, the contractors under the Maintenance Contracts in performing their respective obligations under such Maintenance Contracts.
- (b)
 - (i) If required by the Authority, the Operator shall enter into a Novation Agreement in respect of a Maintenance Contract.
 - (ii) Upon the entry into of the Novation Agreement in relation to a Maintenance Contract:
 - (A) the Operator shall perform its obligations under such Maintenance Contract, as supplemented by the Novation Agreement;
 - (B) the Operator shall procure the proper performance by the relevant maintenance contractor of its obligations under such Maintenance Contract, as supplemented by the Novation Agreement;
 - (iii) If the Operator has entered into a Novation Agreement in respect of a Maintenance Contract and without prejudice to clauses 45 (*Consequences of Termination*) or 46 (*Competitive Tendering*), upon termination (for whatever reason) or expiry of this Agreement, the Operator shall:
 - (A) undertake all steps necessary (including the execution of such documents as this may entail) to transfer its rights and obligations under such Maintenance Contract to the Authority or such Successor Operator as the Authority may specify; and
 - (B) indemnify the Authority and any Successor Operator and keep the Authority and any Successor Operator indemnified and held harmless against all Indemnified Liabilities in respect of the period from:
 - (1) the date the Novation Agreement takes effect in respect of the Maintenance Contract, to
 - (2) the date the Maintenance Contract is the subject of a subsequent novation agreement taking effect, arising as a consequence of, or in connection with, any breach of its obligations under:
 - (aa) this clause 13.4; and/or
 - (bb) the Novation Agreement; and/or
 - (cc) the Maintenance Contract.

14. ENVIRONMENTAL MANAGEMENT

14.1 General Environmental Management

The Operator shall:

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

14.2 Land Contamination

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

15. SAFETY MANAGEMENT

15.1 Safety Management

The Operator shall comply with the requirements of Schedule 6 (*Safety Management*) in relation to health and safety matters related to the performance of the Services.

15.2 Construction Regulations

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

PART 6 – PASSENGER 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 Schedule 2 (*Service Specification*), Schedule 13 (*Customer Care*), Schedule 14 (*Customer Information*) and Schedule 15 (*Communications and Public Relations*) in relation to the Timetable and the provision of information relating to the Services.

16.2 Customers' Charter

- (a) The Operator shall comply with the requirements of Schedule 13 (*Customer Care*).
- (b) The Operator shall provide the Services so that the requirements of the Customers' Charter are satisfied.

16.3 Authority Consent

The Operator shall not make any changes to:

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

without the Authority's prior consent in writing or, in the case of clause 16.3(a) or clause 16.3(c), to the extent permitted by Schedule 5 (*Operations Management*).

16.4 Contracts of Carriage

In performing the Services, the Operator is authorised to enter into contracts of carriage with passengers on the Routes provided that the terms and conditions of such contracts of carriage (and any subsequent changes thereto) shall:

- (a) be subject to the prior Approval of the Authority; and
- (b) comply with all applicable Legal Requirements (including any bye-laws relating to the Services).

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 the Authority from time to time to the Operator, subject to the Authority providing the Operator with reasonable prior notice in relation to changes to the tickets and the fare levels and consultation by the Authority with the Operator concerning any operational or administrative issues in relation to such changes;

- (b) provide such assistance to the Authority in establishing the design of tickets to be used on the Network as the Authority may reasonably require from time to time;
- (c) implement revenue protection measures in accordance with Schedule 10 (*Revenue Protection*) or such other measures as the Authority may require from time to time;
- (d) collect Fares from passengers or require passengers to present (and have validated as appropriate) a valid ticket or pass entitling such passengers to use the Services; and
- (e) without prejudice to the generality of the foregoing, comply with:
 - (i) the revenue reporting set out in the Schedule 8 (*Ticketing and Fare Collection*);
 - (ii) the requirements of Schedule 8 (*Ticketing and Fare Collection*) in relation to ticketing; and
 - (iii) the requirements of Schedule 10 (*Revenue Protection*) in relation to Standard Fares.

17.2 Standard Fares

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

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 Authority's prior consent in writing.

17.4 Fares

- (a) The Operator hereby agrees and acknowledges that:
 - (i) the Authority is the legal and beneficial owner of:
 - (A) the Fares Revenue,
 - (B) the Standard Fares; and
 - (C) all other amounts received from passengers,

(collectively, the “**Authority Fares**”) and the proceeds thereof and the Operator has no right, title or interest in or to the Authority Fares or the proceeds thereof;
 - (ii) the proceeds of all Authority Fares is payable directly to the Authority at the Authority's nominated bank account and no payments in respect of Authority Fares shall be made to, or accepted by, the Operator (as beneficial owner of the Authority Fares);
 - (iii) the Operator has no right, title or interest in or to the Authority Fares or the monies standing to the credit of such Authority's nominated bank account; and
 - (iv) to the extent the Operator receives any proceeds or monies representing or relating to Authority Fares, it holds all such proceeds or monies (the “**trust monies**”) on trust for, and on behalf of, the Authority and that, forthwith upon receipt of any such proceeds or monies, it shall:
 - (A) identify such monies or proceeds;
 - (B) segregate such monies or proceeds from all its assets (including other monies) such that there is no commingling of assets; and
 - (C) remit such trust monies to the Authority.
- (b) The Operator shall remit all Fares and Standard Fares collected by it to the Authority in accordance with Schedule 8 (*Ticketing and Fares Collection*)
- (c) No changes to Fares shall be made by the Operator without the prior Approval in writing of the Authority.

18. ADVERTISING

- (a) The Operator shall not be entitled to place commercial advertising on the Network Buses.
- (b) The Operator shall facilitate such reasonable access to the Network Assets (subject to compliance with all reasonable instructions of the Operator with regard to the safety of the Network) and provided such access does not disrupt the Services for the Authority, its employees, sub-contractors and agents as may be requested by the Authority in relation to the installation and replacement of advertisements on any Network Assets.

19. CUSTOMER CARE AND PUBLIC RELATIONS

The Operator shall:

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

20. SERVICES INTERRUPTIONS**20.1 Services Interruptions**

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

- (a) local diversion of the Services to avoid the affected part of the Network; or
- (b) operating Services to the nearest suitable Stop either side of the affected part of the Network,
- (c) in each case in accordance with Schedule 5 (*Operations Management*).

20.2 Operator Relief in relation to Service Interruption

To the extent that the Operator complies with clause 20.1 (*Services Interruptions*), then the Operator shall be entitled to relief in accordance with Schedule 19 (*Performance Payments and Deductions*).

PART 7 – RELATIONSHIPS, MONITORING AND THIRD PARTIES

21. RELATIONSHIPS

21.1 Instructions in writing

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

21.2 Certificates and approvals

- (a) Where a part of the Network or any Network Asset is required to be certified or approved by a Relevant Authority, the Authority shall not be obliged to issue any certificate or approval under this Agreement in respect of such part of the Network unless the Authority is reasonably satisfied that the required certificates or approvals have been given by the Relevant Authority.
- (b) Neither the Authority nor the Operator shall be liable for any delay or disruption to the Services as a result of the Authority, before issuing a certificate or approval, as the case may be, making reasonable enquiries to establish in accordance with clause 21.2(a) whether a certificate or approval has been given by the Relevant Authority.

21.3 Operator's Representative

- (a) The Operator shall appoint a competent and qualified person to act as its representative in connection with this Agreement and such person shall be the Operator's Representative. Such appointment shall be subject to the Approval of the Authority (such Approval not to be unreasonably withheld or delayed).
- (b)
 - (i) The Operator's Representative shall be located in Ireland.
 - (ii) At any time the Operator's Representative will be outside of Ireland for more than five (5) consecutive Business Days, the Operator's Representative shall nominate a temporary substitute and shall so notify the Authority in writing, which notice shall include the name and contact details of the temporary substitute.
 - (iii) Where the Operator's Representative proposes to nominate a substitute for a period in excess of twenty (20) consecutive Business Days, such nomination shall, unless otherwise agreed by the Parties, be deemed to be a termination of the Operator's Representative's appointment and the provisions of clause 21.4 (*Change of Operator's Representative*) shall apply.
- (c) The Operator's Representative shall have full authority to act on behalf of the Operator for all purposes of this Agreement. The Authority shall be entitled to treat any act of the Operator's Representative in connection with this Agreement as being expressly authorised by the Operator, and the Authority shall not be required to determine whether any express authority has in fact been given.

21.4 Change of Operator's Representative

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

21.5 Authority's Representative

- (a) The Authority shall appoint a competent and qualified person to act as its representative in connection with this Agreement and such person shall be the Authority's Representative.
- (b)
 - (i) The Authority's Representative shall be located in Ireland.
 - (ii) At any time the Authority's Representative will be outside of Ireland for more than five (5) consecutive Business Days, the Authority's Representative shall nominate a temporary substitute and shall so notify the Operator in writing, which notice shall include the name and contact details of the temporary substitute.
 - (iii) Where the Authority's Representative proposes to nominate a substitute for a period in excess of twenty (20) consecutive Business Days, such nomination shall, unless otherwise notified by the Authority, be deemed to be a termination of the Authority's Representative's appointment and the provisions of clause 21.6 (*Change of Authority's Representative*) shall apply.
- (c) The Authority's Representative shall have full authority to act on behalf of the Authority for all purposes of this Agreement. The Operator shall be entitled to treat any act of the Authority's Representative in connection with this Agreement as being expressly authorised by the Authority, and the Operator shall not be required to determine whether any express authority has in fact been given.

21.6 Change of Authority's Representative

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

21.7 Attendance at Meetings

- (a) Subject to the giving of not less than five (5) Business Days' notice, the Operator shall attend such meetings at the Authority's offices or such other premises as the Authority may reasonably require to:
 - (i) review the day-to-day performance of this Agreement; and

- (ii) discuss any changes to this Agreement which might be appropriate and desirable.
- (b) Each Party shall ensure that sufficient representatives of that Party attend meetings required under this clause 21.7 (*Attendance at Meetings*) to constructively address any issues raised.
- (c) The Operator shall liaise with the Authority as and when required by the Authority, and to deal with general enquiries of the Authority in a prompt and efficient manner.

22. QUALITY MANAGEMENT

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

23. CONSENTS AND APPROVALS

23.1 Approvals

- (a) Without limitation to clause 23.2 (*Effect of Consents and Approvals*), notwithstanding the Approval of the Authority, the Operator shall not be entitled to recover from the Authority any Losses or Claims which may arise out of or in connection with any inadequacy, error or failure of any matter which has been subject to Approval and any comments made by the Authority in the course thereof.
- (b) The Operator shall obtain from the Principal Sub-Contractors, prior to any such party carrying out any part of the Services, waivers of liability in favour of the Authority in respect of any such Losses and Claims.
- (c) No comments or absence of comments on any matter in the course of an Approval shall relieve the Operator of any of its obligations under this Agreement in connection with the Services.

23.2 Effect of Consents and Approvals

- (a) Neither the giving of any Approval, knowledge of the terms of any agreement or document, nor the review of any document or course of action by or on behalf of the Authority shall relieve the Operator of any of its obligations under this Agreement or of its duty to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the Approval, knowledge or review.
- (b) Any Approval shall be final, subject only to being opened up, reviewed or revised:
 - (i) if errors or further material relevant facts are revealed after the Approval has been given; or
 - (ii) where clause 23.3 (*Withdrawal of Approval*) applies.
- (c) Without prejudice to the preceding provisions of this clause 23.2 (*Effects of Consents and Approvals*), any Approval, endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement, or certificate of the Authority shall be final.

23.3 Withdrawal of Approval

Without prejudice to clause 23.2 (*Effects of Consents and Approvals*), which shall apply whether or not an Approval is withdrawn under this clause 23.3, an Approval may be withdrawn if it has been given:

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

24. CONSENTS TO OPERATE

24.1 Consents to Operate

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

24.2 Authority Assistance

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

25. INFORMATION AND ACCESS

25.1 Use of Information

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

25.2 Supply of Information and Access to the Network

- (a) The Operator shall at any time throughout the Contract Period:
 - (i) provide to the Authority at its own cost such information, records or documents (including details of cost breakdowns or updates to financial models, if any or any copy correspondence) with respect to the Services as the Authority may reasonably require and within such period as the Authority may in each case require and subject to all applicable laws;
 - (ii) without prejudice to the generality of clause 25.2(a)(i), provide such information, records or documents as the Authority may reasonably require and within such period as the Authority may in each case require in order to assess the efficiency of the provision of Services or any part of the Services;

- (iii) inform and keep informed the Authority of any material change or proposed material change in the performance of the Services or in the Operator including any material change in or restructuring of the capitalisation or financing of the Operator; and
 - (iv) subject to the compliance by the Authority with all reasonable instructions of the Operator with regard to the safety of the Network and the Network Assets, provide access to the Authority to the Network Assets (or any part thereof).
- (b) Without prejudice to the generality of clause 25.2(a), the Operator shall make available to the Authority, or such professional advisers as the Authority may from time to time nominate, such financial information, documents or accounts as the Authority may reasonably require to audit and verify any payments made under this Agreement and such as may reasonably be required from time to time to comply with the statutory obligations upon the Authority for preparation of accounts.
- (c) The Operator:
 - (i) acknowledges that the rights of the Authority under clauses 25.2(a) and 25.2(b) may be exercised by such professional advisers as the Authority may from time to time appoint on its behalf; and
 - (ii) shall provide such information, access and assistance as may reasonably be required by such professional advisers subject to, and in accordance with, clauses 25.2(a) and 25.2(b).

25.3 Oireachtas Questions and Issues

- (a) Without prejudice to clause 25.2 (*Supply of Information and Access to the Network*) the Operator shall, at its own cost and within the timescale from time to time prescribed by the Authority to ensure compliance with all relevant procedures, provide any information within the possession of the Operator or any company which is at the relevant time an Associated Company of the Operator or the Principal Sub-Contractors or any of their respective directors, officers, employees, servants or agents, which is requested by the Authority:
 - (i) in connection with this Agreement and/or the Services; and
 - (ii) in relation to statements by the Authority to or responses to questions or issues raised by or on behalf of the Oireachtas, or any member thereof or the Comptroller and Auditor General.
- (b) The Authority shall be entitled to disclose in the course of carrying out its public functions any information to which clause 25.3 (*Oireachtas Questions and Issues*) applies to the extent that it deems necessary or appropriate and shall not be obliged to keep any such information confidential provided that, in the case of any disclosure to a member of the Oireachtas, the Authority shall have used reasonable endeavours to consult with the Operator prior to any such disclosure.

25.4 Access to Information

- (a) Subject to Legal Requirements, the Operator shall provide the Authority or (subject to appropriate confidentiality undertakings being provided by the participant) any person (each a “**participant**”) participating in a competition consequent on an

invitation to potential successor operators to tender for the right and obligation to provide or operate all or any part of the Services on the expiration or earlier termination of the Contract Period with access to:

- (i) the employees;
 - (ii) the Network Assets; and
 - (iii) the books, records and other material kept by or on behalf of the Operator in connection with the Services and which is relevant to the competition.
- (b) The Operator shall make available to the Authority or, with the consent of the Authority, a participant, such information and shall assist in the verification of such information (including the provision of answers to verification questions) as shall reasonably be required in connection with such exercise provided that:
- (i) such exercise shall not unduly interfere with the continuing provision and operation of the Services by the Operator; and
 - (ii) the Authority or such participant, as the case may be, shall comply with all reasonable instructions of the Operator with regard to the safe use of the Network Assets.

25.5 Relevant Authority Information

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

26. RECORDS AND REPORTING REQUIREMENTS

26.1 Required Reports and Records

- (a) The Operator shall submit to the Authority the reports and the records specified in Schedule 18 (*Records and Reporting Requirements*), Schedule 19 (*Performance Payments and Deductions*) and Schedule 20 (*Contract Charges and Indexation*) at the times and in such numbers as provided therein, and such reports shall, at the Authority's request, be accompanied by an electronic copy of such report.
- (b) Without prejudice to the generality of clause 26.1(a), the Operator shall:
 - (i) ensure that it maintains separate accounts in relation to the Services from any other business of the Operator;
 - (ii) furnish to the Authority, as soon as they become available and in any event not later than one hundred and twenty (120) days after the end of each of its financial years a copy of its draft financial statements, including a draft balance sheet prepared as at the end of such accounting period and a draft profit and loss account in respect of such accounting period;
 - (iii) furnish to the Authority, as soon as they become available and in any event not later than one hundred and eighty (180) days after the end of each of its financial years:

- (A) a copy of its audited financial statements, including a balance sheet prepared as at the end of such accounting period and a profit and loss account in respect of such accounting period; and
 - (B) to the extent that they are different, the accounts referred to in clause 26.1(b)(i);
- (iv) ensure that the cost accounting principles according to which separate accounts are maintained are clearly established; and
- (v) maintain its accounts in accordance with generally accepted accounting principles, practices and policies in Ireland and ensure that all accounting principles are clearly stated.

26.2 Audit

- (a) The reports and records referred to in clause 26.1 (*Required Reports and Records*) shall be kept in good and safe order and in such form (including in electronic format) so as to be capable of audit by the Authority (or any person authorised in this regard by the Authority).
- (b) The Authority is entitled to audit such records (or any category of record or any of them):
 - (i) subject to clause 26.2(b)(ii), no more frequently than once each Contract Year in relation thereto and may only exercise its right to have such records audited on giving five (5) Business Days' notice to the Operator; and
 - (ii) at any time, upon the occurrence and for the duration of:
 - (A) an Event of Default; or
 - (B) a Step-In.

26.3 Availability

- (a) The Operator shall make the records referred to in clause 26.1 (*Required Reports and Records*) available for inspection by or on behalf of the Authority at all reasonable times upon the Authority giving at least two (2) days' notice or, if an Event of Default or Step-In has occurred, without notice, and shall assist the Authority in respect of any accounting queries.
- (b) The Authority shall be entitled at all reasonable times, upon giving at least two (2) days' notice or, if an Event of Default has occurred, without notice, to free and full access to inspect examine and/or copy any books, files, records, data, and/or documents relating to the Services other than:
 - (i) documents prepared in response to the issue of any extension or invitation to tender for the provision of the Services; or
 - (ii) legally privileged documents, belonging to or maintained by or on behalf of the Operator.

26.4 Retention of Records

- (a) Without prejudice to any Legal Requirement, all Required Records shall be:
 - (i) retained for and stored on a computer system; and
 - (ii) shall be archived,

in accordance with the provisions of, and for not less than the periods specified in, Schedule 18 (*Records and Reporting Requirements*).
- (b) Where the period for the retention of any records has expired, then the Operator shall notify the Authority as to what it intends to do with such records. If it intends to dispose of them or subsequently decides to dispose of them, the Operator shall notify the Authority, and if the Authority shall within thirty (30) days of such notice elect to receive those records or any part of them the Operator, at the Authority's cost, shall deliver up such records to the Authority in the manner and at such location as the Authority shall reasonably specify.
- (c) At the end of the Contract Period, the Operator shall, at its own cost, deliver up to the Authority, in the manner and at such location as the Authority shall reasonably specify, all such records as are referred to in clause 26.1 (*Required Reports and Records*) which were in existence at the end of the Contract Period (or, where those records are required by statute to remain with the Operator, copies thereof) or such part of such records as the Authority may by notice to the Operator specify. Without prejudice to any Legal Requirement, and subject to the receipt of a reasonable request in writing from the Operator, the Authority shall make available to the Operator such records delivered up by the Operator pursuant to this clause 26.4(c) as the Authority considers reasonable.
- (d) The Operator shall retain in safe storage at a location to be identified by the Operator and agreed by the Authority for a period of not less than that specified in Schedule 18 (*Records and Reporting Requirements*) following the end of the Contract Period all such records as are referred to in clause 26.4(c) which the Authority does not require to be delivered up to it. The costs of retaining those records in safe storage shall be borne by the Operator and the Authority in equal proportions.

26.5 Protection of Data

- (a) All data or information generated or acquired as a consequence of, or in connection with, this Agreement shall be stored by or on behalf of the Operator such that it can be extracted, from all other data or information generated or acquired by the Operator in some other capacity, and provided to the Authority when required.
- (b) The Operator shall implement reasonable measures which shall protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other forms of unlawful processing.
- (c) The Operator shall institute and operate all necessary back-up procedures on its systems to ensure that data integrity can be maintained in the event of loss of data for any reason.

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

26.6 Computer Records

- (a) In respect of all records of the Operator that are to be created or maintained on a computer or other electronic storage device, the Operator shall comply with the reasonable requirements of the Authority in relation to the back-up and adjacent storage of copies of such records and shall adhere to such agreed procedure and shall cause the Principal Sub-Contractors and their sub-contractors (to the extent that their subcontractors are engaged for, solely or among other things, the purpose of back-up and adjacent storage of copies of such records) to implement and adhere to such agreed procedure.
- (b) In this regard, the Operator shall establish and maintain separate and distinct series of computer records and databases (together with all related records and information) in connection with the performance of its obligations under this Agreement from any computer records and databases established by it in connection with the issue of, and processing of transactions from, its general computer records or records relating to its business generally.
- (c) Without prejudice to the generality of this clause 26.6 (*Computer Records*), 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.

PART 8 – CHANGES AND VARIATIONS

27. OPERATOR SERVICES

27.1 Provision of Services

- (a) Subject to clause 27.1(b), the Operator shall use the Network Assets exclusively in the provision of Services and for no other purpose.
- (b) The Operator may use the Network Assets, other than the Authority Network Assets, for provision of services (other than Services) ("**relevant services**") provided that:
 - (i) it can demonstrate to the Authority that such use is in accordance with Regulation (EC) No. 1370/2007;
 - (ii) the Operator provides details (including, details of the cost of providing such relevant services) in writing to the Authority in respect of each Reporting Period during which such relevant services are provided by the Operator; and
 - (iii) the Authority and the Operator agree the reduction of the Charges consequent on the provision of such relevant services.

27.2 Grant

The Parties acknowledge and agree that the Authority may wish from time to time to make available certain monies by way of grant or to make certain payments to the Operator in accordance with section 45 and/or section 49 of the 2008 Act to facilitate the acquisition by the Operator on behalf of the Authority new Authority Network Assets.

28. NETWORK INFRASTRUCTURE

28.1 Provision of information

- (a) The Operator shall, subject always to clause 8 (*Intellectual Property*), provide to the Authority such information as the Authority may reasonably require concerning:
 - (i) the Network Assets; and/or
 - (ii) the operation of passenger services on the Network; and/or
 - (iii) the maintenance of the Network Assets,that the Authority believes to be required to allow it to specify the terms of any contract for the design, construction, operation and/or maintenance of any public transport infrastructure relating to the Network or the operation of services using the Network Assets.
- (b) Without prejudice to the generality of the foregoing, the information required may be required for the purposes of, and used in preparing and making available:
 - (i) a data room;
 - (ii) any information memorandum, invitation to tender, technical specification, draft contract or other document connected with such purposes.

- (c) Any information requested by the Authority to be provided pursuant to clause 28.1(a) shall be provided by the Operator within such time period as the Authority may reasonably require.

28.2 Network Infrastructure

- (a) The Authority may require the Operator to:
 - (i) liaise with any contractor (and its consultants and advisers) engaged by the Authority to perform any aspect of the design and/or construction of any new or improved infrastructure relating to the Network, in accordance with the reasonable requests of the Authority or any such contractor;
 - (ii) subject to prior reasonable notice, co-operate and co-ordinate with any such contractor (and its consultants and advisers) given access by the Authority to those parts of the Network or Network Assets to which access is required for the efficient carrying out of such design and/or construction; and
 - (iii) provide to the Authority and/or to any such contractor such information concerning the design and/or construction of the Network or Network Assets which is at its unrestricted disposal and is reasonably required by the Authority and/or such contractor to facilitate the efficient interfacing and integration of the Network with any new or improved infrastructure relating to the Network.
- (b) The Operator shall use all reasonable endeavours (without incurring additional cost) to ensure that during the construction of any new or improved infrastructure relating to the Network there is minimum disruption to the passenger services being provided on the Network.

29. VARIATIONS

29.1 Variations

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

29.2 Changes to Services

- (a) Without prejudice to clause 29.1 (*Variations*), either Party may, at its own cost, from time to time prepare and submit to the other Party for its approval proposals for changes to services which it proposes should be introduced.
- (b) Any proposal by the Authority or the Operator for changes to Services that constitute a change to the Service Specification set out in Annex A of Schedule 2 (*Service Specification*) shall constitute, and be treated as, a Variation by that Party and the Authority or the Operator (as applicable) shall be entitled to exercise its rights under Schedule 23 (*Variations*) in this respect.
- (c) Any proposal by the Authority or the Operator for changes to the specification for a Network Bus set out in Annex A of Schedule 3 (*Network Bus Specification*) shall constitute, and be treated as, a Variation by that Party and the Authority or the Operator (as applicable) shall be entitled to exercise its rights under Schedule 23 (*Variations*) in this respect.

- (d) Where a proposal contemplated by clause 29.2(a) is not a Variation, then its introduction (or not), and the conditions of its implementation (if any), shall be a matter to be agreed between the Parties.

29.3 Deemed Variation

- (a) Upon the occurrence of a Deemed Variation, the Operator shall, within five (5) Business Days of its occurrence:
 - (i) notify the Authority of the occurrence of such Deemed Variation; and
 - (ii) where it is a Deemed Variation:
 - (A) falling within paragraph (a) of its definition, confirm to the Authority details of the annual cost, as detailed in paragraph 20.7.1 of Schedule 20 (*Contract Charges and Indexation*), of the Commencement Transferring Employee(s) the subject of the Deemed Variation;
 - (B) falling within paragraph (b) of its definition or paragraph (d) of its definition, confirm to the Authority details of the costs incurred (or to be incurred) by the Operator arising from the Discriminatory Change of Law or the entry into of the Novation Agreement; or
 - (C) falling within paragraph (c) of its definition and it relates to the annual cost of Specified Employees, confirm to the Authority details of the annual cost, as set out in paragraph 20.7.1 of Schedule 20 (*Contract Charges and Indexation*), immediately before the introduction or modification of the Sectoral Employment Order, of the Specified Employees.
- (b) Upon receipt of the information contemplated by clause 29.3(a) and provided the notice satisfies the requirements of paragraph 23.8.1 of Schedule 23 (*Variations*), the Authority shall treat such as an Operator Variation Notice in respect of the Deemed Variation for the purposes of Schedule 23 (*Variations*).
- (c) Schedule 23 (*Variations*) applies to each Deemed Variation.
- (d) The amount payable in respect of each Reporting Period in connection with a Deemed Variation falling within paragraph (a) of its definition is, if (i) is greater than (ii), the difference between:
 - (i) the annual cost of the Commencement Transferring Employee(s) is the subject of the Deemed Variation failing to be paid in such Reporting Period; and
 - (ii) the annual cost of an equivalent employee failing to be paid in such Reporting Period.
- (e) The amount payable in connection with a Deemed Variation falling within paragraph (b) or paragraph (d) of its definition is the costs incurred (or to be incurred) by the Operator arising from the Discriminatory Change of Law or the entry into of the Novation Agreement.

- (f) The amount payable in respect of each Reporting Period in connection with the Deemed Variation falling within paragraph (c) of its definition is, if (i) is greater than (ii) the difference between:
 - (i) the annual cost, as detailed in paragraph 20.7.1 of Schedule 20 (*Contract Charges and Indexation*), prescribed by the Sectoral Employment Order for drivers of Buses, to the extent that the Sectoral Employment Order prescribes this; and
 - (ii) the amount referred to in clause 29.3(a)(ii)(C).
- (g) In this clause 29.3:
 - (i) “**annual cost**” means, in the case of an Employee, all payments associated with the employment of drivers (such as salary, bonus, overtime, pension contributions, employer’s PRSI) and includes all amount which may be payable in connection with unsocial hours or other enhancements; and
 - (ii) “**equivalent employee**” for the purposes of this clause 29.3 means an employee of the Operator with similar experience, skill, qualifications and performance history as the Commencement Transferring Employee the subject of the Deemed Variation.

29.4 Section 51, 2008 Act

It is agreed and acknowledged that this clause 29 is without prejudice to, and shall not affect any right, duty or entitlement of the Authority pursuant to section 51 of the 2008 Act to review and, following such review, unilaterally amend this Agreement.

30. CHANGE OF LAW

30.1 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, the Authority as a result of any actual or anticipated Discriminatory Change of Law.
- (b) The Operator’s obligations to mitigate pursuant to clause 30.1(a) shall not include measures which might result in reduced Fares Revenue.

30.2 Discriminatory Change of Law

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

30.3 Variations required as a result of a Change of Law

If a Change of Law (other than a Discriminatory Change of Law) occurs and as a result of which a Variation is necessary:

- (a) the Authority or the Operator may give notice to the other to this effect; and
- (b) provided the notice satisfies the requirements of paragraph 23.8.1 of Schedule 23 (*Variations*), the Authority will treat such notice as an Operator Variation Notice in respect of a Variation.

30.4 Costs

The Operator shall bear any costs it incurs by reason of a Change of Law except for those costs which the Authority is liable to pay in respect of a Discriminatory Change of Law in accordance with clause 29.3 (*Deemed Variation*).

PART 9 – PAYMENT AND TAXES**31. PAYMENT****31.1 Charges**

Subject to the terms of this Agreement, the Authority shall be liable to pay to the Operator in respect of each Reporting Period the Charges determined for such Reporting Period in accordance with Schedule 21 (*Payment Mechanism*).

31.2 Value Added Tax

- (a) Except where otherwise expressly stated in this Agreement or otherwise applicable at law, all Charges payable by the Authority under this Agreement are VAT exempt in accordance with paragraph 14(3) of Schedule 1 of the Value Added Tax Consolidation Act 2010.
- (b) If the provision of public transportation is no longer treated as an exempt supply or is treated as subject to VAT, the Operator may give notice to the Authority to this effect, together with material (satisfactory to the Authority) evidencing or demonstrating this.
- (c) Where the Authority is satisfied that the provision of public transportation is no longer treated as an exempt supply or is treated as subject to VAT, in which case:
 - (i) the Authority and the Operator shall revise the Charges so that the Operator is “no better no worse” in accordance with clause 31.2(d); and
 - (ii) VAT shall be payable in addition to the revised Charge and the Authority shall pay to the Operator the amount of the VAT properly chargeable in sufficient time to allow the Operator to meet its payment obligations in respect of VAT.
- (d) In revising the charges in accordance with this clause 31.2 (*Value Added Tax*):
 - (i) the Operator shall provide to the Authority such information as would be required by Schedule 23 (*Variations*) if the change in the VAT treatment had been a Variation;
 - (ii) the Parties shall engage in good faith in resolving this so that the Operator is “no better no worse”; and
 - (iii) without prejudice to any other provision of this Agreement, the Authority will be entitled to inspect and audit the records of the Operator in connection with such revision.
- (e) No payment is to be made under this clause 31.2 in respect of VAT unless the Authority has received from the Operator a valid VAT invoice in respect of the relevant supply.
- (f) For the purposes of this clause 31.2, “no better no worse” is to be construed by reference to the costs of, and VAT input credits available to, the Operator both before and after the provision of public transportation being no longer treated as an exempt supply or is treated as subject to VAT, such that the net position of the Operator remains unchanged between before and after such occurring.

32. PAYMENT PROCESS**32.1 Process**

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

32.2 Method of payment

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

32.3 Errors in Reports

- (a) Without prejudice to clause 26.2 (*Audit*), the Authority shall be entitled to send any Required Report or Required Record to an independent accountant for examination and scrutiny.
- (b) If, following such examination, scrutiny or otherwise, it is found that any report, supporting information or records was erroneous, resulting in an overpayment or underpayment of an Operator Payment by the Authority, then the amount of the Operator Payment payable by the Authority in respect of the next following Reporting Period shall be adjusted to reflect the amount of such overpayment or underpayment, as the case may be.

33. RATES, TAXES AND CHARGES

The Operator shall pay:

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

PART 10 – PERFORMANCE STANDARDS**34. PERFORMANCE****34.1 Reporting and monitoring**

The Operator shall comply with the requirements of Schedule 19 (*Performance Payments and Deductions*) in relation to performance monitoring and inspection.

34.2 Breach

- (a) Without prejudice to clause 34.2(b), if the Operator is in breach of any provision of this Agreement, and the breach is one which will not result in a Performance Deduction (a “**Non-PMS Breach**”), then the Authority shall be entitled to enforce its rights in relation to the breach by way of an order for specific performance or an injunction.
- (b) In the event of a Non-PMS Breach (except where the Authority has received damages in lieu of specific performance) the Authority shall be entitled to withhold payment of one or more Operator Payments (or any part thereof) in an amount equal to the aggregate of:
 - (i) any savings in costs or expenses made by the Operator;
 - (ii) any additional revenues earned by the Operator; and
 - (iii) any loss suffered by the Authority,in each case as a result of the Non PMS-Breach.

34.3 Maximum Liability - Performance Deductions

- (a) Subject to clause 34.3(b), the Operator’s maximum liability for Performance Deductions, excluding Lost Kilometres Deductions, in any Contract Year shall be limited to ten per cent (10%) of the Annual Operating Charge for such Contract Year.
- (b) Clause 34.3(a) shall not apply to the Authority’s rights to withhold amounts under clause 34.2 (*Breach*) or clause 47.4(h) (*Pay and Conditions of Employment*).

35. PERFORMANCE MONITORING**35.1 Attendance at meetings**

- (a) The Operator shall send at its own cost and expense such representatives to meetings as the Authority may reasonably require from time to time which are called to discuss or at which there will be discussed the performance of the Operator against the requirements of the Performance Monitoring System.
- (b) Without prejudice to clause 35.1(a), the Operator shall send at its own cost and expense representatives to a performance meeting in respect of each Reporting Period with the Authority to discuss the performance of the Operator against the requirements of the Performance Monitoring System for such Reporting Period.

35.2 Performance Monitoring System reports

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

35.3 Annual review

Without prejudice to clauses 35.1 (*Attendance at Meetings*) or 35.2 (*Performance Monitoring System reports*), the Operator shall comply with the requirements of Schedule 17 (*Annual Contract Review*) in relation to the preparation and implementation of the Annual Contract Review for each Contract Year.

36. MONITORING AND ACCESS

36.1 Access to the Authority

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

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

36.2 Effect

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

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

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

PART 11 – INDEMNITIES, INSURANCE AND LIMITATION OF LIABILITY**37. INDEMNITIES****37.1 Operator's General Indemnities**

- (a) Subject to this clause 37 (*Indemnities*), the Operator shall indemnify and hold harmless the Authority from and against all Indemnified Liabilities for or in respect of any breach of this Agreement and/or any:

- (i) bodily injury, illness, disease or death of any person whatsoever;
- (ii) damage to any property real or personal of the Authority or its employees or any third party ("**Indemnified Property Losses**"); and
- (iii) any breach of statutory duty,

to the extent, in the case of clauses 37.1(a)(i) to 37.1(a)(iii) above, that the same arises out of or are contributed to in whole or in part by any performance or non-performance by the Operator of this Agreement or its Sub-Contractors of any tier, or its or their agents or employees.

- (b) Any amount that may be payable by the Operator pursuant to this clause 37 (*Indemnities*) shall be paid by it on demand being made of it by the Authority.

37.2 Extent of Indemnities

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

- (a) arise from a breach of this Agreement by the Authority or the gross negligence or recklessness of the Authority or its sub-contractors 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 the Authority, 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.

37.3 Notification of Claims procedures and assistance in defending Claims

- (a) The Authority shall, as soon as reasonably practicable, notify the Operator of the circumstances or incidences of 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 Agreement.
- (b) Each Party shall give to the 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 Agreement.
- (c) Subject to the following provisions of this clause 37.3 and to complying with the provisions of the relevant insurances, on the giving of a notice pursuant to clause

37.3(a), the Operator shall be entitled to pursue or resist the Claim in the name of the Authority 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 and the Authority will give the Operator all reasonable assistance for the purposes of considering and resisting such Claim.

- (d) With respect to Claims being pursued or resisted by the Operator in accordance with clause 37.3(c):
 - (i) the Operator shall keep the Authority fully informed and consult with it about the conduct of the Claim; and
 - (ii) to the extent that the Authority 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 37.3(c) which shall increase the amount of any payment to be made by the Authority 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, the Authority 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 Agreement (including, without limitation, clause 37.1 (Operator's General Indemnities) if:
 - (i) within forty (40) Business Days of the issue date of the notice from the Authority under clause 37.3(a) the Operator fails to notify the Authority of its intention to dispute the Claim; or
 - (ii) the Operator fails to comply in any material respect with the provisions of clause 37.3(d).
- (f) Subject to complying with the provisions of the relevant insurances, the Authority may, having regard to the interests of the Operator, give notice to the Operator that it is taking-over the conduct of any dispute, compromise or appeal of any Claim subject to clause 37.3(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 the Authority and shall provide to the Authority 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 Agreement 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.

37.4 Savings

The Operator's liability to the Authority arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to the Authority including any other indemnity by the Operator in this Agreement.

37.5 Road Traffic Insurance

Notwithstanding anything else in this clause 37 (*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 2014 and the Party so required to carry insurance shall indemnify and hold harmless the other Party in respect of all such Indemnified Liabilities to the extent to which it is required to be so insured.

37.6 The Operator's Other Indemnity

The Operator shall indemnify and hold harmless the Authority from and against all Indemnified Liabilities incurred by the Authority to or in respect of any employee, agent, officer or director of the Operator or any Sub-Contractor.

38. INSURANCE

38.1 Insurance cover

- (a) Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Agreement, the Operator shall for the periods specified in Schedule 26 (*Insurances*) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 26 (*Insurances*) and any other insurances required by law (together the "**Required Insurances**").
- (b) The Operator shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- (c) The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- (d) Where specified in Schedule 26 (*Insurances*) the Operator shall ensure that the relevant policy of insurance:
 - (i) shall contain an indemnity to principals clause, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Operator is legally liable in the provision of the services under this Agreement;
 - (ii) names the Authority as co-insured for its separate interest with attendant non-vitiation, waiver of subrogation and notice of cancellation provisions.
- (e) The Operator shall not (and the Operator shall procure that none of its subcontractors of any tier shall not) take any action or fail to take any action or, insofar as 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 of the Required Insurances.

38.2 Authority's right to insure

If the Operator is in breach of this clause 38 (*Insurance*), the Authority may elect, but shall not be obliged, to purchase any insurance which the Operator is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Operator.

38.3 Renewal

The Operator shall, upon the date of this Agreement and within fifteen (15) days after the renewal of any of the Required Insurances, provide evidence, in a form of a letter of undertaking substantially in the form of the specimen letter of undertaking contained in Annex A to Schedule 26 (*Insurances*) or such other form as may be satisfactory to the Authority, that the Required Insurances are in force and effect and meet the requirements of this clause 38 (*Insurance*) and Schedule 26 (*Insurances*). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this clause 38 (*Insurance*) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Agreement nor be a waiver of the Operator's liability under this Agreement.

38.4 Notification/Information

- (a) The Operator shall notify the Authority at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- (b) The Operator shall promptly notify to insurers any matter arising from, or in relation to, the services and/or this Agreement for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the services or this Agreement, the Operator shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- (c) The Operator shall notify the Authority immediately upon the occurrence or knowledge of:
 - (i) any development in any incident or circumstances which may give rise to any claim which may be in excess of the limits of the insurances; or
 - (ii) any incident or circumstance which might have an adverse effect on the reputation or image to the Authority or the Operator or on health, safety, the environment, regulatory matters, labour or public relations; and
- (d) any such notification is to be accompanied by full details of the incident or circumstances giving rise to the claim.

38.5 Premium/Deductible

- (a) Where any Required Insurance requires payment of a premium, the Operator shall be liable for such premium.
- (b) Where any Required Insurance is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Operator shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Operator shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Agreement or otherwise.

38.6 Insurance Proceeds

All insurance proceeds received in respect of the first party physical damage insurances (own damage element of the Motor Vehicle Insurance and Property Damage "All Risks" Insurance)

as specified in Schedule 26 (*Insurances*) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

39. **LIMITATION ON LIABILITY**

39.1 Limitation on Operator liability

(a) Subject to clause 39.1(b):

(i) except to the extent contemplated by clause 39.1(a)(ii), the Operator's maximum liability to the Authority for all matters arising out of, or in connection with, this Agreement shall not exceed an amount equal to the highest of:

(A) the Annual Operating Charge referred to at paragraph (a) of its definition (Indexed); and

(B) € [REDACTED] (Indexed);

(ii) the Operator's maximum liability to the Authority in respect of its failure to achieve the Performance Standards in respect of which Performance Deductions may be made shall be limited to:

(A) in accordance with clause 34.3(a) (*Maximum Liability – Performance Deductions*); or

(B) to the extent not contemplated by clause 34.3(a), to the Performance Deductions,

(each a "**Liability Cap**" and together the "**Liability Caps**").

(b) The Liability Caps shall not apply to:

(i) any damage to any Authority Network Assets, other than damage caused by the Authority;

(ii) any costs or expenses which the Operator is obliged to or does expend in performing its obligations under this Agreement;

(iii) except for amounts that are expressly subject to a Liability Cap, any payments which the Operator is obliged to or does make to the Authority under this Agreement (including in respect of any Variation);

(iv) any Loss recoverable by the Operator under any insurance policy;

(v) any Loss arising under or in respect of any breach by the Operator of the provisions of clause 8 (*Intellectual Property*); or

(vi) any liability of the Operator to the Authority arising as a result of or in connection with:

(A) death or personal injury;

(B) fraud or wilful deceit by the Operator; or

- (C) wilful default or abandonment of this Agreement by the Operator;
- (vii) the Operator's liability to refund or reimburse as expressly provided by this Agreement;
- (viii) the Operator's liability to pay any Taxes as expressly provided by this Agreement or required by any Legal Requirements; or
- (ix) any interest payable by the Operator under this Agreement.

39.2 Exclusions

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

39.3 General Mitigation Obligation

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

PART 12 – THIRD PARTY EVENTS AND STEP IN**40. FORCE MAJEURE****40.1 Application**

- (a) Neither of the Parties shall be in breach or otherwise be liable to the other Party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to the occurrence of Force Majeure on the basis that:
 - (i) subject to clause 40.1(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 40 (*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 Agreement by an event of Force Majeure must give notice to the other Party forthwith (upon becoming aware of the same) upon the event ending or being removed or its existence no longer preventing performance of an obligation and shall resume performance of such obligation under this Agreement.
- (c) A Party seeking to rely on the provisions of this clause 40 (*Force Majeure*) shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure event.

40.2 Payments

If, as a result of any Force Majeure event occurring on or after the Commencement Date, the Operator is unable to provide the Services on the Routes as contemplated by this Agreement or such operation is disrupted, then the payment by Authority to the Operator of any Operator Payment (or part thereof) shall not be made to the extent that the provision of Services is so affected.

40.3 Obligation to Remedy

As soon as practicable after the occurrence of any Force Majeure event the Party affected shall take all reasonable steps to remedy the failure to perform and relief under this clause 40 (*Force Majeure*) shall cease to be available to a Party if it fails so to take all such steps to remedy the failure.

40.4 Mitigation

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

40.5 Termination

If the Force Majeure event:

- (a) has an effect on the rights or obligations of any of the Parties so as to render financially or practicably impossible the performance of this Agreement; or
- (b) substantively frustrates the ability of a Party to perform its obligations under this Agreement for a period of time in excess of six (6) months,
- (c) then the Authority or the Operator may by notice to the other Party forthwith terminate this Agreement.

41. RELIEF EVENTS

41.1 Request for Relief

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

41.2 Relief Notice

Subject to compliance by the Operator with its obligations under clause 41.1 (*Request for Relief*) and clause 41.3 (*Duty to Mitigate*), the Authority shall, having satisfied itself (acting reasonably) of the occurrence of the Relief Event and its effect on the ability of the Operator to perform its obligations under this Agreement, issue a notice (the “**Relief Notice**”) specifying:

- (a) the relevant obligations for which relief is given; and
- (b) the period during which the Operator shall be relieved from the performance of those obligations (the “**Relief Period**”);
- (c) where the Operator is unable by reason of such Relief Event to perform the Services on the Routes, the extent to which the payment by Authority to the Operator of any Operator Payment (or part thereof) shall not be made,

and the Operator shall be relieved from the performance of all or part of, and the Authority shall not exercise its right to terminate this Agreement under clause 44.1 (Events of Default) in respect of the non-performance of, such obligations as set out in the Relief Notice during the relevant Relief Period.

41.3 Duty to Mitigate

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

41.4 Curtailment Event - maintenance

The parties acknowledge that where a Curtailment Event occurs:

- (a) the obligations of the Operator under clause 12 (*Defects in and damage to Network Assets*) and clause 13 (*Operations and maintenance*) (and the relevant schedules) to the extent relating to the securing and maintenance of the Network Assets shall not be relieved by the Authority;
- (b) if the Operator is performing its obligations under clause 12 (*Defects in and damage to Network Assets*) and clause 13 (*Operations and maintenance*) (and the relevant schedules) to the extent relating to the securing and maintenance of the Network Assets, the Authority shall pay to the Operator an amount equal to the Maintenance Related Payment in respect of that Reporting Period; and
- (c) the Operator shall have no entitlement or right to any other payment under this Agreement consequent on or related to the occurrence of the Curtailment Event.

42. COMPENSATION EVENT

42.1 Compensation Event – Request

- (a) If as a direct result of the occurrence of a Compensation Event:
 - (i) the Operator is unable to comply with its obligations under this Agreement; and/or
 - (ii) the Operator has incurred Eligible Costs,

notwithstanding the Operator using all reasonable endeavours and in accordance with Good Industry Practice to mitigate the effect of such Compensation Event in its performance of its obligations under this Agreement, the Operator may apply for an extension and/or relief from its obligations under this Agreement and/or for compensation under this Agreement.

- (b) Any such request shall be made by service of an initial notice on the Authority within two (2) Business Days of the Operator becoming aware of the occurrence of a Compensation Event,
- (c) Without prejudice to the generality of the request in paragraph (b) above, the Operator shall provide the Authority within ten (10) Business Days of the Operator becoming aware of the occurrence of a Compensation Event with a subsequent notice, including:
 - (i) the direct effect of the Compensation Event on the Operator's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the precise effect on each such obligation and the likely duration of that effect;
 - (ii) an explanation of any measures that the Operator proposes or intends to adopt to mitigate the consequences of the Compensation Event; and
 - (iii) details of the Eligible Costs incurred and to be incurred for the duration of the Compensation Event, and which could not reasonably be expected to be mitigated or recovered by the Operator, acting in accordance with Good Industry Practice.

42.2 Authority obligations

Subject to the Operator complying with clause 42.1 (*Compensation Event – Request*) and clause 42.4 (*Duty to Mitigate*), then:

- (a) the Authority shall extend the Scheduled Operator Property Date, the Scheduled Initial Operating Commencement Date or the Scheduled Operating Commencement Date, as the case may be;
- (b) the Authority will issue a notice specifying:
 - (i) the relevant obligations for which relief is given; and
 - (ii) the period during which the Operator shall be relieved from the performance of those obligations (the “**Applicable Period**”);
 - (iii) where the Operator is unable by reason of such Compensation Event to perform the Services on the Routes, the extent to which the payment by Authority to the Operator of any Operator Payment (or part thereof) shall not be made,

and the Operator shall be relieved from the performance of all or part of such obligations as set out in the notice during the applicable period; and

- (c) the Operator will be entitled to include the Eligible Costs which have been agreed between the Operator and the Authority, in the amount being invoiced for the Reporting Period in which the Eligible Costs are agreed.

42.3 Eligible Costs

- (a) The Operator shall supply to the Authority (at the same time as it submits a notice in accordance with clause 42.1 (*Compensation Event – Request*) or, if later, within five (5) Business Days of the Eligible Cost being incurred with details of the Eligible Cost incurred.
- (b) The Authority may seek and the Operator shall provide such further information and evidence as may be reasonably required to verify the amount of the Eligible Cost.
- (c) Where Eligible Costs are incurred at different times, the Operator may request payment of each such Eligible Cost.

42.4 Duty to Mitigate

Notwithstanding the issue of any notice in accordance with clause 42.2 (*Authority obligations*), the Operator shall use all reasonable endeavours and in accordance with Good Industry Practice to mitigate the consequences of any Compensation Event.

43. STEP IN

43.1 Step In

- (a) Without prejudice to the powers of the Authority under section 56 of the 2008 Act, if, in the reasonable opinion of the Authority, the Operator fails materially or refuses to provide the Services in accordance with this Agreement, the Authority may (acting reasonably) by notice in writing to the Operator:
 - (i) require the Operator to remedy its failure or refusal to provide the Services within such timeframe as may be specified by the Authority (being not less than fifteen (15) Business Days); and
 - (ii) increase the level of its monitoring of the Operator or, at the Authority's option, the Operator's monitoring of its performance of its obligations under this Agreement until such time as the Operator shall have demonstrated to the reasonable satisfaction of the Authority that it will perform, and is capable of performing, its obligations under this Agreement.
- (b) If the Operator does not remedy its failure or refusal to provide the Services within the timeframe specified in the notice referred to in clause 43.1(a), the Authority may:
 - (i) step in and provide, or procure the provision on its behalf of all or part of the Services (a "**General Step In**"); and
 - (ii) where the failure or refusal to provide the Services in the Authority's opinion affects the provision of the Services only on a particular Route or Route(s), step in and provide, or procure the provision on its behalf of, the Services on such Route(s) (a "**Route-Specific Step In**").

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

- (c) In the event that the Authority exercises its rights under clause 43.1(b):
 - (i) the Operator shall indemnify and keep indemnified the Authority at all times from and against all reasonable costs and expenses (if any) incurred directly or indirectly by or on behalf of the Authority in relation to such Step In (including an appropriate sum in respect of general staff costs and overheads);
 - (ii) the Authority may deduct any costs and expenses incurred from any monies due or which may become due to the Operator or may invoice the Operator for such sums; and
 - (iii) the Operator shall give all reasonable co-operation to the Authority to ensure a smooth transition to enable the Authority to provide or procure the provision on its behalf of part or all of the Services with no degradation of the standard of Services.
- (d) The provision of part or all of the Services by the Authority in accordance with this clause 43 (*Step In*) shall not relieve the Operator from any of its powers, obligations or liabilities under this Agreement or affect the rights and powers conferred on the Authority under this Agreement.
- (e) Without prejudice to the foregoing, the Operator shall not be subject to Performance Deductions in respect of Services in respect of which there is a Step In for the duration of such Step In.

43.2 Step Out

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

- (a) the Authority shall give reasonable notice to the Operator of the date on which Step Out shall occur;
- (b) the Operator shall, upon receipt of a notice under clause 43.2(a), resume performance of the Step In Services; and
- (c) the Operator shall give all reasonable co-operation to the Authority to ensure a smooth transition to enable the Operator to resume performance of the Step In Services with no degradation of the standard of Services.

43.3 Operator of last resort

- (a) This clause 43 (*Step-in*) is without prejudice to section 56 of the 2008 Act.
- (b) If the Authority exercises the rights conferred on it pursuant to section 56 of the 2008 Act, the Operator shall cooperate with the Authority (or any person nominated by it) and shall do all things required by the Authority to facilitate such exercise.

43.4 Access to Authority Network Assets and Control Systems

Without prejudice to the generality of the foregoing, in the event of a Step In, the exercise by the Authority of its rights under section 56 of the 2008 Act or the exercise by the Authority of its rights under clause 46 (*Competitive Tendering*):

- (a) if requested, the Operator shall make available for use by the Authority (or a person on its behalf) the Authority Network Assets (or relevant part thereof);
- (b) the Operator shall provide to the Authority (or person nominated by it) access to the Control Systems (or relevant part thereof); and
- (c) the Operator shall remedy its failure or refusal to provide the Services within such timeframe as may be specified by the Authority.

PART 13 – TERMINATION AND HANDBACK

44. TERMINATION

44.1 Events of Default

- (a) Without prejudice to any other rights or remedies of the Authority under this Agreement, the following shall constitute Events of Default:
- (i) any Insolvency Event in relation to the Operator;
 - (ii) any of:
 - (A) a breach by the Operator of this Agreement where such breach on its own or together with a series of other breaches has a materially adverse effect on the provision of the Services by the Operator or such breach materially and adversely affects the enjoyment by the Authority of its rights under this Agreement;
 - (B) a breach by the Operator which has continued for more than three (3) days or occurred more than seven (7) times within a six (6) month period or, following receipt of notice, the breach continues beyond seven (7) days after the date of service of the notice;
 - (C) any breach by the Operator of its obligations under clause 10.5 (*Network Licence*);
 - (D) any event or circumstance, which the Authority considers (acting reasonably) constitutes a threat to the safe operation of the Network (or any of them);
 - (E) the Operator ceases to be authorised to operate the Network Buses on the Routes, including failing to obtain or maintain in effect any Consents to Operate;
 - (F) a failure by the Operator to pay any sum greater than thirty thousand euro (€[REDACTED]) due and payable under this Agreement within twenty (20) Business Days of the due date for payment unless its failure to pay is caused by administrative or technical error;
 - (G) the breach by the Operator of the provisions of clause 48 (*Assignment*);
 - (H) the deduction of five per cent (5%) of the Base Period Payment in any six (6) consecutive Reporting Periods in connection with a breach by the Operator of its obligations under clause 47 (*Employment Issues*);
 - (I) if the Performance Bond:
 - (1) ceases to be issued by an Acceptable Entity and is not replaced with a Performance Bond satisfying the requirements of this Agreement within ten (10) Business Days of the original Performance Bond so ceasing to be issued; or

- (2) has an expiry date on or prior to the Expiry Date and the Operator has not provided to the Authority a replacement Performance Bond which satisfies the requirements of the Agreement, at least, thirty (30) Business Days prior to the expiry of the then Performance Bond;
 - (J) subject to clause 44.1(a)(ii)(I), if any of the Support Documents fails to comply with the requirements of this Agreement and is not replaced by an equivalent Support Document which satisfies the requirements of this Agreement;
 - (iii) circumstances entitling the Authority to terminate this Agreement pursuant to, and in accordance with, clause 60 (*Corrupt Gifts*);
 - (iv) the absence of all Network Buses being run on all Routes in any period of two (2) consecutive weeks other than as a direct result of a Force Majeure Event, Relief Event or Compensation Event;
 - (v) the occurrence of Performance Deductions:
 - (A) of an average of twenty five per cent (25%) or more of the Base Period Payment in any six (6) consecutive Reporting Periods; or
 - (B) of an average of twenty per cent (20%) or more of the Base Period Payment in any thirteen (13) consecutive Reporting Periods;
 - (vi) the abandonment of this Agreement or a material part of the Services by the Operator;
 - (vii) the Operating Commencement Date not occurring on or before the Final Longstop Date, unless the Authority has exercised its rights under clause 9.9(b)(i) (*Delays to Operating Commencement Date*);
 - (viii) the Operator Property Date not occurring on or before the Longstop Property Date;
 - (ix) the Initial Operating Commencement Date not occurring on or before the Longstop Initial Commencement Date;
 - (x) the occurrence of Fare Evasion Loss of an average of the Fare Evasion Rate multiplied by ten per cent (10%) in any six (6) consecutive Reporting Periods;
 - (xi) the occurrence of a Change in Control of the Operator, unless such a Change in Control of the Operator has been approved in advance by the Authority; and
 - (xii) the occurrence of a Change in Control of the Operator Parent Company which, in the reasonable opinion of the Authority, is likely to have a material adverse effect on the ability of the Operator Parent Company to meet its obligations under the Parent Company Guarantee.
- (b) The Operator shall notify the Authority forthwith upon becoming aware of the occurrence of an Event of Default and shall provide the Authority with full details of

all steps which it is taking, or proposes to take, in order to remedy or mitigate the effect of the Event of Default or otherwise in connection with it.

- (c) If an Event of Default contemplated by clause 44.1(a)(i), clause 44.1(a)(ii)(I) or clauses 44.1(a)(iii) to 44.1(a)(xii) (inclusive) occurs, the Authority may within six (6) months of such Event of Default coming to its attention by notice to the Operator terminate this Agreement forthwith.
- (d) Without prejudice to its rights under clause 10.2 (*Right to Suspend Network Licence*), if an Event of Default contemplated by clause 44.1(a)(ii) (other than those contemplated by clause 44.1(a)(ii)(I)) occurs, the Authority may, subject to clause 44.1(d)(iii), within six (6) months of such Event of Default coming to its notice, serve notice of such Event of Default on the Operator specifying the breach and requiring the Operator:
 - (i) to provide, within ten (10) Business Days, to the Authority a detailed written rectification plan in respect of the Event of Default demonstrating how the Event of Default will be rectified;
 - (ii) to commence rectification in accordance with the rectification plan; and
 - (iii) to rectify the Event of Default as soon as possible but, in any event, within fourteen (14) days from the date of the rectification plan referred to in clause 44.1(d)(i).
- (e) In the event that:
 - (i) the Operator fails to provide the Authority with a rectification plan pursuant to clause 44.1(d)(i); and/or
 - (ii) if, in the reasonable opinion of the Authority such rectification plan, does not adequately address the Event of 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 the Authority that it is implementing such rectification plan within the specified timescale; and/or
 - (iv) the Authority (acting reasonably) determines that as a result of a persistent breach or a material breach of this Agreement there is a significant risk that the Operator has or will compromise the Authority's performance of its statutory functions or, if the Services were to continue, would be likely to compromise such performance in the future,the Authority may, at any time within three (3) months thereafter, terminate this Agreement by giving not less than five (5) Business Days' notice to the Operator.
- (f) In the event that the Event of Default is one which is not capable of remedy, or is not so capable within the period prescribed by clause 44.1(d)(iii), the Authority may within twenty (20) Business Days of such Event of Default coming to its notice, terminate this Agreement immediately by notice to the Operator.
- (g) Notwithstanding anything in this clause 44.1 (*Events of Default*), upon the occurrence of an Event of Default, the Authority may exercise all rights and remedies available to it under this Agreement, or otherwise, including under any Support Document.

44.2 Authority Default

- (a) “**Authority Default**” for the purposes of this Agreement shall be:
- (i) if the obligations of the Authority under this Agreement are (without the prior consent of the Operator, such consent not to be unreasonably withheld or delayed) assigned, novated or otherwise transferred (by virtue of any Legal Requirement) to another person other than:
 - (A) any department, office, instrumentality or agency of the Government which has sufficient financial standing or resources to perform the obligations of the Authority under this Agreement; or
 - (B) any person whose obligations under this Agreement are validly and enforceably guaranteed by:
 - (1) the Authority 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 the Authority under this Agreement,

provided that such obligations shall be deemed to be validly and enforceably guaranteed by the Authority or the Government or by any department, office, instrumentality or agency of the Government (as the case may be) if the Authority 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;
 - (ii) a failure by the Authority to make payment, at any time, of any amount of money exceeding whether singly or in the aggregate twenty percent (20%) of the Annual Operating Charge that is due and payable by the Authority under this Agreement within thirty (30) days of service of a formal written demand by the Operator where that amount fell due and payable two (or more) months before the date of service of the written demand.
- (b) Other than the events and circumstances described in this clause 44.2 above, no other event or circumstance shall constitute an Authority Default and the Operator hereby waives any other rights to terminate this Agreement (or accept an alleged repudiation) by reason of default of the Authority howsoever arising.
- (c) Upon the occurrence of an Authority Default contemplated by clause 44.2(a)(i) occurring, the Operator may within twenty (20) Business Days of such Authority Default coming to its attention terminate this Agreement by giving six (6) months’ notice in writing to the Authority.

44.3 Termination for Force Majeure

Where a Party serves on the other Party a notice pursuant to clause 40.5 (*Termination*), this Agreement shall terminate immediately upon service of the relevant notice.

44.4 Procurement Regulations

- (a) The Authority may, at any time, terminate this Agreement early on reasonable notice in the event that a challenge to the award of this Agreement to the Operator or to any aspect of the competition leading to award of this Agreement is or has been made by any person on the grounds of non-compliance with EU public procurement rules. The Authority 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 Agreement.
- (b) If the Authority exercises its right of termination pursuant to this clause it shall:
 - (i) pay the Operator for such of the Services as are provided up to the Termination Date in accordance with clause 31 (*Payment*) and clause 32 (*Payment Process*); and
 - (ii) pay the Operator such vouched third party expenses reasonably incurred as a direct result of such termination.

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 Agreement in accordance with this clause.

- (c) In the event that this Agreement is declared “**ineffective**” pursuant to Regulation 9(1)(b) of the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010, the Authority shall have no 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 31 (*Payment*) and Schedule 20 (*Contract Charges and Indexation*).

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.

44.5 Change in Control

- (a) A Change in Control of a company (including the Operator and the Operator Parent 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 the Authority’s consent.
- (b) The Authority shall not unreasonably withhold or delay its consent to a Change in Control of the Operator Parent Company.
- (c) For the purpose of this clause 44.5 (*Change in Control*), a person shall be deemed 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.
- (d) For the purpose of clause 44.5(c), 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 44.5(d)(ii);
 - (iv) in this clause 44.5 “**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 possesses, or 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 44.5(d)(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 44.5(d)(iv) does not prevent a participator in one company being treated also as a participator in another company; and
- (vii) in this clause 44.5 (*Change in Control*):
 - (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.
- (viii) A change in control of the Operator which arises from any bona fide open market transactions in any shares or other securities of the Operator effected on a recognised stock exchange (being for this purpose, The Irish Stock Exchange Limited and London Stock Exchange plc (or such other stock exchange as may be agreed from time to time by the parties)) shall not constitute a Change in Control.

45. CONSEQUENCES OF TERMINATION

45.1 Obligations on Termination

The Operator shall comply with the provisions of this clause 45 (*Consequences of Termination*) upon termination of this Agreement (for whatever reason).

45.2 Termination as a result of Event of Default

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

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

- (c) the Authority shall not be required to make any further payment to the Operator after the date of termination of this Agreement until any sum due to the Authority under this Agreement or as damages has been agreed or established in accordance with clause 31.1 (*Payment*) and clause 50 (*Disputes Resolution Procedure*), as the case may be, provided that, upon agreeing or establishing such sum, the Operator shall be entitled to seek payment of any outstanding amounts due to it by the Authority in accordance with this Agreement.

45.3 Termination as a result of Authority Default

Where this Agreement is terminated as a result of an Authority Default, the Authority 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 Annual Operating Charge 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 Agreement not been subject to such termination; and
- (b) Break Costs.

45.4 Condition of records and systems

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

45.5 Continuance of activities and assignment of benefit of this Agreement

- (a) Subject to clause 45.2 (*Termination as a result of Event of Default*) and without prejudice to any rights and remedies of any Party, the Operator and the Authority shall continue to perform their respective obligations under this Agreement until the date of termination of this Agreement unless other phased handover procedures are agreed between the Parties.
- (b) The Operator shall:
 - (i) give all reasonable co-operation to the Authority to ensure a smooth transition to enable a Successor Operator to continue to perform the Services with no degradation of the standard of Services; and
 - (ii) at the Authority's request execute all documents and do all acts which may be necessary to assign the benefit of this Agreement to a third party.

45.6 Saving provisions

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

46. COMPETITIVE TENDERING

46.1 Competitive Tendering

- (a) The Operator shall provide such assistance as the Authority may reasonably require from time to time in connection with the competitive tendering of the Routes specified in Schedule 2 (*Service Specification*).
- (b) 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 Agreement, and in either case for a period of three (3) months thereafter, the Operator shall, at its own cost and in accordance with the directions of the Authority, co-operate in the transfer of responsibility for the Services to any Successor Operator.
- (c) To the extent that the Authority requires the Operator to co-operate in the transfer of responsibility for the Services, in accordance with the directions of the Authority, for a period in excess of three (3) months after the Expiry Date:
 - (i) subject to clause 46.1(c)(ii), the Authority shall reimburse the Operator for any costs properly incurred on an arm's length commercial basis in co-operating during the period commencing on the date three (3) months after the Expiry Date and expiring on the date the Authority no longer requires the co-operation of the Operator; and
 - (ii) the obligation of the Authority to reimburse such costs shall be subject to the Authority being satisfied (acting reasonably) with the co-operation of the Operator.
- (d) For the purposes of this clause 46.1 (*Competitive Tendering*) "**co-operate**" shall include the following:
 - (i) liaising with the Authority and any Successor Operator, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to any Successor Operator;
 - (ii) co-ordinating and co-operating (at reasonable times and on reasonable notice) with the Authority and any Successor Operator granted access to the Authority Network Assets by the Authority; and
 - (iii) providing to the Authority and to any Successor Operator such information concerning the Authority Network Assets, the Routes and the Services which is at the Operator's unrestricted disposal and which is reasonably required for the efficient transfer of responsibility for the performance of the Services.
- (e) The Operator shall use all reasonable endeavours so as to facilitate the transfer of responsibility for the Services to the Authority or a Successor Operator and the Operator shall take no action at any time during the Contract Period or thereafter which is calculated or intended to prejudice or frustrate or make more difficult such

transfer. In particular, but without limitation to the generality of the foregoing, the Operator shall not, during the final six (6) months of the Contract Period (where this expires by effluxion of time) or during the period of any notice of termination of this Agreement:

- (i) without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) make, or promise to make, any material improvement 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 performing the Services and acting in accordance with Good Industry Practice;
 - (ii) appoint new employees to be engaged in the operation or maintenance of the Authority Network Assets who would not reasonably be appointed by the Operator in the ordinary course of its business of performing the Services and acting in accordance with Good Industry Practice;
 - (iii) without prior consent of the Authority (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 performing the Services and acting in accordance with Good Industry Practice; or
 - (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 Authority Network Assets by a Successor Operator substantially in accordance with the terms of this Agreement.
- (f) The obligations of this clause 46.1 (*Competitive Tendering*) shall continue in force for the period of three (3) months following the termination of this Agreement.

46.2 Exit Management Plan

The Operator hereby undertakes to develop the Exit Management Plan in accordance with Schedule 25 (*Exit Management*).

46.3 Comply with Exit Management Plan

Upon the exercise by the Authority of its rights under clause 46.1 (*Competitive Tendering*), the Operator hereby:

- (a) acknowledges that the Exit Management Plan shall apply;
- (b) undertakes to comply with, and perform, the Exit Management Plan; and
- (c) to the extent applicable, undertakes to comply with the requirements of Schedule 25 (*Exit Management*).

46.4 Operator Tender

Nothing in this Agreement shall restrict or prohibit the Operator from tendering for any Routes that are subject to competitive tendering in accordance with clause 46.1 (*Competitive Tendering*).

PART 14 - EMPLOYMENT**47. EMPLOYMENT ISSUES****47.1 General**

- (a) The Operator shall provide sufficient trained, competent and suitable Staff with the necessary qualifications, skills and experience to provide the Services to ensure that the Services are provided at all times with reasonable skill and care and in accordance with the Performance Standards.
- (b) The Operator shall upon written request furnish to the Authority, in the format required by the Authority, details of all employees, agents, Sub-Contractors, or any other person whatsoever who will have an involvement in the provision of the Services. The Operator shall also provide the required information in respect of any additional or replacement personnel or any other personnel whatsoever who may in the future provide any or all of the Services.
- (c) The Operator shall, at its own cost and risk, fill all staff vacancies arising during the Contract Period using fair policies.

47.2 Ongoing Training

- (a) The Operator shall comply with the requirements of Schedule 5 (*Operations Management*).
- (b) Without prejudice to the generality of the obligation contained in clause 47.2(a) above, 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.

47.3 Employment Conditions

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

47.4 Pay and Conditions of Employment

- (a) The Operator shall prominently exhibit copies of this clause 47.4 (*Pay and Conditions of Employment*) for the information of persons at the Operator Properties.
- (b) The Operator shall ensure that the rates of pay and the conditions of employment, including pension contributions, for all Staff comply with all applicable Legal Requirements and that those rates and conditions are at least as favourable as those for the relevant category of worker in any employment agreements registered under the Industrial Relations Acts 1946 to 2015. This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 concerning the posting of workers in the framework of the provision of services), except that the Operator's obligation to make pension contributions under registered employment agreements does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union. The obligations in this clause 47.4(b) apply regardless of what the Operator is entitled to be

paid by the Authority in consideration of it performing the Services under this Agreement.

- (c) The Operator shall in respect of:
- (i) workers employed by, or otherwise working for, the Operator; and
 - (ii) all other workers engaged in performing the Services (or any part of the Services), ensure that their employers, or the persons for whom they are working,

do all of the following:

- (A) pay all wages and other money due to each worker;
- (B) ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than one (1) month in arrears or unpaid;
- (C) pay all pension contributions and other amounts due to be paid on behalf of each worker;
- (D) make all deductions from payments to workers required by any Legal Requirements, and pay them on as required by such Legal Requirements;
- (E) keep proper records including time sheets, wage books and copies of pay slips showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by any persons authorised by the Authority, on written request by the Authority during normal business hours provided that nothing in this paragraph shall require the Operator to disclose to the Authority or any third party or shall entitle the Authority or any third party to access and/or copy any of the following, namely records or other information which directly discloses margins or other internal financial data of the Operator;
- (F) produce any statutory or other records relating to the rates of pay, pension and other contributions, deductions from pay and their disposition, conditions of employment, rest periods, and annual leave for inspection and copying by any persons authorised by the Authority, whenever required by the Authority;
- (G) respect the right under law of workers to be members of trade unions;
- (H) observe, in relation to the employment of workers providing the Services, the Safety, Health and Welfare at Work Acts 2005 to 2014 and all employment law including the Employment Equality Acts 1998 to 2011, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015, and regulations, codes of practice, legally binding determinations of the Labour Court and the terms of any registered employment agreements and sector employment

orders for the PSO related bus market as may be applicable to the Operator as the employer of the workers concerned in that employment under those laws; and

- (I) appoint an appropriately experienced third party (the “**Compliance Monitor**”) to monitor compliance by the Operator, and the employers of any workers engaged in providing the Services, of the terms of this clause 47.4 (*Pay and Conditions of Employment*) on the following basis:
 - (1) before appointing the Compliance Monitor the Operator shall notify and obtain the Authority’s written approval of the identity of the Compliance Monitor and the terms of engagement (such approval not to be unreasonably withheld);
 - (2) the Compliance Monitor shall report to the Authority, with the costs of the Compliance Monitor being borne by the Operator; and
 - (3) the Compliance Monitor shall not be required to monitor and report on Sub-Contractors unless their engagement directly or indirectly exceeds three months in a three year period.
- (d) The Operator shall, and shall ensure its Sub-Contractors are similarly bound, co-operate fully with the Authority and/or its appointed agent and the Compliance Monitor in the conduct of an annual assessment and in monitoring compliance by the Operator (and/or its Sub-Contractors) by conducting ‘spot checks’ regarding these clause 47.4 (*Pay and Conditions of Employment*) terms. In all such measures, the onus shall be on the Operator to demonstrate compliance with these terms and applicable legislation. For the term for which the Operator provides services to or on behalf of the Authority and for 7 years thereafter, the Operator shall maintain full records of salaries and wages (and deductions therefrom) paid to workers and shall, upon request (and subject to compliance with applicable data protection laws), make copies of all such records available to the Authority, its agent or the Compliance Monitor. The Operator shall, to the extent required under applicable law, obtain all necessary consents from workers to facilitate compliance by the Operator with the obligations set out in this clause.
- (e) If the Authority so requests, the Operator shall, within five (5) Business Days after the receipt of the request, give to the Authority a statement showing the amount of wages and other payments due at the date of the request to and in respect of each of the Operator’s workers providing the Services, or, in respect of workers providing the Services not employed by or otherwise working for the Operator, ensure that their employer or the person for whom they are working does the same.
- (f) The Authority may seek information under clause 47.4(c) only for the purpose of ensuring the obligations referred to in this clause 47.4 to workers have been properly discharged.
- (g) All documents and records received under clause 47.4(c) shall be returned to the person providing them or destroyed if the Authority is satisfied that the relevant employer has complied with its obligations under clause 46.4 (*Operator Tender*) and with Legal Requirements to relevant workers.

- (h) If the Operator has not complied with this clause 47.4 (*Pay and Conditions of Employment*), the Authority shall, without limiting its other rights or remedies, be entitled to estimate (including, if appropriate and without limitation by requesting the Compliance Monitor to prepare such an estimate) the amount that should have been paid to workers providing the Services and contributions that should have been made on their behalf, and the Authority may at its discretion deduct the estimated amount from any payment due to the Operator under this Agreement, unless and until the Authority is satisfied that all proper amounts have been paid.
- (i) In the event of the Authority forming the view that the Operator (or any of its Sub-Contractors) are in breach of any of the terms of this clause 47.4 (*Pay and Conditions of Employment*), the Authority shall be entitled to inform, and disclose all relevant information in its possession to, the competent authorities in any jurisdiction in which such breach is believed to be occurring.
- (j) If the Operator does not comply with this clause 47.4 (*Pay and Conditions of Employment*), subject to the Authority's compliance with this clause 47.4, it shall pay to the Authority any reasonable and properly incurred costs the Authority incurs in investigating and dealing with the non-compliance.
- (k) Where there is a registered employment agreement and/or Sectoral Employment Order in place and applicable to the Operator, the Operator shall engage with workers or their representatives to constructively resolve any compliance matters regarding the relevant registered employment agreement or Sectoral Employment Order.
- (l) At the end of each Reporting Period during the Contract Period, the Operator shall give the Authority a list of the names of Staff who worked such Reporting Period and details of the category of and hours worked by each worker on the list.

47.5 Supervision

The Operator shall ensure that:

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

47.6 Disciplinary Action

- (a) The Authority may instruct the Operator to procure the removal of any employee of the Operator or any employee of any of its Sub-Contractors (of any tier), from the provision of the Services under this Agreement. The Authority shall co-operate with any such disciplinary proceedings and shall be advised in writing by the Operator of the outcome.
- (b) The Operator shall procure that there are set up and maintained by it and by all Sub-Contractors (of any tier), 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.

47.7 Penalties/Deductions/Service Credits for Operator breach of clause 46 Obligations

In the event that there are breaches of compliance by the Operator or its Sub-Contractors with clause 47, the Authority shall, without limiting its other rights or remedies, deduct five per cent (5%) of the Base Period Payment until such time as the Authority is satisfied that the Operator has successfully resolved the breaches.

47.8 Transfer Regulations

- (a) For the purposes of this clause 47.8 (*Transfer Regulations*):

“**Employee Information**” has the meaning set out in clause 47.8(i) below; and

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

- (b) The Operator and the Authority acknowledge that the Transfer Regulations:

- (i) may apply upon the Operator commencing all or part of the Services under this Agreement;
- (ii) may apply upon all or part of the Services transferring to, or otherwise being taken on by, the Authority or a Replacement Operator on termination or expiry of this Agreement; and
- (iii) may apply upon the Services transferring to, or otherwise being taken on by, the Authority or a Replacement Operator upon the occurrence of a Step In and/or Step Out.

- (c) The Parties agree that if the Transfer Regulations apply on or following the commencement of all or part of this Agreement, such that there are Commencement Transferring Employees, the contracts of employment of those persons (save insofar as excluded under Regulation 4 of the Transfer Regulations) will have effect from that date as if originally made between the Operator and those persons.

- (d) The Operator agrees that:

- (i) it shall be liable for all Liabilities resulting from the application or alleged application of the Transfer Regulations on, or following, commencement of this Agreement,
- (ii) the Authority has made no representations regarding the Transfer Regulations;
- (iii) the Authority has not provided any warranty or indemnity of any nature regarding the application of the Transfer Regulations or the identity of the persons who may transfer to the Operator in accordance with the Transfer Regulations; and
- (iv) its sole right and entitlement as regards the Authority in connection with a Commencement Transferring Employee is by way of the Deemed Variation.

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- (e) If the Transfer Regulations apply on or following commencement of this Agreement, it is agreed that in relation to Commencement Transferring Employees:
- (i) the Operator shall comply with its obligations under the Transfer Regulations and inform the Authority upon request of any measures envisaged in relation to such Commencement Transferring Employee;
 - (ii) the Authority shall provide information and assistance so far as it is reasonably able to do so in order to allow the Operator to so comply with its obligations under the Transfer Regulations, including using reasonable endeavours to obtain details of such Commencement Transferring Employees' existing contractual rights and obligations. However, the Authority neither warrants, represents nor takes responsibility for the accuracy of information so obtained and provided to the Operator; and
 - (iii) the Operator shall indemnify the Authority and keep the Authority indemnified on demand against any and all Liabilities relating to such persons arising from:
 - (A) a refusal to employ such Commencement Transferring Employee;
 - (B) the employment or termination of such Commencement Transferring Employee's employment by the Operator after the Transfer Date;
 - (C) any changes in such Commencement Transferring Employee's terms and conditions of employment; and
 - (D) any failure by the Operator to comply with the Transfer Regulations.
- (f) If the Transfer Regulations apply on termination or expiry of this Agreement, the Operator shall comply with its obligations under the Transfer Regulations, including its information and consultation obligations under Regulation 8 of the Transfer Regulations, and it shall provide any reasonably necessary information and assistance to a Replacement Operator to allow that party to comply with its obligations (including providing a list of Relevant Employees together with their terms and conditions of employment and allowing the Replacement Operator to address Relevant Employees as is reasonably necessary in the lead up to the Subsequent Transfer Date).
- (g) The Operator shall indemnify the Authority and the Replacement Operator and keep the Authority and Replacement Operator indemnified against any and all Liabilities relating to Relevant Employees (or a person claiming his employment should transfer to the Replacement Operator) arising from:
- (i) any claim which relates to such person's employment by the Operator before the Subsequent Transfer Date;
 - (ii) the employment or termination of such person's employment by the Operator before the Subsequent Transfer Date;
 - (iii) any changes in such person's terms and conditions of employment before the Subsequent Transfer Date;
 - (iv) any failure by the Operator to comply with the Transfer Regulations, including the information and consultation requirements in Regulation 8;
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- (v) a failure by the Operator to provide an accurate list of Relevant Employees together with their terms and conditions of employment; and
 - (vi) the non-disclosure or inaccurate disclosure of Employee Information.
- (h) If it is found by the Workplace Relations Commission, Labour Court or any other court of competent jurisdiction that the provisions of the Transfer Regulations operate so as to transfer to the Replacement Operator a person other than a Relevant Employee whose identity was notified to the Replacement Operator in accordance with clause 47.8(f) above:
- (i) the Replacement Operator shall, upon becoming aware of the alleged application of the Transfer Regulations to such person, inform the Operator and the Operator shall within five (5) Business Days:
 - (A) provide all relevant information to the Replacement Operator relating to such person and his employment as reasonably requested by the Replacement Operator ; and
 - (B) consult with the Replacement Operator in good faith as to the appropriate steps to be taken in relation to that person;
 - (ii) the Operator shall be entitled but not required, within ten (10) Business Days, offer such person employment on their same terms and conditions of employment; and
 - (iii) the Operator covenants to pay to the Replacement Operator on demand an amount equal to any and all Liabilities arising out of such person's employment and/or the termination of such person's employment (including any award made following a claim taken by such person together with the costs reasonably incurred in defending such claim), so long as such termination takes place within two (2) months of the Replacement Operator becoming aware of such allegation.
- (i) Within fifteen (15) Business Days of a written request by the Authority, the Operator shall give to the Authority or shall procure that the Authority is given the following information:
- (i) details of Relevant Employees including by category (including, without limitation, drivers and Revenue Protection Officers):
 - (A) number of Relevant Employees;
 - (B) job titles and job descriptions;
 - (C) length of service and years left to retirement;
 - (D) notice period for termination;
 - (E) rostering arrangements;
 - (F) duty rules (including, without limitation, maximum working time, maximum spread, sign on time, sign off time and meal reliefs);

- (G) rates of pay, average overtime earnings, allowances, bonuses and other benefits (including, without limitation, pension, life insurance, death in service benefit, spouses' pension benefit, health insurance, company mobile phones and company cars);
- (H) annual leave entitlement and accrued annual leave at that date;
- (I) absenteeism rates;
- (J) employer's pension contributions; and
- (K) overall wages and salary costs;
- (ii) copies of sample contracts of employment of the Relevant Employees;
- (iii) copies of any relevant collective or workforce agreement;
- (iv) a list of any Employee Representatives;
- (v) proposals for consultation with affected employees;
- (vi) such further information as is required by the Transfer Regulations at the Subsequent Transfer Date;
- (vii) such additional information as may be requested by the Authority; and
- (viii) such information as may be required to enable the Authority to comply with its obligations pursuant to any Legal Requirement.
- (j) The Operator shall inform the Authority of all material changes to the information supplied under clause 47.8(i) (other than to age and length of service) within ten (10) Business Days of such change occurring.
- (k) The Authority shall be entitled to provide information supplied under clauses 47.8(i) and 47.8(j) to the Replacement Operator and any Potential Replacement Operator.
- (l) The Operator warrants that the information given under clauses 47.8(i) and 47.8(j) will be complete and accurate and the Operator shall indemnify and hold harmless the Authority on its own account and as trustee for any Replacement Operator or any Potential Replacement Operator against all and any Indemnified Liabilities awarded against, incurred by or paid by the Authority or a Replacement Operator as a result of any such inaccurate or incomplete information.
- (m) The Operator shall upon:
 - (i) termination or expiry of this Agreement or the transfer of all or part of the Services to a Replacement Operator; and
 - (ii) to the extent applicable, Step In under clause 41 (*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);

- (n) The Operator shall maintain, or procure that there is maintained, adequate and suitable personnel records regarding Relevant Employees to enable the Operator to comply with this clause 47.8 (*Transfer Regulations*).
- (o) The Operator shall procure that there is not, without the Authority's prior consent, at any time made, agreed to take effect, or promised any change to the terms of employment of any Relevant Employee (including, but without limitation, the engagement, promotion or dismissal of any Relevant Employee (other than a dismissal for serious misconduct or serious poor performance and in each case having followed an appropriate disciplinary procedure)) in the period:
 - (i) after the Operator has been notified of the termination of this Agreement or part thereof; or
 - (ii) of six (6) months immediately prior to Expiry Date, up to and including the Expiry Date; or
 - (iii) prior to any Step In or such period of notice for the exercise of the Step In as has been given, or
 - (iv) on or after the Expiry Date,other than changes:
 - (A) made in the ordinary course of business; or
 - (B) consequent on a national industrial relations agreement or Sectoral Employment Order, in each case (as applicable), with which the Operator, as an operator of buses, is obliged to comply.
- (p) The Authority holds the benefit of any indemnities, covenants, agreements or warranties provided under this clause 47.8 (or any sub-clauses hereof) for itself and in trust for any nominee or Replacement Operator, and the Operator agrees that the Authority has the right at its sole discretion to assign the benefit of such indemnities to a Replacement Operator and that, when requested to do so by the Authority, the Operator shall execute indemnities, covenants, agreements or warranties in similar terms as this clause 47.8 in favour of a Replacement Operator.
- (q) Where the Operator chooses to provide all or any part of the Services through a Sub-Contractor:
 - (i) the term "**Operator**" shall be interpreted where necessary as including such Sub-Contractor; and
 - (ii) the Operator shall ensure that any such Sub-Contractors providing some or all of the Services, comply with the Transfer Regulations (if applicable) and any obligations to provide information or assistance to the Authority or a Replacement Operator in the same manner as such applies to the Operator.
- (r) The Operator shall indemnify and hold harmless the Authority for itself and as trustee for any Replacement Operator against all and any Indemnified Liabilities awarded

against, incurred or paid by the Authority or any Replacement Operator or replacement contractor in respect of any employee, contractor or worker employed by or contracted to the Operator who is not a Relevant Employee or is not deemed to be a Relevant Employee for the purposes of this clause 47.8 (and for these purposes “**Indemnified Liability**” shall include those of any Replacement Operator and/or any replacement contractor in relation thereto).

- (s) 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 47.8 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.
- (t) 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 47.8 relates, each Party shall give upon request by the other Party such assistance or information relevant to such Claim as may reasonably be requested.
- (u) Subject to clauses 47.8(g), 47.8(i) and 47.8(j), the Authority shall indemnify the Operator in respect of the discharge of all salaries, wages, bonuses, pension contributions and any other emoluments or financial benefits and other employment obligations relating to or concerning any Relevant Employee who transfers to a Replacement Operator in respect of the period following the Subsequent Transfer Date, provided that the relevant obligation or liability does not arise in or relate to any period before the Subsequent Transfer Date or any act or omission of the Operator taking place in such period.

47.9 Pensions – Relevant Employees

To the extent that any Relevant Employees who were members of the CIE Pension Scheme and CIE Spouses and Children’s Pension Scheme for Regular Wages Staff transfer to the Operator pursuant to the Transfer Regulations during the Contract Period, the Operator shall offer such Relevant Employees pension terms no less favourable than the following:

- (a) The Operator shall establish a contributory defined contribution occupational pension scheme (“**DC OPS**”) for Relevant Employees;
- (b) The DC OPS shall have a mandatory employer contribution rate of not less than 8% of salary and a mandatory employee contribution rate of not less than 4% of salary;
- (c) The Operator shall ensure that the DC OPS provides for a death in service benefit of 4 times basic salary for single members and 10 times salary for married members;
- (d) The Operator shall ensure that the trust deed and rules governing the DC OPS are standard insofar as expected in a pension scheme of this nature and size; and
- (e) The Operator shall ensure that the DC OPS is established and administered in accordance with legislation and best practice, that an independent trustee is appointed, and that Relevant Employees have reasonable access to information in relation to their pension benefits.

47.10 Pensions – Staff (Other than Relevant Employees)

The Operator shall offer Staff (other than Relevant Employees) a contributory defined contribution occupational pension scheme:

- (a) with a matching regular employer contribution for regular employee contributions up to five per cent. (5%) of salary;
- (b) with a death in service benefit of four (4) times basic salary for single members and 10 times salary for married members;
- (c) governed by a trust deed and rules that are standard insofar as expected in a pension scheme of this nature and size; and
- (d) established and administered in accordance with legislation and best practice, with an independent trustee appointed, and providing members with reasonable access to information in relation to their pension benefits.

47.11 Labour Court decision

- (a) Where:
 - (i) the Operator has been and is complying in full with the requirements of this clause 47 (Employment Issues); and
 - (ii) (A) there was a Trade Dispute between Specified Employees and the Operator, which was referred to the Labour Court; and
 - (B) the Operator having participated fully in any Labour Court hearings on the Trade Dispute, the Labour Court issued a binding recommendation or determination under the Industrial Relations Acts in relation to such Trade Dispute that such Specified Employees are entitled to a percentage increase in pay rates or wages (the "**determined increase**");
 - (iii) if, expressed as a percentage of the rates of pay for Specified Employees on the Initial Operating Commencement Date, the aggregate of:
 - (A) the determined increase to the extent the increase is made prior to the Trigger Date; and
 - (B) any other change in the pay rates previously granted to the Specified Employees on or prior to the expiry of the last Quarter prior to such Trigger Date,
 adjusted to take into account any savings or cost reductions realised or to be realised by the Operator (including productivity benefits or enhancements, as determined by the Authority, acting reasonably)) exceeds by fifty percent. (50%):
 - (1) in the case of the first Trigger Date, the percentage change in the average hourly earnings of all employees in the economy number ("**earnings number**") last published by the Central

Statistics Office (or any successor thereto) prior to the first Trigger Date when compared to the earnings number last published prior to or on the Initial Operating Commencement Date, or

- (2) in the case of the second Trigger Date, the aggregate of:
 - (aa) the percentage change in the earnings number last published by the Central Statistics Office (or any successor thereto) prior to the second Trigger Date when compared to the earnings number last published prior to or on the Initial Operating Commencement Date; and
 - (bb) the percentage change in the earnings of the Specified Employees since the previous Pay Review Date consequent on the inclusion of "AP_{TD1}" in the formula in paragraph 20.11 of Schedule 20 (Contract Charges and Indexation) in accordance with clause 47.11(e), being the percentage determined for the purposes of, and in accordance with, clause 47.11(f)(ii)(B),

the Operator shall be entitled at any time after the expiry of the Reporting Period in which the date that is thirty six (36) months after the Initial Operating Commencement Date falls to serve a notice on the Authority in accordance with this clause 47.11.

- (b) Where there are different rates for different Specified Employees, the effect of each different increase on the overall calculation for the purposes of clause 47.11(a)(iii) shall be weighted by reference to the number of Specified Employees the subject of the different arrangements as of the Trigger Date, such that the overall percentage calculation of the increase for all Specified Employees shall be one percentage amount.
- (c) The Operator may only exercise its right to serve a notice under this clause 47.11:
 - (i) if:
 - (A) the Contract Period is not extended in accordance with clause 4.2 (Contract Period Extension), once; or
 - (B) in any other case, twice;
 - (ii) where a notice under this clause 47.11 has not been served in the immediately preceding eighteen (18) months; and
 - (iii) in the case of a second notice under this clause 47.11 and a second Trigger Date, if the requirements of 47.11(a)(i), clause 47.11(a)(ii) and clause 47.11(a)(iii) (to the extent applicable) are satisfied in respect of that second notice and second Trigger Date.

It is agreed and acknowledged that, to the extent the requirements of clause 47.11(a)(i), clause 47.11(a)(ii) and clause 47.11(a)(iii) have been complied with in respect of a first notice under this clause 47.11 and the first Trigger Date, such

compliance is not to be taken into account in determining whether the circumstances exist to allow the Operator to serve a second notice under this clause 47.11.

- (d) Any notice being served in accordance with clause 47.11(a) shall contain all relevant information relating to the relevant pay increase, including:
- (i) copies of any determinations, recommendations, decision, agreements or understandings relevant to pay increase;
 - (ii) full details of the changes in pay rates for each grade, including when such changes took effect;
 - (iii) full details of changes in the Specified Employees, including in grades and entitlements and the reasons for such changes;
 - (iv) details of how sums which were not otherwise percentages are reflected in the percentage calculation referred to in clause 47.11(a)(iii) ; and
 - (v) details of all savings and productivity changes realised or projected to be realised consequent on any determination, decision, agreement or understanding.
- (e) In the case of the first notice served under this clause 47.11 and the first Trigger Date, subject to the foregoing, and the Authority having satisfied itself (acting reasonably):
- (i) that the aggregate, as of the first Trigger Date, of:
 - (A) the determined increase to the extent the increase is made prior to such Trigger Date; and
 - (B) any other change in the pay rates previously granted to the Specified Employees on or prior to the expiry of the last Quarter prior to such Trigger Date,

(such aggregate figure being expressed as a percentage of the rates of pay for Specified Employees on the Initial Operating Commencement Date), adjusted to take account of any savings or cost reductions realised or to be realised by the Operator (including productivity benefits or enhancements, as determined by the Authority, acting reasonably)) (together the "**first aggregate increase**"),

exceeds by fifty percent. (50%) or more:
 - (ii) the percentage change in the earnings number last published by the Central Statistics Office (or any successor thereto) prior to the first Trigger Date when compared to the earnings number last published prior to or on the Initial Operating Commencement Date, to the extent a positive number (the "**first wage indexation change**"),

the formula in paragraph 20.11 of Schedule 20 (Contract Charges and Indexation), with effect from the relevant Pay Review Date, shall be:

$$EF_{rd} = \left(1 + \left[\frac{EHECS_{id} - EHECS_{bd}}{EHECS_{bd}} \right] + AP_{TD1} \right) \times (EP)$$

where:

- (1) each of EF_{rd} and EP has the meaning given to it in paragraph 20.11 of Schedule 20 (*Contract Charges and Indexation*);
- (2) each of $EHECS_{id}$ and $EHECS_{bd}$ has the meaning, and is determined in accordance with, paragraph 20.11 of Schedule 20 (*Contract Charges and Indexation*);
- (3) AP_{TD1} is the amount expressed as a fraction determined in accordance with the following formula:

$$AP_{TD1} = \left(\frac{AI_{TD1} - [1.5 \times WI_{TD1}]}{2} \right) \times \left(\frac{SE}{TE} \right)_{TD1}$$

where:

AI_{TD1} is the first aggregate increase as of the first Trigger Date;

WI_{TD1} is the first wage indexation change as of the first Trigger Date; and

$\left(\frac{SE}{TE} \right)_{TD1}$ is the proportion of Specified Employees to the total number of employees of the Operator as of the first Trigger Date, expressed as a fraction provided that if at the start of any Relevant Quarter the result of the fraction would be a smaller fraction if the number of Specified Employees and total number of employees as of that date were used than the fraction as of the Trigger Date, such smaller fraction shall be used.

- (f) In the case of the second notice served under this clause 47.11 and the second Trigger Date, subject to the foregoing, and the Authority having satisfied itself (acting reasonably):

- (i) that the aggregate, as of the second Trigger Date, of:
 - (A) the determined increase to the extent the increase is made prior to such Trigger Date; and
 - (B) any other change in the pay rates previously granted to the Specified Employees on or prior to the expiry of the last Quarter prior to such Trigger Date,

(such aggregate figure being expressed as a percentage of the rates of pay for Specified Employees on the Initial Operating Commencement Date), adjusted to take account of any savings or cost reductions realised or to be realised by the Operator (including productivity benefits or enhancements, as determined by the Authority, acting reasonably) (together the "**second aggregate increase**"),

exceeds by fifty percent. (50%) or more:

- (ii) the aggregate of:
 - (A) the percentage change in the earnings number last published by the Central Statistics Office (or any successor thereto) prior to such Trigger Date when compared to the earnings number last published prior to or on the Initial Operating Commencement Date; and
 - (B) the percentage change in the earnings of the Specified Employees since the previous Pay Review Date consequent on the inclusion of "AP_{TD1}" in the formula in paragraph 20.11 of Schedule 20 (Contract Charges and Indexation) in accordance with clause 47.11(e) (namely, by multiplying AP_{TD1} and $(\frac{TE}{SE})_{TD1}$,

to the extent a positive number (the "**second wage indexation change**"),

the formula in paragraph 20.11 of Schedule 20 (*Contract Charges and Indexation*), with effect from the relevant Pay Review Date, shall be:

$$EF_{rd} = \left(1 + \left[\frac{EHECS_{id} - EHECS_{bd}}{EHECS_{bd}} \right] + AP_{TD1} + AP_{TD2} \right) \times (EP)$$

where:

- (1) each of EF_{rd} and EP has the meaning given to it in paragraph 20.11 of Schedule 20 (*Contract Charges and Indexation*);
- (2) each of EHECS_{id} and EHECS_{bd} has the meaning, and is determined in accordance with, paragraph 20.11 of Schedule 20 (*Contract Charges and Indexation*);
- (3) AP_{TD1} is the amount determined in accordance with clause 47.11(e);
- (4) $\frac{TE}{SE}_{TD1}$ is the inverse of $\frac{SE}{TE}_{TD1}$ (as determined in accordance with clause 47.11(e));
- (5) AP_{TD2} is the amount expressed as a fraction determined in accordance with the following formula:

$$AP_{TD2} = \left(\frac{AI_{TD2} - [1.5 \times WI_{TD2}]}{2} \right) \times \left(\frac{SE}{TE} \right)_{TD2}$$

where:

AI_{TD2} is the second aggregate increase as of the second Trigger Date;

WI_{TD2} is the second wage indexation change as of the second Trigger Date;
and

$(\frac{SE}{TE})_{TD2}$ is the proportion of Specified Employees to the total number of employees of the Operator as of the second Trigger Date, expressed as a fraction provided that if at the start of any subsequent Relevant Quarter the result of the fraction would be a smaller fraction if the number of Specified Employees and total number of employees as of that date were used than the fraction as of the Trigger Date, such smaller fraction shall be used.

- (g) The Authority acknowledges that, with effect from each Pay Review Date, the Annual Operating Charge shall be determined taking account of any adjustment consequent on the formulae set out in clause 47.11(e) or clause 47.11(f), as applicable, notwithstanding that the Pay Review Date is not a Review Date.

PART 15 – MISCELLANEOUS PROVISIONS**48. ASSIGNMENT****48.1 Binding on Successors and Assigns**

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

48.2 Assignment by the Operator

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

- (a) this Agreement;
- (b) the Principal Sub-Contracts; or
- (c) any other contract entered into by the Operator in performing its obligations under this Agreement or any part thereof or any benefit or interest therein or thereunder; or

provided that such consent will not be required where any assignment or creation or allowing to subsist of any Encumbrance, trust or interest in relation to this Agreement is by way of security to a financial institution providing funding to the Operator and such financial institution does not require any confirmation or undertaking from the Authority in relation to this Agreement.

49. SUB-CONTRACTING**49.1 Sub-Contracting Performance**

- (a) Subject to Regulation (EC) No. 1370/2007, the Operator shall not be entitled to sub-contract performance of the Services in whole or part without the Authority's prior Approval.
- (b) The Operator shall ensure that no Principal Sub-Contractor shall be entitled to sub-contract performance of its services relating to the Services without the Authority's prior Approval.
- (c) Where any Principal Sub-Contractor sub-contracts any of its performance of the Services without the prior knowledge of the Operator and without the prior Approval of the Authority, the Operator shall not be in breach of this clause 49.1 (*Sub-Contracting Performance*) where it has acted in good faith and either:
 - (i) obtains the Approval of the Authority; or
 - (ii) procures that the Principal Sub-Contractor terminates, rescinds, revokes and/or procures the rescission of such sub-contract, within thirty (30) Business Days of the date of any such sub-contract.
- (d) For the avoidance of doubt, the Operator acknowledges that it will remain primarily responsible to the Authority for the provision of the Services notwithstanding any sub-contracting permitted pursuant to the terms of this clause 49 (*Sub-Contracting*).

49.2 Principal Sub-Contractors

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

- (a) the engagement or employment of any Principal Sub-Contractor is 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 any Principal Sub-Contractor, provided however if there is an event of default under the Operator's contract with any Principal Sub-Contractor such that their appointment is to be terminated, the Authority shall not object to the appointment of any replacement who has the necessary legal capacity, power and authority to perform such function and who has the necessary technical and financial resources to perform such function.

49.3 Replacement of Principal Sub-Contractors

If any Principal Sub-Contractor 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 49.2 (*Principal Sub-Contractors*).

49.4 Details of proposed Sub-Contractors and Suppliers

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

49.5 Principal Sub-Contractor's Direct Agreements

- (a) The Operator shall enter into, and procure that each Principal Sub-Contractor enters into, a Direct Agreement in favour of the Authority in form set out in Schedule 29 (*Form of Direct Agreement*).
- (b) The Operator shall enter into, and procure that any substitute for a Principal Sub-Contractor to be appointed in accordance with clause 49.3 (*Replacement of Principal Sub-Contractors*) shall, upon its appointment or as soon as reasonably practicable thereafter, and in any event no later than 30 (thirty) Business Days of the appointment, enter into a Direct Agreement in favour of the Authority in the form set out in Schedule 29 (*Form of Direct Agreement*).

49.6 Continuing obligations

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

- (b) The Operator shall procure that any manufacturers' or suppliers' warranties to be given in respect of any part or parts of the Network Assets shall be assignable to the Authority and thence by the Authority to any nominee stipulated by the Authority.

49.7 Waiver of Liability – Disclosed Data and Certification Procedure

If requested by the Authority, 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 the Authority in respect of the Losses or Claims referred to in clause 6 (*Disclaimers*) and clause 23 (*Consents and Approvals*) in a form satisfactory to the Authority (acting reasonably).

50. **DISPUTES RESOLUTION PROCEDURE**

Except as expressly provided in any other provision of this Agreement, all Disputes shall be resolved in accordance with the provisions set out in Schedule 28 (*Disputes Resolution Procedure*).

51. **SET-OFF**

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

52. **NOTICES**

52.1 Requirement for Writing

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

52.2 Notice Specify Response Period

Subject to clause 52.4 (*Changes*), any Notice issued by the Operator under this Agreement which requires a response from the Authority within a particular period of time (pursuant to the provisions of this Agreement) shall expressly specify the particular period.

52.3 Addresses

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

Authority:

National Transport Authority
Dún Scéine
Iveagh Court

Harcourt Lane Dublin 2 Email: Anne.Graham@nationaltransport.ie Attention: Anne Graham
Operator: Go-Ahead Transport Services (Dublin) Limited Holmes O'Malley Sexton Solicitors, 2-4 Ely Place, Dublin 2, D02FR28 Email: Ed Willis Ed.willis@go-aheaddublin.ie

Operator's Representative Go-Ahead Transport Services (Dublin) Limited 2 Ely Place Dublin 2 D02 H982 Email: Ed Willis Ed.willis@go-aheaddublin.ie
Authority's Representative National Transport Authority Dún Scéine Iveagh Court Harcourt Lane Dublin 2 Email: Tim.Gaston@nationaltransport.ie Attention: Tim Gaston

52.4 Changes

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

52.5 Receipt

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

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

53. ANNOUNCEMENTS

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

54. CONFIDENTIALITY

54.1 Confidential Information

In this clause 54 (*Confidentiality*), “**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 Agreement by one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), whether before or after the date of this Agreement, including:

- (a) all correspondence between a Party, or any Associated Company of that Party, and the Minister for Transport and/or Department of Transport, Tourism and Sport; and
- (b) any information of a confidential or proprietary nature which relates to the undertaking or finances of any of the Parties.

54.2 Obligations

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

- (a) will not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
- (b) will not disclose Confidential Information to any third party except with the prior written consent of the Disclosing Party other than in accordance with clauses 54.3 (*Permitted Disclosures*); and
- (c) shall make every effort to prevent the use or disclosure of Confidential Information.

54.3 Permitted Disclosures

- (a) During the term of this Agreement, the Receiving Party may disclose Confidential Information to any of its directors, officers, shareholders (including employees of such shareholders) and employees (a “**Recipient**”) to the extent that disclosure is reasonably necessary for the purposes of this Agreement.
- (b) The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

- (c) The obligations in this clause 54 (*Confidentiality*) shall not apply to the extent that:
- (i) the disclosure of Confidential Information is required by the law of any relevant jurisdiction (including for the avoidance of doubt any disclosure required under the Freedom of Information Act 2014) or pursuant to an order of a court of competent jurisdiction;
 - (ii) the information is disclosed on a strictly confidential basis to the professional advisers, bankers or auditors of that Party;
 - (iii) the information has come into the public domain through no fault of that Party;
 - (iv) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid;
 - (v) the information was obtained by the Receiving Party from a third party who was free to divulge the same;
 - (vi) the information is disclosed by the Receiving Party in accordance with clause 25.3 (*Oireachtas Questions and Issues*); or
 - (vii) the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed.

55. AGENCY

55.1 No Delegation

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

55.2 No Agency

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

55.3 Operator Responsibility

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

55.4 Operator Knowledge

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

55.5 Independent Operator

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

56. **WHOLE AGREEMENT**

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

57. **SEVERABILITY**

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

58. **WAIVER**

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

59. **AMENDMENTS**

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

60. **CORRUPT GIFTS**

60.1 Prohibited Acts

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

- (a) offer or give or agree to give to any employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; or
- (b) enter into any agreement (including this Agreement) with the Authority in connection with which commission has been paid or agreed to be paid by the Operator or on its

behalf, or to its knowledge, unless before such agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to a duly authorised representative of the Authority.

60.2 Consequences of Prohibited Acts

If the Operator (or anyone acting on its behalf) does any of the Prohibited Acts or commits any offence under the Prevention of Corruption Acts 1889 to 2001, and/or the Ethics in Public Office Act 1995, with or without the knowledge of the Operator then, subject to clause 60.3 (*Remedies for Prohibited Acts*) the following provisions shall apply:

- (a) If a Prohibited Act is committed by the Operator or by the Staff (or any member of the Staff) not acting independently of the Operator, then the Authority may terminate this Agreement by giving notice to the Operator.
- (b) If a Prohibited Act is committed by the Staff (or any member of the Staff) acting independently of the Operator, then the Authority may give notice to the Operator of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Operator removes (or procures the removal) of the Staff (or the relevant member of Staff as the case may be) (which shall unless otherwise agreed with the Authority include the employer of any employee in addition to the relevant employee) from the Services and (if necessary) procures the performance of such part of the Operator's obligations under this Agreement by another person.
- (c) Any notice of termination under this clause 60 (*Corrupt Gifts*) shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (iii) the date on which this Agreement will terminate, in accordance with the applicable provision of this clause.

60.3 Remedies for Prohibited Acts

- (a) Without prejudice to any other rights under this clause 60 (*Corrupt Gifts*), the Authority shall be entitled to:
 - (i) recover from the Operator the amount of any Loss suffered by the Authority, as the case may be, resulting from a breach by the Operator of its obligations under this clause 60 (*Corrupt Gifts*); and
 - (ii) require that the amount or value of any gift or consideration given in breach of this clause 60 (*Corrupt Gifts*) be donated to a charity specified by the Authority.
- (b) In exercising its remedies under this clause 60 (*Corrupt Gifts*), the Authority shall:
 - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of the Prohibited Act and the identity of the person committing the Prohibited Act; and

- (ii) report the Prohibited Act to the authorities to the extent that it deems such Prohibited Act to be an offence.

61. **COUNTERPARTS**

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

62. **GOVERNING LAW AND JURISDICTION**

62.1 Law

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

62.2 Jurisdiction

Subject to the provisions of clause 50 (*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 Agreement.

EXECUTION PAGE

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

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

SIGNED by _____ a duly authorised representative of/for and on behalf of GO-AHEAD TRANSPORT SERVICES (DUBLIN) LIMITED	_____
in the presence of: Witness: Address: Occupation:	_____ _____ _____