

## **PURCHASE / SERVICE ORDER GENERAL TERMS AND CONDITIONS**

### **PART A – GENERAL CONDITIONS**

#### **1. INTERPRETATIONS AND GENERAL MATTERS**

##### **1.1 Definitions**

- 1.1.1 "Customer" means KDR Victoria Pty Ltd (ACN 138 066 074) trading as Yarra Trams.
- 1.1.2 "day" means a calendar day.
- 1.1.3 "FIS" means, in relation to delivery of the Goods, free in store and includes the responsibility (and associated costs) for packing, loading, transportation, delivery and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.
- 1.1.4 "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase/Service Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.
- 1.1.5 "Insolvency Event" has the meaning given in Clause 5.3.
- 1.1.6 "Losses" means all loss, damage, liability, cost or expense arising from the performance or non performance (including any negligent or wilful act or omission), any breach or default of parties' obligations under this Purchase/Service Order and includes any loss, damage, liability, cost or expense agreed to be paid by way of settlement or compromise.
- 1.1.7 "PTV" means the Public Transport Development Authority.
- 1.1.8 "Public Transport Development Authority" (trading as Public Transport Victoria) means, the Public Transport Development Authority, a body corporate established under the *Transport Integration Act 2010* (Vic).
- 1.1.9 "Purchase/Service Order" means the purchase order and/or service order issued by the Customer to the Supplier as evidenced by the documents listed in the Purchase/Service Order Form.
- 1.1.10 "Purchase/Service Order Form" means the section of the Purchase/Service Order to be completed by the Customer, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase/Service Order.
- 1.1.11 "Rolling Stock Maintenance Services" means any maintenance services or other works to:
- rolling stock;
  - rotable items; or
  - any tool (including an electronic diagnostic tool) that may be used in a specific activity for maintaining the rolling stock or rotatable items.
- 1.1.12 "Services" means the services as set out and further detailed in the Purchase/Service Order Form.
- 1.1.13 "Specifications" means the Customer's requirements with which the Goods and Services must comply, as specified by the Customer to the Supplier from time to time.
- 1.1.14 "Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase/Service Order Form.
- 1.1.15 "Warranty Period" means:
- in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereof; and
  - in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year thereof.

##### **1.2 Interpretations**

- 1.2.1 Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.
- 1.2.2 Rights and remedies under the Purchase/Service Order are in addition to rights or remedies available at law (including under statute).

##### **1.3 Supplier to Inform Itself**

- 1.3.1 The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all of the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase/Service Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase/Service Order.

##### **1.4 Order of Precedence**

- 1.4.1 Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase/Service Order Form, will be as follows:
- the Purchase/Service Order Form;
  - the General Terms and Conditions (this document); and
  - the Specification(s).

##### **1.5 Ambiguities**

- 1.5.1 If the Supplier discovers any ambiguity in the Purchase/Service Order it shall immediately notify the Customer in writing. The Customer will then determine the correct interpretation of the Purchase/Service Order. The determination of the Customer will be final and binding on the Supplier and have no effect on the Purchase/Service Order price.

##### **1.6 Use of Documentation and Equipment**

- 1.6.1 Documents prepared in relation to, or ancillary to the Purchase/Service Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.
- 1.6.2 The Supplier will keep any equipment provided by the Customer to the Supplier safe and return it to the Customer in its original state on expiry or termination of this Purchase/Service Order (fair wear and tear excepted), failing which the Supplier will pay the cost of repair or replacement (at the Customer's option).

##### **1.7 Waiver**

- 1.7.1 No failure or delay on the part of the Customer in exercising any of its rights under the Purchase/Service Order shall be construed as constituting a waiver of any such rights.

##### **1.8 Entire Agreement**

- 1.8.1 The Purchase/Service Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase/Service Order has any effect on the Purchase/Service Order unless specifically incorporated herein. Without limitation, no quotation or Supplier standard terms and conditions of supply shall form part of this Purchase/Service Order unless otherwise agreed in writing by the Customer.

##### **1.9 Communications**

- 1.9.1 Any notice or other communication required under the Purchase/Service Order must be delivered in writing. Such written communication will be provided in English. Verbal instructions or directions from the Customer must be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

##### **1.10 Licences and Laws**

- 1.10.1 The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, directions received from the PTV, orders and rules and with the lawful

requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services. No change in licenses or laws will affect the Purchase/Service Order price.

#### **2. PERFORMANCE AND QUALITY**

##### **2.1 Materials and Workmanship**

- 2.1.1 All Services and/or Goods shall be fit for purpose. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase/Service Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws. Goods supplied must meet all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

##### **2.2 Supplier Qualifications**

- 2.2.1 The Supplier represents and warrants to the Customer that it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase/Service Order.

##### **2.3 Testing and Inspection**

- 2.3.1 The Goods and/or Services must be tested in accordance with the requirements of the Purchase/Service Order, including any Specification. Unless otherwise stated in the Purchase/Service Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing.
- 2.3.2 The Customer will have the right to inspect, expedite and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved in writing by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of the Purchase/Service Order and will in no way impair the Customer's right to require subsequent correction or re-performance of non-conforming Services and/or Goods.

##### **2.4 Quality Standards**

- 2.4.1 The Supplier must comply with the standards of quality specified in the Purchase/Service Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.

##### **2.5 Defects and Warranty**

- 2.5.1 The Supplier warrants that the Goods shall:
- be free from liens, charges, encumbrances, mortgages or other defects in title;
  - be new and made to the specified quality;
  - be free from defects in design, materials and workmanship; and
  - conform to the conditions and specifications of the Purchase/Service Order.
- 2.5.2 The Supplier warrants that the Goods and Services shall:
- conform to all applicable laws and regulations to which the Services or Goods are subject; and
  - be performed in accordance with any performance standard specified in the Purchase/Service Order.
- 2.5.3 The Supplier warrants that it will comply with any of the Customer's policies notified by the Customer to the Supplier from time to time, including without limitation any of the Customer's privacy policies.
- 2.5.4 The warranties noted in Clause 2.5.1 above are in addition to any statutory warranties applicable to the Services and/or Goods.
- 2.5.5 During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:
- correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
  - correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Customer.
- 2.5.6 If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be unreasonable), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.
- 2.5.7 Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.
- 2.5.8 Where the Supplier is not the original equipment manufacturer of the Goods the Supplier must obtain for the Customer's benefit such standard warranties, indemnities and rights as those outlined in this Purchase/Service Order and where more are offered, then the Supplier must provide such additional warranties, indemnities and rights to the Customer.

#### **3. DELIVERY/DELAY**

- 3.1 Unless otherwise specified in the Purchase/Service Order, Goods must be delivered FIS, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase/Service Order Form.
- 3.2 Title in the Goods will transfer to the Customer upon payment for the Goods. Such payment is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that the Customer has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase/Service Order.
- 3.3 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date or in the performance of the Services provided:
- the delay is caused by a breach or act of prevention by the Customer, (without fault of the Supplier);
  - the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase/Service Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.
- 3.4 The Customer may in its absolute discretion (and with no obligation to do so) extend the time for performance or delivery for any other reason at any time prior to expiration of the Warranty Period. The Customer is not required to exercise its discretion under this Clause 3.4 for the benefit of the Supplier.
- 3.5 If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), the Customer may terminate the Purchase/Service Order

either in whole or in part for default, in accordance with the provisions of Clause 5.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Customer's damages and not as a penalty, the amount specified in the Purchase/Service Order Form, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.

**4. VARIATIONS**

- 4.1 The Customer may vary the work under the Purchase/Service Order or any condition thereof and the Supplier must carry out any such variation as directed by the Customer. In the event of any such variation, the Supplier's price (addition or reduction) will be varied together with the delivery date(s) for the Services and/or Goods. Any variation to the price will be consistent with prices charged by the Supplier in accordance with the Purchase/Service Order. If agreement cannot be reached in relation to a revised price or delivery date(s), the parties will seek to resolve the dispute in accordance with Clause 9.
- 4.2 The Supplier must not vary the work under the Purchase/Service Order or any condition thereof, without the written consent of the Customer.

**5. SUSPENSION/TERMINATION**

**5.1 Suspension**

- 5.1.1 The Customer may, at any time by written notice, suspend all or part of the Purchase/Service Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase/Service Order within forty-eight (48) hours of being directed to do so by the Customer.

**5.2 Termination by Default**

- 5.2.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice stating its intention to terminate the contract pursuant to this Clause 5.2 to the other party (the "defaulting party") in the event that the defaulting party:
  - (a) abandons or repudiates the Purchase/Service Order;
  - (b) suspends performance of the contract for a significant time, or fails to pay monies due under the Purchase/Service Order, without reasonable cause;
  - (c) breaches any of the terms and conditions of the Purchase/Service Order which is not remedied within seven (7) days of notice to do so; or
  - (d) appears likely to become subject to an Insolvency Event described in Clause 5.3.

**5.3 Termination for Insolvency**

- 5.3.1 If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation (each such event or process referred to in these General Terms and Conditions as an "Insolvency Event"), the other party may at any time by written notice terminate the contract forthwith.

**5.4 Termination for fraudulent, misleading or deceptive conduct by the Supplier**

- 5.4.1 Notwithstanding any other provisions of the Purchase/Service Order, the Customer may terminate the Purchase/Service Order if the Supplier or any of its personnel engage in fraudulent, misleading or deceptive conduct in relation to the Purchase/Service Order or any other agreement or contract between the Supplier and the Customer.

**5.5 Termination at Customer's Option**

- 5.5.1 Notwithstanding any other provisions of the Purchase/Service Order, the Customer may terminate the Purchase/Service Order at any time and for any reason whatsoever by giving seven (7) days written notice to the Supplier.

**5.6 Supplier's Rights and Obligations on Suspension /Termination**

- 5.6.1 In the event of suspension of the Purchase/Service Order, the Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension.
- 5.6.2 In the event of insolvency of the Supplier or its default under Clause 5.2, the Customer shall immediately suspend any further payment to the Supplier. Any additional monies required by the Supplier to complete the Purchase/Service Order in excess of what the Customer would have paid under the Purchase/Service Order shall be a debt due and payable by the Supplier to the Customer.
- 5.6.3 In the event of termination by the Customer under Clause 5.4, and provided the Supplier is not in default, the Customer shall pay the Supplier for Services performed or Goods delivered prior to termination. The Customer shall not otherwise be liable for any other costs, losses, damages or expenses of any kind whatsoever of the Supplier in respect of the termination.

**6. PRICE AND PAYMENT**

- 6.1 Unless otherwise stated in the Purchase/Service Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
- 6.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes applicable to the Supplier, duties and charges payable with respect to the Goods and/or Services. The Purchase/Service Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 6.3 Unless otherwise specified in the Purchase/Service Order, invoices for payment must be submitted to the Customer for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than 60 days from the end of month of the date the invoice was issued (invoice date).
- 6.4 To the extent that any Taxable Supply occurs under the Purchase/Service Order then:
  - (a) the party who is the supplier will (unless prices are expressed to be inclusive of GST), be entitled to increase the consideration for the Taxable Supply identified in the Purchase/Service Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act;
  - (b) the recipient shall pay such increased consideration;
  - (c) the supplier must in a situation such as described in Clause 6.4, issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid;
  - (d) in Clauses 6.4(a) and (c), "Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated legislation and regulations, "GST" means the goods and services tax imposed by the Act and "Taxable Supply" means a taxable supply under the Act.

**7. SUPPLIER NOT TO SUBCONTRACT OR ASSIGN**

- 7.1 The Supplier must not subcontract, assign, novate, transfer, mortgage, charge or encumber any right or obligation, in whole or in part, under this Purchase/Service Order without the prior written consent of the Customer (in its absolute discretion).
- 7.2 The Supplier must obtain the approval of the Customer to full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any

subcontract. Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase/Service Order.

**8. RELATIONSHIP**

- 8.1 In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in this Purchase/Service Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

**9. DISPUTES**

- 9.1 Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.
- 9.2 In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under the Purchase/Service Order is continued without any effect on the specified delivery date.
- 9.3 The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Customer and the Supplier.
- 9.4 If the parties cannot resolve a dispute within twenty-one (21) days the dispute is first raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation. The dispute must be heard within fourteen (14) days after it is referred to the ACDC.
- 9.5 Neither party may litigate until the procedures in Clauses 9.1 to 9.4 above have first been complied with.

**10. INSURANCE AND INDEMNITIES**

- 10.1 The Supplier must maintain the insurances specified below from the commencement of this Purchase/Service Order until seven (7) years after the completion of the delivery of the Goods and/or Services:
  - (a) the Supplier must maintain public and product liability insurance for an amount of not less than \$20,000,000, professional indemnity insurance for an amount of not less than \$5,000,000 and where applicable goods in transit insurance (for the total replacement value of the Goods);
  - (b) the Supplier must ensure that its public liability and products liability policy each name the Customer as an additional insured and contain a cross-liability clause which allows the Customer to make a claim as though individual insurance policies had been issued to the Supplier and the Customer;
  - (c) not reduce the level of insurance required by this Purchase/Service Order without the written consent of the Customer; and
  - (d) give evidence of the insurances, and their currency, acceptable to the Customer on request.
- 10.2 The Supplier indemnifies the Customer in respect of all Losses arising out of the Supplier's performance or non performance (including any negligent or wilful act or omission), or any breach or default of its obligations under this agreement.
- 10.3 The Supplier's liability under Clause 10.2 shall not exceed the amount equal to five (5) times the amount paid or payable by the Customer under this Purchase/Service Order, except for Losses arising from personal injury or death (including disease or illness), third party property damage, breach of a third party's Intellectual Property, delays to tram passenger services, breach of confidence and loss arising from fraud or unlawful act, where no limitation applies.

**11. APPLICABLE LAW**

- 11.1 Unless otherwise specified, the Purchase/Service Order will be governed and construed in accordance with the laws of Victoria. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of Victoria.
- 11.2 The United Nations Convention on Purchase/Service Orders for the International Sale of Goods does not apply to this Purchase/Service Order.
- 11.3 Clauses 1.1, 1.2, 1.3, 1.6, 1.7, 2.5, 3.5, 5.6, 7, 8, 9, 10, 11 and 12 in Part A of the General Terms and Conditions and all Clauses in Part B of the General Terms and Conditions survive the termination or expiry of this Purchase/Service Order as do any other provisions that by implication from their nature are intended to survive the termination or expiry, and any rights and remedies accrued prior to termination.

**12. FRANCHISE BUSINESS SPECIAL CONDITIONS**

- 12.1 The Contractor must comply with the requirements set out in Part B (Franchise Business Special Conditions). Notwithstanding anything else in this agreement, to the extent that there is any inconsistency, ambiguity or discrepancy between the requirements of Part B and the rest of this agreement, the requirements of Part B prevail.

**PART B – FRANCHISEE BUSINESS SPECIAL CONDITIONS**

**13. DEFINITIONS**

- 13.1 "2009 Personal Information" means any information or opinion about a natural person (whether true or not), including 'personal information' as that term was defined in the *Information Privacy Act 2000* (Vic) and 'Health Information' as the term is defined in the *Health Records Act*.
- 13.2 "Accreditation" means accreditation obtained in accordance with the requirements of Part 5 of the *Rail Safety Act*, including any guideline, regulation or ordinance made pursuant to that Part.
- 13.3 "Authorisation" includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a Governmental Agency.
- 13.4 "Background Intellectual Property" means any and all Intellectual Property owned or licensed by the Supplier that subsists in any material provided to the Customer by or on behalf of the Supplier under or in connection with the Purchase/Service Order and which was created prior to the date of the Purchase/Service Order.
- 13.5 "Claim" includes any claim, action, proceeding, demand or investigations of any nature or kind and includes the allegation of a claim.
- 13.6 "Collision" Spare means a spare listed in the Franchise Agreement or any spare replacing that spare.
- 13.7 "Confidential Information" means all documents and information (whether or not in material form and whether or not disclosed before or after the date of the Purchase/Service Order) disclosed or revealed by, or on behalf of, the Customer or PTV to the Supplier relating to the Purchase/Service Order, the Franchise Agreement, the Franchise Business or the Victorian public transport system.
- 13.8 "Contract Intellectual Property" means any and all Intellectual Property rights:
  - (a) developed by or on behalf of the Supplier in connection with the performance of the Purchase/Service Order; or
  - (b) subsisting in any Improvement,

- including any information, records, reports, documents, drawings, specifications, instructions, procedures, training materials, photographs, plans, software (including source code), operating plans and schedules but excludes Background Intellectual Property.
- 13.9 "Supplier Data" means all Data that is created by or on behalf of the Supplier and provided to the Customer under or in connection with the Purchase/Service Order and includes any such Data that is Third Party Data.
- 13.10 "Data" means any information or materials generated, processed, obtained, received, collected, held, stored, managed, used, disclosed, transferred or transmitted by or on behalf of the Customer including all data and expressions of data comprising:
- (a) reports generated or prepared by or on behalf of the Customer (including reports generated or prepared by the Supplier);
  - (b) Passenger Services Personal Information;
  - (c) OCMS Data;
  - (d) Transport Information (including Live Transport Information); and
  - (e) any public sector data (as defined in the Privacy and Data Protection Act) which is collected, held, used, managed, disclosed or transferred by the Supplier for the Customer or PTV.
- 13.11 "End of Franchise Period" has the meaning given in the Franchise Agreement.
- 13.12 "Fair Work Act" means the *Fair Work Act 2009* (Cth).
- 13.13 "Financial Year" means each period of 12 months from 1 July to 30 June.
- 13.14 "Franchise Agreement" means the agreement entitled Franchise Agreement – Tram dated 2 October 2017 between the Customer and PTV.
- 13.15 "Franchise Business" means the business of:
- (a) providing the tramway passenger services as provided by the Customer in Victoria (Passenger Services);
  - (b) the maintenance and operation of, and the granting of access to, infrastructure and operational control and management systems related to the Passenger Services;
  - (c) the maintenance and operation of rolling stock related to the Passenger Services;
  - (d) undertaking or assisting in the delivery of projects related to the Passenger Services;
  - (e) any business or activity associated with the activities described in paragraph (a), (b), (c) or (d),
- to be conducted by or on behalf of the Customer under and in accordance with the Franchise Agreement.
- 13.16 "Franchise Asset" means each asset of the Customer.
- 13.17 "Governmental Agency" means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (wherever created or located). It also includes a self-regulatory organisation established under statute or a stock exchange.
- 13.18 "Health Records Act" means the *Health Records Act 2001* (Vic).
- 13.19 "Improvements" means all:
- (a) alterations, modifications and enhancements to, and applications, developments and adaptations of, the materials in which:
    - (i) any Intellectual Property in Data subsists;
    - (ii) any Background Intellectual Property subsists;
    - (iii) any Intellectual Property provided to the Supplier by or on behalf of the Customer or PTV subsists (Franchise IP); and
  - (b) all other materials based upon or derived from the materials in which:
    - (i) any Contract Intellectual Property or Intellectual Property in Data subsists;
    - (ii) any Background Intellectual Property subsists; and
    - (iii) any Franchise IP subsists,
- whether or not the use of such alterations, modifications, enhancements, applications, developments, adaptations, or other materials would constitute an infringement of any Intellectual Property in Data, Background Intellectual Property or Franchise IP. Improvements do not include Third Party Improvements.
- 13.20 "Industry Capability Network" or "ICN" means Industry Capability Network (Victoria) Limited (ACN 007 058 120).
- 13.21 "Industry Best Practice" means the utilisation of up-to-date and advanced proven processes, techniques, technology or methodologies, and will be interpreted having regard to:
- (a) any prevailing industry standards in respect of tram passenger services similar to the services conducted by the Customer under the Franchise Agreement both in Australia and internationally; and
  - (b) the processes, techniques, technology or methodologies utilised by other service providers substantially similar to the Customer in the performance similar services to the passenger services conducted by the Customer under the Franchise Agreement.
- 13.22 "Infrastructure" means:
- (a) all improvements, plant, equipment, fixtures and fittings installed or erected on, over or under the land leased to the Customer under the Franchise Agreement from time to time including:
    - (i) track systems (such as rail, fastenings, pads, sleepers, ballast, rail joints and slab track);
    - (ii) sidings/stabling facilities and yards;
    - (iii) associated track structures (such as points and crossings, track support earthworks cuttings, embankments, track formation, track drainage systems and geomembranes);
    - (iv) structures that accommodate and allow the movement of people, plant and equipment (such as tunnels, bridges, retaining walls, viaducts, subways, platforms, station buildings, at-grade pedestrian crossings, maintenance depots/workshops/facilities);
    - (v) any under floor wheel lathe;
    - (vi) signalling system assets (such as signals, track circuits, point machines, tram stops, level crossing protection equipment);
    - (vii) traction power assets (such as overhead wiring, structures supporting overhead wiring, substations, tie stations, rectifiers, rectifier transformers, circuit breakers, feeder cables remote control systems);
    - (viii) building services (such as power supply, lighting, air conditioning, water supply, sewerage and storm water drainage);
    - (ix) service roads;
    - (x) notices and signs, and
  - (b) all tram track and tram supporting infrastructure (such as passenger loading platforms, passenger shelters, safety zones, traction power systems and communication systems) relating to the routes owned by or leased to PTV from time to time necessary for the safe and proper operation of the Franchise Business.
- 13.23 "Infrastructure Module" means the Infrastructure Module – Tram which forms part of the Franchise Agreement.
- 13.24 "Infrastructure Spares" means parts and components of the Infrastructure which are available for the purpose of carrying out Infrastructure Works on the Infrastructure.
- 13.25 "Infrastructure Works" means the works required to be undertaken by the Customer pursuant to the Infrastructure Module.
- 13.26 "Intellectual Property" means any intellectual or industrial property whether protected by statute, at common law or in equity, including any registered and unregistered Mark, trade name, logo or get-up (and copyright subsisting in any such Mark, trade name, logo and get-up), patent, invention, copyright, design (whether or not registrable), trade secret, circuit layout design or right in relation to circuit layouts, right to confidential information, technical information, processes, techniques and know how.
- 13.27 "Law" means:
- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Victoria or local or other government in force in the State of Victoria and any code of practice enforceable under any rail or safety statute, irrespective of where enacted; and
  - (b) the common law and principles of equity as applied from time to time in the State of Victoria.
- 13.28 "Lease" means an agreement under which an asset may be used, exploited, operated or managed by a person other than the owner. It includes a lease, licence, charter, hire purchase or hiring arrangement.
- 13.29 "Licensee" means PTV and all Successor Operators and their licensees, contractors, assignees and successors and any other person authorised or nominated by any of them including, in the case of PTV, any PTV's Associate and any step-in party appointed by PTV under the Franchise Agreement.
- 13.30 "Liability" means debts, obligations, liabilities, losses, expenses, costs and damages of any kind and however arising, including penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable and whether:
- (a) arising from or in connection with any Claim or not;
  - (b) liquidated or not;
  - (c) legal or equitable; or
  - (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.
- 13.31 "LIDP" means the Local Industry Development Plan developed by the Customer under the Franchise Agreement.
- 13.32 "Live Transport Information" means Transport Information which relates to:
- (a) the current location of trains and trams;
  - (b) the expected time of arrival of a train or tram at a particular place; or
  - (c) disruptions.
- 13.33 "Maintenance Work" means the conduct of activities such as inspection, examination, condition assessment, servicing, adjustment, alteration, addition, modification, repair, reconditioning, overhaul, refurbishment, replacement or other maintenance work.
- 13.34 "Mark" has the meaning given to 'trade mark' in the *Trade Marks Act 1995* (Cth).
- 13.35 "OCMS Data" means information which is:
- (a) collected, generated or produced by;
  - (b) transmitted, received or stored in connection with; or
  - (c) processed, compiled or modified through the use of, the operational control and management systems used by the Customer under the Franchise Agreement or any agreement related to the Franchise Agreement.
- 13.36 "Passenger Services Personal Information" means any Personal Information which the Supplier, the Customer or PTV accesses, receives, collects, stores, uses, generates, discloses or processes under or in connection with the passenger services conducted by the Customer under the Franchise Agreement, the operation of the Franchise Business or otherwise under the Franchise Agreement or any agreement related to the Franchise Agreement.
- 13.37 "Permitted Security Interest" means:
- (a) a Security Interest created or outstanding by the Supplier with the prior written consent of the Customer;
  - (b) a lien over the assets of the Supplier:
    - (i) which arises by operation of Law or which is in favour of a repairman, workman, storeman or Supplier and which arises in the ordinary course of business; and
    - (ii) under which the indebtedness secured by it is not overdue for payment by more than one month or is being contested in good faith;
  - (c) a Security Interest given by the Supplier in favour of a Governmental Agency securing public statutory obligations as long as there is no default in payment of the amount secured or the payment of the amount secured is being contested in good faith;
  - (d) any netting or set-off arrangements entered into by the Supplier in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances.
- 13.38 "Personal Information" means information or opinion about an individual whose identity is apparent, or can reasonably be ascertained, including 'personal information' as that term is defined in the Privacy and Data Protection Act and 'health information' as that term is defined in the Health Records Act.
- 13.39 "Power" means any power, right, authority, discretion or remedy, whether express or implied.
- 13.40 "PPSA" means the *Personal Property Securities Act 2009* (Cth) and all regulations and other subordinate legislation pursuant to it.
- 13.41 "PPSA Deemed Security Interest" means an interest of the kind referred to in section 12(3) of the *Personal Property Securities Act 2009* (Cth) where the transaction concerned does not, in substance, secure payment or performance of an obligation.
- 13.42 "Privacy and Data Protection Act" means the *Privacy and Data Protection Act 2014* (Vic).
- 13.43 "PTV" means the Public Transport Development Authority (operating as Public Transport Victoria), a body corporate established under the *Transport Integration Act 2010* (Vic).
- 13.44 "PTV's Associate" means the State and any Victorian Governmental Agency and any officer, employee, agent, contractor, consultant or adviser of or to PTV, the State or any Victorian Governmental Agency.
- 13.45 "Rail Safety Act" means the *Rail Safety (Local Operations) Act 2006* (Vic).
- 13.46 "Related Body Corporate" has the meaning given in the *Corporations Act 2001* (Cth).
- 13.47 "Responsible Minister" means the Minister with responsibility for administering the *Victorian Industry Participation Policy Act 2003* (Vic).
- 13.48 "Rolling Stock" means any vehicle that operates on or uses a tramway track, including a light inspection vehicle and a road/rail vehicle.
- 13.49 "Rotable Item" means a constituent item of Rolling Stock which is capable of being reconditioned or repaired.
- 13.50 "Safety Law" means any Law in relation to safety including the following:
- (a) *Work, Health and Safety Act 2011* (Cth);
  - (b) *Safety, Rehabilitation and Compensation Act 1988* (Cth);
  - (c) *Workplace Injury, Rehabilitation and Compensation Act 2013* (Vic);
  - (d) *Electrical Safety Act 1998* (Vic);
  - (e) *Dangerous Goods Act 1985* (Vic);
  - (f) the Rail Safety Act; and
  - (g) *Occupational Health and Safety Act 2004* (Vic).
- 13.51 "Security Interest" means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind. It includes:
- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
  - (b) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security.
- It does not include a PPSA Deemed Security Interest.



- 13.52 "Security of Payment Act" means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
- 13.53 "Spare" means a part or component of Rolling Stock (including a Rotable Item) which is available for the purpose of carrying out Maintenance Work on Rolling Stock. To avoid doubt, a Collision Spare does not constitute a Spare.
- 13.54 "Special Tool" means a tool (including an electronic diagnostic tool) which may be used in a specific activity for undertaking Maintenance Work with respect to Rolling Stock or Rotable Items.
- 13.55 "State" means the State of Victoria.
- 13.56 "Successor Operator" means a tram operator succeeding the Customer in the conduct or operation of all or any part of the Franchise Business (and includes any person nominated by the Successor Operator to conduct part of the Franchise Business).
- 13.57 "Third Party Data" means Data which is provided to the Customer by or on behalf of the Supplier under or in connection with the Purchase/Service Order but which is not owned by the Supplier.
- 13.58 "Third Party Improvements" means all:
- alterations, modifications and enhancements to, and applications, developments and adaptations of, the materials in which any Background Intellectual Property subsists which are:
    - owned wholly or in part by a party other than the Customer or the Supplier; and
    - not made by or on behalf of the Supplier in connection with performing its obligations under the Purchase/Service Order; and
    - used by the Supplier or provided to the Customer under or in connection with the Purchase/Service Order; and
  - all other materials based upon or derived from the materials in which any Background Intellectual Property subsists which:
    - are owned wholly or in part by a party other than the Customer or the Supplier; and
    - are not made by or on behalf of the Supplier in connection with performing its obligations under the Purchase/Service Order; and
    - used by the Supplier or provided to the Customer under or in connection with the Purchase/Service Order.
- 13.59 "Transaction Document" means the Franchise Agreement or any agreement related to the Franchise Agreement.
- 13.60 "Transport Information" means, in relation to the passenger services provided in Victoria by a transport operator, the following information:
- the timetable;
  - each route, with stop/station and zones (where relevant) located;
  - details of fares, including prices for those fares;
  - details of vehicle types (low floor or otherwise) serving routes;
  - details of planned and unplanned disruptions to its passenger services, including alternative transport arrangements;
  - Live Transport Information; and
  - any other information about the passenger services provided by a transport operator that a reasonable user of public transport services would seek.
- 13.61 "Use" means, in relation to the Intellectual Property, disclose, reproduce, copy, adapt, publish, perform, exhibit, transmit, communicate, rent or make other use of the Intellectual Property or any adaptation thereof (or any part of the Intellectual Property or any such adaptation).
- 13.62 "VicTrack" means Victorian Rail Track, a body corporate established under the *Rail Management Act 1996* (Vic) and continued under the *Transport Integration Act 2010* (Vic).
- 13.63 Victorian Industry Participation Policy" or "VIIPP" means the Victorian Industry Participation Policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003* (Vic).
- 14. INTERPRETATION**
- 14.1 Notwithstanding anything in the Purchase/Service Order to the contrary, to the extent that there is any inconsistency, ambiguity or discrepancy between this Part B of the General Terms and Conditions and any other clause, schedule or annexure of the Purchase/Service Order, this Part B of the General Terms and Conditions will prevail.
- 15. NO CUSTOMER DEFAULT**
- 15.1 The Supplier acknowledges and agrees that neither the creation of any Security Interest granted by the Customer in favour of PTV (the *Customer Security*) nor the exercise of any of PTV's Powers under the Customer Security or the Franchise Agreement will of itself contravene or constitute a Customer Default (as defined below) under the Purchase/Service Order or entitle the Supplier to exercise any Power (including termination) under the Purchase/Service Order.
- 15.2 In this Clause 15, a *Customer Default* means:
- a breach by the Customer of any of its obligations under the Purchase/Service Order or any event of default, termination event or similar event (whatever called) under the Purchase/Service Order; or
  - any other event or circumstance that would entitle the Supplier to avoid, terminate, discharge or rescind the Purchase/Service Order or treat it as repudiated or suspend the Supplier's performance of obligations under the Purchase/Service Order.
- 16. COOPERATION WITH PTV NOMINATED PARTY**
- 16.1 Acknowledgment**
- 16.1.1 The Supplier acknowledges that, under the Franchise Agreement, PTV may nominate one or more of PTV's Associates (*Nominated Party*) to undertake works necessary to ensure compliance with the Franchise Agreement (*Rectification Works*).
- 16.2 Cooperation in Rectification Works**
- 16.2.1 The Supplier agrees to cooperate with the Nominated Party when carrying out any Rectification Works, including permitting the Nominated Party to access any railway land and any information the Nominated Party reasonably requires.
- 17. STEP-IN RIGHTS**
- 17.1 Acknowledgment**
- 17.1.1 The Supplier acknowledges that:
- the Customer is a party to the Franchise Agreement; and
  - in certain situations, the Franchise Agreement confers on PTV (or PTV's agent, attorney or any other third party nominated by PTV) (*Step-in Party*) a right to exercise all or any of the Powers and perform all or any of the obligations, of the Customer under any agreement to which the Customer is a party as if it were the Customer to the exclusion of the Customer (*Step-in Right*).
- 17.2 Supplier to Honour Step-in Right**
- 17.2.1 The Supplier agrees that the Supplier will recognise any purported exercise of rights, or performance of the Customer's obligations, by PTV under the Purchase/Service Order as an exercise or performance by the Customer itself.
- 17.3 Cooperation with Step-in Party**
- 17.3.1 The Supplier must cooperate with and provide reasonable assistance to the Step-in Party in the exercise of the Step-in Right.
- 17.3.2 Without limiting Clause 17.3.1 above, the Supplier must give access to a Step-in Party to:
- all or any of the assets used in the operation of the Franchise Business, including, but not limited to, any land or premises used by the Supplier in connection with the Purchase/Service Order;
  - the Supplier's employees; and
  - any information the Step-in Party requires, acting reasonably, to enable the Step-in Party to use the Step-in Right.
- 17.4 Protection of the Supplier**
- 17.4.1 If the Supplier is a party to a Dealing (as defined below):
- it need not enquire:
    - as to whether the Step-in Right has become exercisable;
    - as to whether a person who is or purports or is purported to be, the Step-in Party is duly appointed; or
    - in any other way as to the propriety or regularity of the Dealing;
  - it is not affected by express notice that the Dealing is unnecessary or improper; and
  - the Dealing will be taken to be authorised by the Franchise Agreement and will be valid accordingly, even if there is any irregularity of impropriety in the Dealing.
- 17.4.2 In this Clause 17.4, a *Dealing* is:
- any payment, or any delivery or handing over of an asset, to; or
  - any acquisition, incurring of financial indebtedness, receipt, sale, Lease, disposal or other dealing, by,
- any Step-in Party or any person who purports or is purported to be a Step-in Party.
- 18. PTV'S RIGHT TO ACCESS, AUDIT AND INSPECT**
- 18.1 Acknowledgment**
- 18.1.1 The Supplier acknowledges that:
- the Customer is a party to the Franchise Agreement; and
  - under the Franchise Agreement, PTV, or its nominee, has the right to:
    - directly access, inspect and copy (or be provided with copies of) books, records, contracts, Data and other information or material kept by or on behalf of the Customer or the Supplier in connection with the Franchise Business;
    - require the Customer to provide to PTV, PTV's Associates or a proposed or prospective Successor Operator and their respective agents, Suppliers, consultants and advisors complete copies of agreements relating to the Franchise Business to which the Customer is a party and any other documents or information provided or received under or in relation to those agreements;
    - be provided with office accommodation, work stations, computer access and printing facilities;
    - access the Supplier's personnel, including procuring that such personnel attend interviews and give evidence in court at the request of PTV;
    - directly access land or premises relating to or used in connection with the Customer or the Franchise Business or activities relating to the Customer or the Franchise Business;
    - inspect the Rolling Stock, the Rotable Items, the Collision Spares, other Spares and the Special Tools, and any Maintenance Work or other works undertaken with respect of the Rolling Stock, Rotable Items, the Collision Spares, other Spares or Special Tools;
    - inspect the Franchise Assets, Infrastructure and Infrastructure Spares;
    - inspect the Data Systems,
- including for the purposes of verifying or auditing any information supplied to PTV under any Transaction Document (including to calculate or verify the calculation of any payment made or to be made under any Transaction Document);
- the Customer must procure all necessary access, cooperation and assistance from the Supplier to ensure that PTV is able to exercise its rights under the Franchise Agreement; a reference to the 'Franchise Business' in this Clause 18.1 is a reference to the Franchise Business conducted under the Franchise Agreement and any other agreement between the Customer and PTV that predates the Franchise Agreement; and
  - PTV's rights described in this Clause 18.1, and PTV and PTV's Associates rights described in Clause 18.2, survive the expiry or termination of the Franchise Agreement and continue for seven years after the expiry or termination of the Franchise Agreement.
- 18.2 Access to land, premises or activities**
- 18.2.1 The Supplier must permit PTV and PTV's Associates to access any of the Supplier's land or premises relating to the Customer or the Franchise Business or any of the Supplier's activities relating to the Customer or the Franchise Business in accordance with the Franchise Agreement.
- 18.3 Access to information and records**
- 18.3.1 The Supplier must permit PTV and PTV's Associates to access, inspect and copy the books, records, contracts, Data and other information or materials of, or which are maintained by, the Supplier relating to the Customer or the Franchise Business in accordance with the Franchise Agreement.
- 18.4 Access to computers and printing facilities**
- 18.4.1 The Supplier agrees to provide PTV and PTV's Associates with all necessary office accommodation, workstation, computer access and printing facilities in accordance with the requirements of the Franchise Agreement.
- 18.5 Access to Personnel**
- 18.5.1 The Supplier agrees to provide PTV and PTV's Associates with access to the Supplier's personnel in accordance with the requirements of the Franchise Agreement.
- 18.6 Assistance**
- 18.6.1 The Supplier must provide all necessary assistance as the Customer may request from time to time to ensure that PTV is able to exercise its rights under the Franchise Agreement.
- 19. MEETINGS WITH PTV**
- 19.1 The Supplier agrees to attend any meeting with PTV or PTV's Associates upon receipt of a notice from the Customer.
- 20. PERMITTED DISCLOSURE**
- 20.1 The Supplier agrees that notwithstanding any other provision of the Purchase/Service Order, the Customer and PTV may disclose the existence or provide a complete and up-to-date copy of:
- the Purchase/Service Order; and
  - any information that the parties are required to keep confidential under the Purchase/Service Order (including information provided under Clause 18 of this Part B of the General Terms and Conditions),
- to:
- PTV, PTV's Associates and PTV's legal and other professional advisors, auditors and other consultants and employees of PTV; and

- (d) proposed or prospective Successor Operators, and their respective agents, contractors, consultants and advisors, who have undertaken to the Customer or PTV (as appropriate) to keep the Contract and any such information confidential.
- 21. SUITABILITY OF SUPPLIER PERSONNEL**
- 21.1 The Supplier must ensure that it and any directors, officers, employees, contractors, consultants, advisers, agents or Related Bodies Corporate of the Supplier from time to time involved in the performance of the Purchase/Service Order are:
- (a) acceptable to or approved by the agency or authority from time to time responsible for Accreditation, as required by Law; and
- (b) properly trained and experienced to a level that would reasonably be expected of an experienced, efficient and competent person engaged in the same type of undertaking as the Supplier under the same or similar circumstances.
- 22. PTV'S DATABASES AND RECORD SYSTEMS**
- 22.1 Acknowledgment**
- 22.1.1 The Supplier acknowledges that:
- (a) the Customer is a party to the Franchise Agreement; and
- (b) under the Franchise Agreement, PTV, or a person nominated by PTV (the *Database Maintainer*), may from time to time establish, replace, or modify one or more databases or record systems (*PTV's Databases and Record Systems*).
- 22.2 Cooperation with PTV**
- 22.2.1 The Supplier must provide PTV, or the Database Maintainer, as the case may be, with any data, drawings, information, records or other material held by or on behalf of the Supplier relating to the Franchise Business which are required from time to time to enable PTV or the Database Maintainer to establish and maintain PTV's Database and Records Systems.
- 22.3 Records for assets**
- 22.3.1 For each tangible Primary Franchise Asset (as defined below) which is the subject of, or operated under, the Purchase/Service Order, or other asset which is the subject of, or operated under the Purchase/Service Order which has been designated as a Primary Franchise Asset, the Supplier must maintain:
- (a) complete records of its maintenance, repair and renewal work (including all operating and maintenance plans, technical information and data, specifications, manuals, drawings, tracings, calculations, financial information, computer programs, computer disks and reports) to enable PTV to monitor the Customer's compliance with its maintenance, repair and renewal obligations under the Franchise Agreement or otherwise assist PTV to determine the condition of the assets;
- (b) all operating manuals (including any safety related regulations); and
- (c) all Authorisations or other documents required to operate it.
- 22.3.2 In this Clause, *Primary Franchise Asset* means:
- (a) Rotable Items, Collision Spares and other Spares, Special Tools, customised vehicles required by mobile track maintenance gangs for daily maintenance and Rolling Stock; and
- (b) an asset used for the purpose of maintaining, replacing, repairing or renewing a Primary Franchise Asset identified in paragraph (a) and which forms or replaces part of or all of that Primarily Franchise Asset on completion of that maintenance, replacement, renewal or repair.
- 23. COMPLIANCE WITH SAFETY LAW**
- 23.1 The Supplier must comply with Safety Law at all times.
- 23.2 The Supplier must notify the Customer of any incident described in section 37(1) or 37(2) of the *Occupational Health and Safety Act 2004* (Vic).
- 24. INTELLECTUAL PROPERTY**
- 24.1 Ownership of Intellectual Property**
- 24.1.1 The Supplier acknowledges and agrees that, to the extent it is lawfully able to do so:
- (a) all right, title and interest in and to Improvements and Contract Intellectual Property will vest upon creation in the Customer; and
- (b) subject to Clause 24.2.4, all right, title and interest in and to Data and any Intellectual Property subsisting in Data will vest upon creation in the Customer.
- 24.1.2 Subject to Clause 24.2.4, the Supplier:
- (a) hereby assigns all copyright (including future copyright) in all Improvements, Contract Intellectual Property and Supplier Data to the Customer free of any Security Interest or any other third party rights or interest;
- (b) without limiting Clause 24.1.2(a), assigns, and must procure that each of the Supplier's Related Bodies Corporate, employees, servants, agents and contractors assigns, to the Customer, as at the date of creation of the relevant Improvement, Contract Intellectual Property or Supplier Data and with effect from such date all right, title and interest in and to all Improvements, Contract Intellectual Property, Supplier Data and Intellectual Property subsisting in Supplier Data free of any Security Interest or any other third party rights or interest;
- (c) if requested by the Customer to do so, will bring into existence, sign, execute or otherwise deal with any document or do such acts or things as the Customer may request (acting reasonably) in order to enable vesting of all right, title and interest in and to all Improvements, Contract Intellectual Property, Supplier Data and Intellectual Property subsisting in Supplier Data in the Customer free of any Security Interest or any other third party rights or interests; and
- (d) if requested by the Customer to do so, will provide, and will ensure that each of the Supplier's Related Bodies Corporate, employees, servants, agents and contractors provide, all reasonable assistance requested by the Customer to protect, perfect, enforce, defend or assert:
- (i) its interests in and right to Use and exploit any Improvement or Contract Intellectual Property; and or
- (ii) its interest in and right to use and exploit the Supplier Data and its interest in and right to Use the Intellectual Property subsisting in Supplier Data,
- (including assisting the Customer to take action against persons infringing, in the Customer's opinion, any Improvement, Contract Intellectual Property or Intellectual Property subsisting in Supplier Data).
- For the avoidance of doubt, this Clause 24.1.2 does not require the Supplier to assign any rights in relation to Third Party Data.
- 24.1.3 Subject to Clause 24.1.4, to the extent it is lawfully able to do so, the Customer grants to the Supplier a non-exclusive, non-transferable, royalty-free licence to:
- (a) Use the Intellectual Property subsisting in any material or thing provided by the Customer or PTV to the Supplier for Use in connection with the Purchase/Service Order (*Franchise IP*);
- (b) Use Improvements and Contract Intellectual Property; and
- (c) use Data (other than Third Party Data) and Use the Intellectual Property subsisting in Data (other than Third Party Data), provided that:
- (d) the Supplier is authorised to use the Data (other than Third Party Data) and to Use the Franchise IP, Improvements and Contract Intellectual Property and the Intellectual Property subsisting in Data (other than Third Party Data) solely for the purpose of undertaking works or performing those services (as the case may be) under the Purchase/Service Order; and
- (e) the licence expires on the earlier of:
- (i) where the relevant Intellectual Property is licensed to the Customer, the day on which the Customer's licence of the relevant Intellectual Property expires or is terminated; and
- (ii) day upon which the Contract expires or is terminated.
- The rights of the Supplier under this Clause 24.1.3 will not be taken to affect the Supplier's obligations under Clause 25.
- 24.1.4 The Supplier must not sub-licence the Franchise IP, Improvements, Contract Intellectual Property, Data (other than Third Party Data) or the Intellectual Property subsisting the Data (other than Third Party Data) to any third party without the Customer's prior written consent.
- 24.1.5 Nothing in this Clause 24 grants to the Supplier or requires the Customer to grant to the Supplier a licence to use any Intellectual Property in connection with any Rolling Stock.
- 24.1.6 The Supplier must, if requested to do so by the Customer, provide the Customer with reports (in a form approved by the Customer) identifying all Improvements, Third Party Improvements and Contract Intellectual Property created under the Purchase/Service Order. This report must contain such detail as the Customer may reasonably require, but in any event must detail in relation to each item:
- (a) the nature of the Improvement, Third Party Improvement or Contract Intellectual Property;
- (b) the materials to which the Improvement or Third Party Improvement has been made or the Contract Intellectual Property has been applied or Used; and
- (c) the date of creation of the Improvement, Third Party Improvement or Contract Intellectual Property.
- 24.1.7 The Supplier must, if requested to do so by the Customer, promptly deliver to the Customer one copy of the materials embodying any Improvement, Third Party Improvement or Contract Intellectual Property.
- 24.2 Background Intellectual Property, Third Party Improvements and Third Party Data**
- 24.2.1 The Supplier grants to the Customer a perpetual, irrevocable, non exclusive, royalty free, transferable licence (with the right to sub-licence) to Use the Background Intellectual Property.
- 24.2.2 The Supplier grants to the Customer the right to grant to PTV a perpetual, irrevocable, non exclusive, royalty free, transferable licence (with the right to sub-licence) to Use the Background Intellectual Property.
- 24.2.3 The Supplier must procure from the owner of any Third Party Improvement a perpetual, irrevocable, royalty free, non-exclusive, transferable licence (with the right to sub-licence) for the Customer and any Licensee to Use any Third Party Improvement and all Intellectual Property subsisting in the Third Party Improvement for purposes associated with the provision of tramway passenger services in Victoria effective from the date the Customer first uses the relevant Third Party Improvement in performing any of its obligations under the Franchise Agreement or any document associated with the Franchise Agreement.
- 24.2.4 The Supplier must procure perpetual, irrevocable, non-exclusive and royalty-free licences for the Customer and any Licensee to use Third Party Data and to Use any Intellectual Property subsisting in Third Party Data effective from the date the Customer first uses the relevant Third Party Data in connection with the operation of the Franchise Business.
- 24.3 General**
- 24.3.1 The Supplier will provide to the Customer and procure and provide to the Customer from any creator or author of any Background Intellectual Property, Contract Intellectual Property, Improvements, Third Party Improvements, Supplier Data or Intellectual Property subsisting in Third Party Improvements or Supplier Data (*Relevant Individual*) an irrevocable and unconditional consent, to the fullest extent permitted by law (either present or future), to the Customer and any Licensee:
- (a) using the Supplier Data or Using the Background Intellectual Property, Contract Intellectual Property, Improvements, Third Party Improvements or Intellectual Property subsisting in any Third Party Improvement or Supplier Data (*Relevant Material and IP*) anywhere in the world, in whatever form and in whatever circumstances the Customer or any Licensee thinks fits, including the making of any distortions, additions or alterations to the Supplier Data or Relevant Material and IP (or any part of the Supplier Data or Relevant Material and IP) as so used or Used;
- (b) using the Supplier Data or Using the Relevant Material and IP (or any part of the Supplier Data or Relevant Material and IP) anywhere in the world without making any identification of the Supplier or Relevant Individual (as applicable) in relation to it; and
- (c) doing anything in relation to the Supplier Data or Relevant Material and IP that (but for these consents) would otherwise infringe any moral rights or similar personal rights of the Supplier or Relevant Individual (as applicable) anywhere in the world.
- 24.3.2 In procuring prior written consents in accordance with Clause 24.3.1 above, the Supplier undertakes that it will not (and will ensure that no one else does) apply any duress to any person or make a statement to any person knowing that the statement is or was false or misleading in a material particular, or knowing that a matter or thing is or was omitted from the statement without which the statement is or was false or misleading in a material particular.
- 24.3.3 The Supplier undertakes and warrants to the Customer that the use of Supplier Data or the Use of any Background Intellectual Property, Contract Intellectual Property, Improvements, Third Party Improvements or Intellectual Property subsisting in Third Party Improvements or Supplier Data by the Customer or any Licensee will not infringe the rights (including intellectual property rights and moral rights and similar personal rights) of any other person, nor give rise to a right entitling any person to make a Claim against or impose any Liability on the Customer or any Licensee, whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to any Supplier Data, Background Intellectual Property, Contract Intellectual Property, Improvement, Third Party Improvement or Intellectual Property subsisting in any Third Party Improvement or Supplier Data.
- 24.3.4 The Supplier indemnifies and holds the Customer and the Licensees harmless against any Liability which is directly or indirectly incurred, suffered or sustained by the Customer or any Licensee (or all of them) as a result of, or in connection with, a Claim threatened, made or brought against the Customer or any Licensee (or all of them) by a third party that use of Supplier Data or the Use of Background Intellectual Property, Contract Intellectual Property, Improvements, Third Party Improvements or Intellectual Property subsisting in Third Party Improvements or Supplier Data (*Relevant Material and IP*) by the Customer or any Licensee infringes the rights (including intellectual property rights and moral rights and similar personal rights) of any third party or gives rise to a right entitling any third party to make a Claim against the Customer or any Licensee whether for the payment of compensation, royalties or otherwise, or to make any attribution or acknowledgement or rectification in relation to the Supplier Data or the Relevant Material and IP.

24.3.5 Without limiting Clause 24.3.3 or Clause 24.3.4, the Supplier indemnifies the Customer and each Licensee from and against any Liability that may be incurred or sustained by any or all of them in respect of or arising from the Supplier breaching Clause 24.1 or Clause 24.2.

**24.4 Source Code**

24.4.1 The Supplier must ensure that the Customer has at all times an up-to-date copy of any object code with respect to any software which comprises any Supplier Data or in which intellectual property provided or developed under, or used in connection with, this agreement, including any Background Intellectual Property, Contract Intellectual Property, Improvements, Third Party Improvements and Intellectual Property subsisting in any Third Party Improvements or Supplier Data subsists, and any corresponding source code, for the purposes of providing it to PTV.

**24.5 Marks**

24.5.1 The Supplier acknowledges that nothing in the Purchase/Service Order grants to the Supplier, or requires the Customer to grant to the Supplier, a licence to Use any Marks.

24.5.2 The Supplier must not apply any Mark to any infrastructure, equipment, rolling stock or other asset that is owned, leased or licensed to the Customer without the Customer's prior written consent.

**25. ASSIGNMENT AND NOVATION**

25.1.1 The Supplier acknowledges that the Customer is entitled to from time to time assign all or any of its rights, and novate any of its obligations, under the Purchase/Service Order to PTV or any Licensee of PTV. The Supplier further acknowledges that, in the event of such assignment or novation, PTV or its Licensee will obtain the benefit and the burden (as the case may be) of the Purchase/Service Order. Without limiting the foregoing, immediately, upon demand from the Customer, the Supplier will execute a novation agreement (in a form submitted to the Supplier by the Customer and approved by the Customer) to confirm that the Customer's transferee pursuant to the assignment or novation is a party to the Purchase/Service Order in place of the Customer.

**26. PRIVACY**

**26.1 Interpretation**

26.1.1 This Clause 26 applies if the Supplier has access to or is required to collect Passenger Services Personal Information (as defined below) for the purposes of the Purchase/Service Order.

26.1.2 In this Clause 26:

- (a) *Associate* means any director, officer, employee, agent, contractor, consultant or adviser, or Related Body Corporate of or to a party.
- (b) *Health Information* has the meaning given in the Health Records Act.
- (c) *Health Complaints Commissioner* has the meaning given in the Health Records Act.
- (d) *HPP* has the meaning given to 'Health Privacy Principle' in the Health Records Act.
- (e) *Information Commissioner* means the Information Commissioner appointed under section 6C of the Freedom of Information Act 1982 (Vic).
- (f) *Information Privacy Principle* has the meaning given in the Privacy and Data Protection Act.
- (g) *IPP* means an Information Privacy Principle.
- (h) *Privacy Code of Practice* means any code of practice approved under Division 3 of Part 3 of the Privacy and Data Protection Act.
- (i) *Privacy Consent* means an individual's consent to the Supplier, the Customer or PTV (as the case may be):
  - (i) collecting, using or disclosing Personal Information about them; and
  - (ii) disclosing their Personal Information to the Supplier, the Customer, PTV or any other person nominated by PTV.
- (j) *Privacy Notice* means a notice provided for the purposes of satisfying IPP 1.3 or 1.5 or HPP 1.4 or 1.5 (as the case may be) or any other Privacy Obligation in a format approved by PTV after consultation with the Customer.
- (k) *Privacy Obligations* means:
  - (i) obligations imposed on public sector agencies under the Privacy and Data Protection Act (excluding Part 4 of the Privacy and Data Protection Act);
  - (ii) obligations imposed on the Customer or the Supplier under the Privacy Act 1988 (Cth) to the extent it is not exempt from regulation under the Privacy Act 1988 (Cth);
  - (iii) any other applicable Laws which relate to the privacy and protection of Personal Information, including the Health Records Act, the Spam Act 2003 (Cth) and the Do Not Call Register Act 2006 (Cth);
  - (iv) any privacy codes of conduct or similar instruments in relation to privacy protection which are industry standards and applicable to the passenger services operated by the Customer under the Franchise Agreement and agreements related to the Franchise Agreement;
  - (v) any Privacy Notice or Privacy Consent issued by PTV; and
  - (vi) any PTV policy relating to privacy compliance, including the PTV Privacy Policy.
- (l) *Privacy Purpose* means, in respect of any Personal Information of an individual, the purpose for which the Personal Information was originally provided to the Supplier, the Customer or PTV by the individual.
- (m) *PTV's Privacy Policy* means any policy of PTV relating to the handling of Personal Information, as published by PTV or otherwise notified by PTV to the Customer from time to time.
- (n) *Related Privacy Purpose* means:
  - (i) in relation to any Personal Information, a purpose that is related to the Privacy Purpose of that Personal Information; or
  - (ii) if the Personal Information is Sensitive Information or Health Information, directly related to the Privacy Purpose of that Personal Information, and for which the individual would reasonably expect the Personal Information to be used or disclosed.
- (o) *Sensitive Information* has the meaning given to that term in the Privacy and Data Protection Act.

**26.2 Compliance with Privacy and Data Protection Act**

26.2.1 Without limiting any obligation the Supplier is subject to under any privacy law, the Supplier is bound by and must comply with:

- (a) the IPPs and any applicable Privacy Code of Practice under the Privacy and Data Protection Act with respect to any act done or practice engaged in by it, in the same way and to the same extent as PTV would have been bound by the IPPs and any applicable Privacy Code of Practice in respect of that act or practice had it been directly done or engaged in by PTV;
- (b) all other Privacy Obligations that apply to the Supplier or the Customer (or both); and
- (c) any protocol, guidelines or direction issued by PTV after consultation with the Customer regarding how to comply with the Privacy Obligations;
- (d) in respect of any Passenger Services Personal Information.

26.2.2 If there is any inconsistency, ambiguity or discrepancy between an obligation in Clause 26.2.1 the Supplier must immediately notify the Customer of the inconsistency, ambiguity or

discrepancy and comply with the higher listed obligation in Clause 26.2.1 to the extent of any inconsistency, ambiguity or discrepancy unless the Customer directs otherwise.

26.2.3 If there is any inconsistency, ambiguity or discrepancy between any of the obligations listed in the definition of Privacy Obligations, the Supplier must immediately notify the Customer of the inconsistency, ambiguity or discrepancy and comply with the higher listed obligation in the definition of Privacy Obligations to the extent of any inconsistency, ambiguity or discrepancy unless the Customer directs otherwise.

26.2.4 The Supplier must require and procure any contractor to the Supplier that receives or has access to any Passenger Services Personal Information to enter into a formal written agreement with the Customer containing terms no less onerous on the contractor than the terms of this Clause 26 are on the Supplier.

**26.3 Collection of Personal Information**

26.3.1 Without limiting any obligations under the Purchase/Service Order or Law, the Supplier must:

- (a) provide a Privacy Notice at the time of collecting Passenger Services Personal Information to the extent necessary for the Customer to comply with the Privacy and Data Protection Act, the Health Records Act and any other applicable Privacy Obligation;
- (b) assist PTV to comply with its obligations under IPP 1.5 or HPP 1.5 (as the case may be) by stating in the Privacy Notice that the Supplier may disclose the Passenger Services Personal Information to the Customer and PTV and any other person nominated by the Customer or PTV, as notified to the Supplier from time to time;
- (c) obtain Privacy Consents from individuals to the extent necessary to allow the Customer, PTV and any person nominated by the Customer or PTV to collect, use, disclose and store any Passenger Services Personal Information, including Sensitive Information and Health Information, in a manner compliant with the Privacy and Data Protection Act, the Health Records Act or any other applicable Privacy Obligation;
- (d) notify the Customer promptly in writing if a Privacy Consent which is required to be obtained in accordance with Clause 26.3.1(c) is not obtained; and
- (e) keep the Customer informed about its procedures for collecting or handling Passenger Services Personal Information and obtaining Privacy Consents, including notifying the Customer promptly in writing if there is any change to such procedures.

**26.4 Protection of Personal Information**

26.4.1 The Supplier must:

- (a) only use, disclose or make accessible Passenger Services Personal Information for the Privacy Purpose of that Personal Information or a Related Privacy Purpose or any other purpose authorised by Law and approved by the Customer, except where it obtains Privacy Consent to any other use or disclosure which is approved by the Customer;
- (b) ensure that Sensitive Information or Health Information is not collected in connection with the provision of the passenger services or the operation of the Franchise Business by the Customer under the Franchise Agreement (or any agreement related to the Franchise Agreement) or otherwise under the Franchise Agreement (or any agreement related to the Franchise Agreement) without the prior written consent of the Customer;
- (c) only disclose Passenger Services Personal Information to the Customer, PTV or other persons nominated by the Customer or PTV or as required by Law;
- (d) take reasonable steps, including appropriate technical and organisational measures to:
  - (i) without limiting its obligation under Clause 27, protect Passenger Services Personal Information from:
    - (A) misuse, interference or loss; and
    - (B) unauthorised access, modification or disclosure;
  - (ii) ensure that Passenger Services Personal Information is kept accurate, complete and up-to-date; and
  - (iii) destroy or permanently de-identify Passenger Services Personal Information as soon as practicable after the Supplier no longer requires that information for the Privacy Purpose of that Passenger Services Personal Information or any other purpose for which the Supplier may use or disclose the Passenger Services Personal Information under Law;
- (e) immediately on expiry or termination of the Purchase/Service Order or otherwise on request by the Customer:
  - (i) transfer 2009 Personal Information and Passenger Services Personal Information that must be kept for a Privacy Purpose or by Law to the Customer or another person nominated by the Customer;
  - (ii) destroy 2009 Personal Information and Passenger Services Personal Information, as directed by the Customer; or
  - (iii) de-identify 2009 Personal Information and Passenger Services Personal Information, as directed by the Customer, at the Customer's election; and
- (f) not disclose, or make accessible, that Passenger Services Personal Information to any person located outside of Australia unless approved by the Customer.

**26.5 Cooperation with the Customer**

26.5.1 The Supplier must:

- (a) allow the Customer or PTV an opportunity, on reasonable request, to review and audit its procedures for collecting, handling and using Passenger Services Personal Information to ensure the Supplier is complying with its obligations under the Franchise Agreement or any agreement related to the Franchise Agreement;
- (b) immediately notify the Customer in writing of:
  - (i) any complaint alleging a breach of the Privacy and Data Protection Act or any other Privacy Obligation or any other improper use or treatment of Passenger Services Personal Information by the Supplier or any of the Supplier's Associates; and
  - (ii) any breach of this Clause 26 or any actual or potential interference with the privacy of an individual;
- (c) upon request by the Customer, immediately assist the Customer and or PTV in:
  - (i) resolving any complaint alleging a breach of the Privacy Obligations or any other improper use or treatment of Passenger Services Personal Information by the Supplier or any of the Supplier's Associates; and
  - (ii) responding to:
    - (A) any access request made by an individual in respect of Passenger Services Personal Information held about him or her; or
    - (B) any complaint made by an individual regarding the handling of his or her Passenger Services Personal Information, including, by:
      - (C) providing access to any record or Passenger Services Personal Information following a request to the Customer or PTV from an individual;
      - (D) correcting or updating any Passenger Services Personal Information following a request to the Customer or PTV from an individual; and
      - (E) any other assistance requested by the Customer or PTV (acting reasonably);
- (d) comply promptly with any direction issued by the Customer or PTV requiring it to take action to prevent future breaches of this Clause 26; and
- (e) upon request by the Information Commissioner or the Health Complaints Commissioner, cooperate with the Information Commissioner or the Health Complaints



Commissioner in resolving any complaint received by him or her alleging a breach of the Privacy and Data Protection Act or the Health Records Act or any other Privacy Obligation or any other improper use or treatment of Passenger Services Personal Information by the Supplier or any of the Supplier's Associates.

**26.6 Recordkeeping requirements**

26.6.1 The Supplier must maintain complete records, in a form acceptable to the Customer, in relation to its collection, handling and use of Passenger Services Personal Information, which will contain details of:

- (a) Privacy Consents obtained for any use of Passenger Services Personal Information which is outside the Privacy Purpose;
- (b) Privacy Consents obtained to allow the Customer or PTV to collect, disclose and store any Passenger Services Personal Information;
- (c) complaints alleging breach of the Privacy and Data Protection Act, any other Privacy Obligations or any privacy law or a privacy principle or any improper use or treatment of Passenger Services Personal Information and any action taken to resolve complaints;
- (d) requests for access to any record of Passenger Services Personal Information and provision of access to any record of Passenger Services Personal Information following such a request;
- (e) requests for correction or updating of any Passenger Services Personal Information and any correction or updating of Passenger Service Personal Information undertaken following such a request; and
- (f) such other records as the Customer may from time to time reasonably require.

**26.7 Indemnity**

26.7.1 The Supplier must indemnify and keep indemnified the Customer and PTV from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind that may be incurred or sustained by the Customer or PTV in respect of or arising from any breach of this Clause 26. The Supplier acknowledges that the Customer will hold (and be entitled to enforce) the benefit of the indemnity on trust for PTV.

**27. DATA SECURITY**

**27.1 Interpretation**

27.1.1 This Clause 27 applies where the Supplier requires access to the Data Systems (as defined below) or Data in order to perform its obligations under the Purchase/Service Order.

27.1.2 In this Clause 27:

- (a) *Data Security Breach* is defined in Clause 27.4.
- (b) *Data Security Obligations* means:
  - (i) obligations imposed on public sector agencies under the Privacy and Data Protection Act which relate to data security;
  - (ii) any other applicable Laws which relate to data security;
  - (iii) requirements imposed on PTV under the Protective Data Security Framework or the Protective Data Security Standards; and
  - (iv) any PTV Data Security Policy.
- (c) Data Systems includes:
  - (i) information technology for the generation, transmission, processing or storage of Data including infrastructure, hardware, software and systems;
  - (ii) non electronic means for storage of Data; and
  - (iii) procedures for dealing with Data including by use of information technology and non-electronic means, employed or used by or on behalf of the Customer under, or in connection with, the Customer performing its obligations under the Franchise Agreement or otherwise in connection with the Franchise Business.
- (d) *Information Commissioner* means the Information Commissioner appointed under section 6C of the Freedom of Information Act 1982 (Vic).
- (e) *IT Environment* means an entity's information technology environments including all infrastructure, hardware, software and systems.
- (f) *Protective Data Security Framework* means the Victorian protective data security framework issued by the Information Commissioner from time to time pursuant to the Privacy and Data Protection Act.
- (g) *Protective Data Security Standards* means the Victorian protective data security standards issued by the Information Commissioner from time to time pursuant to the Privacy and Data Protection Act.
- (h) *PTV Data Security Policy* means any policy of PTV related to data security as published by PTV or otherwise notified by the Customer to the Supplier from time to time.

**27.2 Data Security Compliance**

27.2.1 Without limiting its other obligations under this Clause 27, the Supplier is bound by and must comply with the Data Security Obligations with respect to any act or practice engaged in by it in respect of the Data and the Data Systems in the same way and to the same extent as PTV would have been bound by them if that act or practice had been directly done or engaged in by PTV.

27.2.2 If there is any inconsistency, ambiguity or discrepancy between any of the obligations listed in the definition of Data Security Obligations, the Supplier must immediately notify the Customer of the inconsistency, ambiguity or discrepancy and comply with the higher listed obligation in the definition of Data Security Obligations to the extent of any inconsistency, ambiguity or discrepancy unless the Customer directs otherwise.

27.2.3 If requested by the Customer, the Supplier must confirm its compliance with this Clause 27 in writing signed by the Chief Executive Officer of the Supplier.

27.2.4 The Supplier must not permit any third party to access or use any Data or Data Systems without the Customer's prior written consent.

27.2.5 The Supplier must provide the Customer with such reasonable assistance and access to information or systems and equipment as the Customer may require from time to time (acting reasonably) to undertake security risk profile assessments.

27.2.6 The Supplier must comply with any policies, procedures or plans developed by the Customer in relation to the security of Data and Data Systems notified to the Supplier from time to time.

**27.3 Data security measures**

27.3.1 The Supplier must:

- (a) not do any act or engage in any practice that contravenes the Protective Data Security Standards;
- (b) not omit to do anything that is required by the Protective Data Security Standards;
- (c) do all things that a reasonable and prudent entity would do to ensure all Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- (d) provide protective measures for Data that are no less rigorous than Industry Best Practice and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, Data including:
  - (i) protective measures to keep Data Systems safe and secure from, and to mitigate their functionality and performance from being reduced by:
    - (A) unauthorised access (including hacking for fare evasion);
    - (B) denial of service attacks; or
    - (C) other attacks or abuse;
  - (ii) having adequate intrusion detection and monitoring to detect Security Breaches when they occur and to contain and minimise any resulting adverse impacts; and

(iii) ensuring all Data is stored and transmitted securely in accordance with the Data Security Obligations and Industry Best Practice;

- (e) without limiting paragraph (c) or (d), comply with all security regulations or procedures or directions as are specified in the Purchase/Service Order or given by the Customer from time to time regarding any aspect of security of, or access to, Data or the Data Systems; and
- (f) without limiting paragraphs (c), (d) or (e), regularly monitor, review and update its data security measures to respond to the evolving security risk environment.

**27.4 Security Breach**

27.4.1 If the Supplier becomes aware of any actual, threatened or suspected:

- (a) action taken through the use of computer networks that result in an actual or potential adverse effect on the Data Systems or the Data;
- (b) unauthorised access to, use by a third party of, or misuse, damage or destruction by any person relating to the Data Systems or the Data, (each, a *Data Security Breach*), the Supplier must:
  - (c) notify the Customer in writing immediately and, in any event, within one hour of becoming aware of the Data Security Breach;
  - (d) immediately take all necessary steps to promptly remedy the Data Security Breach and reinstate any affected Data Systems or Data; and
  - (e) immediately comply with any other directions issued by the Customer in connection with the Data Security Breach including in relation to:
    - (i) notifying the Computer Emergency Response Team of PTV and any other person or body notified by the Customer to the Supplier from time to time;
    - (ii) obtaining evidence about how, when and by whom the Data Systems or Data have or may have been compromised, providing such evidence to the Customer on request, and preserving and protecting that evidence for a period of up to 12 months (or such longer period notified by the Customer);
    - (iii) implementing any necessary security improvements to the Franchise Business including any mitigation strategies to reduce the impact of the Data Security Breach or the likelihood or impact of any future similar incident;
  - (f) preserving and protecting Data (including as necessary reverting to any backup or alternative site or taking other action to recover Data) and the Data Systems; and
  - (g) providing all assistance required by the Customer to reinstate any affected parts of the IT Environment of PTV or any PTV's Associate.

**27.5 Additional requirements**

27.5.1 The Supplier must not grant any Security Interest or other right or interest against or to the Data or otherwise deal with the Data.

27.5.2 If requested by the Customer, the Supplier must promptly:

- (a) transfer Data to the Customer or another person nominated by the Customer; and
- (b) destroy or permanently delete Data in its possession, as directed by the Customer.

27.5.3 The Contractor must ensure its information security requirements including compliance with the Protective Data Security Standards is in accordance with Industry Best Practice.

27.5.4 The Contractor further acknowledges breaches of this clause 15 by third parties engaged by the Contractor to enable it to provide the goods or services will be treated as a breach of this clause 15 by the Contractor.

27.5.5 The Contractor must notify the Principal within 48 hours of becoming aware of any material changes in its information and operational environment (including Key Personnel, human resources, and access to its facilities), which causes an incident, emergency change or a breach of its internal controls (or should have been classified as such by Contractor based on Industry Best Practice), which is likely to or is adversely impacting or otherwise compromises its ability to provide the goods or services to the Principal.

**28. CONFIDENTIALITY**

**28.1 Confidential Information**

28.1.1 The Supplier must keep confidential the Confidential Information and must not:

- (a) allow, make or cause any disclosure of or in relation to any Confidential Information except where permitted under Clause 28.2; or
- (b) use any Confidential Information other than for the purpose of performing its obligations under and in accordance with the Purchase/Service Order.

**28.2 Exceptions**

28.2.1 The Supplier's obligations under Clause 28.1 do not apply to disclosures to the extent that the disclosure is:

- (a) to another person with the prior written consent of the Customer, which consent may be given or withheld, or given with conditions, in the Customer's sole discretion;
- (b) required or permitted by the Purchase/Service Order;
- (c) necessary for the performance of the Supplier's obligations under the Purchase/Service Order;
- (d) to:
  - (i) the Supplier's legal and other professional advisers, auditors and other consultants;
  - (ii) its subcontractors;
  - (iii) its employees;
  - (iv) its Related Bodies Corporate,
 requiring the information for the purposes of the Purchase/Service Order (or any transactions contemplated by the Purchase/Service Order) or for the purpose of advising the Supplier in relation thereto;
- (e) to the Supplier's insurers, the Victorian Auditor-General or an auditor appointed under the Purchase/Service Order or the Franchise Agreement;
- (f) of information which is at the time lawfully in the possession of the proposed recipient of this information through a source other than a party;
- (g) required by Law or by a lawful requirement of any Governmental Agency or recognised Australian stock exchange;
- (h) required in connection with legal proceedings, arbitration or expert determination relating to this Supplier or for the purpose of advising the Supplier in relation thereto;
- (i) of information which is at the time generally and publicly available other than as a result of breach of confidence by a party; or
- (j) necessary or commercially desirable to an existing or bona fide proposed or prospective financier or finance lessor, although the Supplier must procure that the proposed recipient of the information executes a confidentiality undertaking in favour of the Customer prior to the disclosure of the confidential information.

**28.3 Other confidentiality requirements**

28.3.1 Before any disclosure by the Supplier in reliance on Clause 28.2.1(g) the Supplier must:

- (a) to the maximum extent permitted by Law or the rules of the relevant stock exchange, immediately notify the Customer giving full details of the circumstances of the proposed disclosure in reliance on Clause 28.2.1(g) and of the relevant information to be disclosed;
- (b) to the maximum extent permitted by Law or the rules of the relevant stock exchange, give the Customer or PTV (as the case may be) a reasonable opportunity in a court of law or other appropriate body to:
  - (i) challenge whether the proposed disclosure is in accordance with Clause 28.2.1(g);

- (ii) challenge the obligation of the Supplier or any other person to make that disclosure; or
  - (iii) secure an order or other ruling (for example, that the disclosure should only be made on a confidential basis) to protect or preserve the confidentiality of the relevant information; and
  - (c) take all reasonable steps to preserve the confidentiality of the information being disclosed (for example, by making an application for an order that the information be disclosed only in a confidential exhibit or in proceedings heard in closed court).
- 28.3.2 If the Supplier discloses information pursuant to Clauses 28.2.1(a), (b), (c), (d) or to any insurer (appointed by the Supplier) under Clause 28.2.1(e):
- (a) it must ensure that such information is:
    - (i) kept confidential by the recipient of the information; and
    - (ii) only used for the purposes for which the Customer has provided its prior written consent; and
  - (b) the Customer may at any time request the Supplier (and the Supplier must immediately) procure that the recipient of the information signs a confidentiality undertaking in favour of the Customer and or PTV agreeing to be bound by substantially the same confidentiality obligations as apply to the Supplier under this Clause 28.
- 28.3.3 The Supplier remains liable at all times for any misuse or failure to keep information confidential in accordance with this Clause 28.
- 28.4 Publication of certain information**
- 28.4.1 Nothing in the Purchase/Service Order prevents:
- (a) any disclosure of Confidential Information by PTV to any PTV's Associate, the State or any Minister of the Crown in right of the State or any of its agencies or instrumentalities; or
  - (b) any disclosure of Confidential Information by PTV to a proposed or prospective Successor Operator either following the expiry or termination of the Franchise Agreement or in bona fide contemplation of such expiry or termination.
- 28.4.2 PTV may publish or require the Customer to publish in any form and at times PTV considers appropriate (including to prospective Successor Operators in a physical or electronic data room or otherwise), any information in connection with the Franchise Business, the performance of the Customer's obligations under the Franchise Agreement or any agreement related to the Franchise Agreement or any other matter relating to those documents.
- 29. SUPPLIER WARRANTY**
- 29.1.1 The Supplier warrants that all of the information, representations and other matters of fact communicated in writing to the Customer under the Purchase/Service Order were (at the time of entering into this Contract) and remain, in all material respects, true, accurate and not misleading.
- 30. ROLLING STOCK MAINTENANCE, REPAIR AND RENEWAL**
- 30.1 Interpretation**
- 30.1.1 In this Clause 30:
- (a) *Part* means:
    - (i) a constituent part of an item Rolling Stock, Rotable Item or Special Tool in each case leased to the Customer under the Franchise Agreement; or
    - (ii) an accessory, component or similar thing installed in or attached to an item of Rolling Stock, Rotable Item or Special Tool in each case leased to the Customer under the Franchise Agreement.

To avoid doubt, a Rotable Item constitutes a Part.
  - (b) *Rolling Stock Holdings* means Rolling Stock Holdings (Victoria) Pty Limited (ACN 104 780 056).
- 30.2 Customer Rotable Items and other Spares**
- 30.2.1 The Supplier, in performing its obligations under this Contract, must ensure that there is at all times:
- (a) an appropriate quantity and quality of Spares; or
  - (b) access to an appropriate quantity and quality of Spares,
- for use in connection with the Franchise Business and in a manner that would reasonably be expected of an experienced, efficient and competent passenger rail operator in relation to the provision of passenger rail services and the conduct of a passenger rail business comparable to the size, scope and complexity of the Franchise Business and the passenger rail services provided by the Customer under the Franchise Agreement. During the End of Franchise Period, the Supplier's obligations under this Clause 30.2 extend to ensuring that an appropriate quantity and quality of Spares for use in connection with the Franchise Business will be made available to any Successor Operator.
- 30.2.2 Without limiting Clause 30.2.1, the Supplier must maintain, protect and preserve all Spares in proper working order and condition and in good repair in a manner that would reasonably be expected of an experienced, efficient and competent passenger rail operator in relation to the provision of passenger rail services and the conduct of a passenger rail business comparable to the size, scope and complexity of the Franchise Business and the passenger rail services provided by the Customer under the Franchise Agreement.
- 30.2.3 The obligation to maintain, protect and preserve a Spare in proper working order and condition under Clauses 30.2.1 and 30.2.2 includes the obligation to replace that Spare with an equivalent or better quality Spare as soon as practicable after that Spare ceases to be a part of the stock of Spares available to the Customer for use in the operation of the Franchise Business.
- 30.2.4 The Supplier must demonstrate to the Customer's satisfaction (acting reasonably) that it is complying with its obligations under Clauses 30.2.1 and 30.2.2 as soon as practicable within five business days after receipt of any request from the Customer to do so.
- 30.2.5 If the Supplier is unable to demonstrate to the Customer's satisfaction (acting reasonably) that it is complying with its obligations under Clauses 30.2.1 or 30.2.2 the Supplier must promptly rectify the non-compliance by:
- (a) purchasing the number and type of Spares directed by the Customer; or
  - (b) undertaking Maintenance Work in relation to the Spares or Collision Spares as directed by the Customer, as applicable.
- 30.2.6 Without limiting Clauses 30.2.1 or 30.2.2, the Supplier must ensure that:
- (a) the lead time between ordering and delivery of any Spare enables the Supplier to comply with its obligations under Clause 30.2.1; and
  - (b) the program for Maintenance Work in relation to the Rotable Items is adequate to support the maintenance and operation of the Rolling Stock for the purpose of the Franchise Business and that that program is not scaled back during the End of Franchise Period.
- 30.3 Parts and works**
- 30.3.1 The Supplier acknowledges that it does not retain a Security Interest or other right or interest in any Part supplied by it which upon installation or incorporation into an item of Rolling Stock, Rotable Item or Special Tool may prevent full title in that Part vesting in Rolling Stock Holdings or any other legal owner of the Rolling Stock.
- 30.4 Procurement and assignability of warranties and guarantees**
- 30.4.1 If the Supplier is carrying out Maintenance Work and other works with respect to any Rolling Stock, Rotable Items, Collision Spares or Special Tools, the Supplier must:
- (a) unless the Purchase/Service Order otherwise specifies the requirements for warranties and guarantees, provide a warranty or a guarantee in support of those works for a period of no less than the standard practice for the Supplier for those works; and
  - (b) ensure that the benefit of all warranties and guarantees made in respect of those works are freely assignable to the Customer or PTV (as directed by the Customer) at the earlier of termination or expiry of the Purchase/Service Order or the Franchise Agreement.
- 31. PPSA**
- 31.1 The Supplier acknowledges and agrees that each of PTV, VicTrack, any other relevant Governmental Agency or the Customer may register any Security Interest or PPSA Deemed Security Interest which it considers arises out of any Transaction Document or this Contract, including any direct agreement signed under Clause 35, (even before that Security Interest or PPSA Deemed Security Interest starts).
- 31.2 Whenever the Customer requests the Supplier to do anything:
- (a) to ensure each Security Interest or PPSA Deemed Security Interest (as applicable) created under the Transaction Documents or the Purchase/Service Order is fully effective, enforceable and perfected with the stated priority;
  - (b) for more satisfactorily assuring or securing any asset the subject of a Security Interest or PPSA Deemed Security Interest to PTV, VicTrack, any other relevant Governmental Agency or the Customer in a manner not inconsistent with the Transaction Documents or this Contract; or
  - (c) for aiding the exercise of any Power,
- the Supplier must do it as soon as practicable at its own cost. It may include:
- (d) doing anything to make, procure or obtain any Authorisation from a Governmental Agency (including registration) in respect of anything, or to facilitate it;
  - (e) creating, procuring or executing any document, including any notice, consent or agreement, or legal or statutory mortgage or transfer; and
  - (f) delivering documents or evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any asset the subject of a Security Interest or PPSA Deemed Security Interest.
- 31.3 The Supplier waives any right it may have at any time, including under sections 144 and 157 of the PPSA, to receive a copy of a verification statement or other notice contemplated in the PPSA.
- 31.4 The Supplier waives its right to receive anything from PTV, VicTrack, any other relevant Governmental Agency or the Customer under section 275 of the PPSA, and agrees:
- (a) not to make any request of PTV, VicTrack, any other relevant Governmental Agency of the Customer under that section; and
  - (b) to waive any duty of confidence that would otherwise permit non-disclosure under that section,
- but this does not limit the Supplier's rights to request information other than under section 275 of the PPSA.
- 31.5 The Supplier shall not disclose any information of the kind mentioned in section 275(1) of the PPSA (but this does not limit the Supplier's rights to request information other than under section 275 of the PPSA).
- 31.6 To the extent permitted by Law:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (i) neither PTV, VicTrack, any other relevant Governmental Agency nor the Customer is required to comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
    - (ii) sections 142 and 143 are excluded;
  - (b) for the purposes of section 115(7) of the PPSA, neither PTV, VicTrack, any other relevant Governmental Agency nor the Customer is required to comply with sections 132 and 137(3) of the PPSA; and
  - (c) if the PPSA is amended after the date of the Purchase/Service Order to permit the Supplier, the Customer, PTV, VicTrack or any other relevant Governmental Agency to agree to not comply with or to exclude other provisions of the PPSA, the Customer, PTV, VicTrack or any other relevant Governmental Agency (as applicable) may notify the Supplier that any of these provisions is excluded, or that the Customer, PTV, VicTrack or any other relevant Governmental Agency (as applicable) need not comply with any of these provisions, as notified to the Supplier by the Customer, PTV, VicTrack or any other relevant Governmental Agency (as applicable).
- 31.7 The Supplier waives any rights it may have to anything installed in or affixed to any asset used by the Customer in the conduct of the Franchise Business, including any rights the Customer might otherwise have under Part 3.3 of the PPSA.
- 32. SERVICE OF NOTICES UNDER THE SECURITY OF PAYMENT ACT**
- 32.1.1 The Supplier must give the Customer a copy of any written communication in relation to the Security of Payment Act which the Supplier receives from another party in relation to this Contract.
- 33. LOCAL CONTENT AND JOBS**
- 33.1 The Supplier must, in performing its obligations under this Contract, use its best endeavours to engage competitive Australian, New Zealand and Victorian suppliers.
- 33.2 The Contractor must, in performing its obligations under this Contract, undertake to achieve a level of local content that provides a meaningful contribution to the Principal to achieve its Franchise Agreement target of 85%. The Principal may specify further requirements, acting reasonably, and in any event the Contractor must comply with the requirements relating to local content contained in this clause 33 for the purposes of the Victorian Industry Participation Policy.
- 33.3 The Supplier must prepare and maintain records regarding its commitment under Clause 33.2.
- 33.4 The Supplier must provide the Customer with such information as the Customer may request (acting reasonably) in relation to the Supplier's compliance with this Clause 33.
- 33.5 If requested by the Customer, the Supplier must provide a statutory declaration made by a director or Chief Executive Officer of the Supplier, confirming that the information provided under Clause 33.4 is true and accurate.
- 33.6 The Supplier must:
- (a) permit PTV, an accountant or auditor on behalf of PTV or any duly authorised representative of PTV, from time to time during ordinary business hours and upon prior written notice, to inspect and verify all records maintained by the Supplier for the purposes of the Purchase/Service Order or the Franchise Agreement;
  - (b) permit PTV from time to time to undertake a review of the Supplier's compliance with this Clause and the Customer's compliance with its local industry development plan under the Franchise Agreement; and
  - (c) provide all reasonable assistance to any person authorised by PTV to undertake such audit or inspection.
- 33.7 The Supplier acknowledges and agrees that:
- (a) the Customer, PTV, any duly authorised representative of PTV and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Supplier's compliance with this Clause and the Customer's compliance with the LIDP;



- (b) ICN will assess the Supplier's performance against this Clause and the Customer's performance against the LIDP; and
- (c) the statistical information and measures of the Supplier's compliance with this Clause:
  - (i) will be included in PTV's report of operations under Part 7 of the Financial Management Act 1994 (Vic) in respect of PTV's compliance with the VIPP in the Financial Year to which the report of operations relates;
  - (ii) will be provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each Financial Year on the implementation of the VIPP during that year; and
  - (iii) may be disclosed in the circumstances set out in Clause 28 or as otherwise required by Law.

**34. OTHER TERMINATION**

34.1 The Supplier acknowledges that the Customer may terminate the Purchase/Service Order by notice in writing if the Franchise Agreement is terminated for any reason or PTV revokes its consent to the Purchase/Service Order under Clause 10.6 of the Franchise Agreement.

**35. DIRECT AGREEMENT**

35.1 If directed to do so by the Customer, the Supplier must enter into a direct agreement with PTV in a form approved by PTV.

**36. COMPLIANCE WITH INDUSTRIAL RELATIONS OBLIGATIONS**

36.1 Without limiting any other obligations in the Purchase/Service Order (including other obligations to comply with Laws), the Supplier must:

- (a) comply with all applicable employment and industrial relations obligations relevant to its employees and other personnel, including any applicable obligations arising under the Fair Work Act and any associated regulations; and
- (b) perform its obligations under the Purchase/Service Order in a manner that complies with all applicable employment and industrial relations Laws, including any applicable obligations arising under the Fair Work Act and any associated regulations.

36.2 The Supplier must not:

- (a) engage in unethical work practices; or
- (b) employ or otherwise engage employees or other personnel on terms or conditions which are overall worse than industry standards generally applicable in Victoria, Australia. To avoid doubt, the Supplier will generally meet applicable industry standards if the terms and conditions of employment are overall no worse than any applicable enterprise agreement, modern award and the National Employment Standards under the Fair Work Act.

**37. DEALINGS WITH PRIMARY FRANCHISE ASSETS AND FRANCHISE ASSETS**

37.1 The Supplier must not, except with the prior written consent of the Customer:

- (a) create or allow to exist any Security Interest (other than a Permitted Security Interest) over any of the Customer's present or future assets or undertaking (including any Primary Franchise Asset or other asset of the Customer); or
- (b) in any other way:
  - (i) dispose of;
  - (ii) create or allow any interest in; or
  - (iii) part with possession of,
 any of the Primary Franchise Assets.

37.2 If at any time a subcontract between the Supplier and a subcontractor gives rise to a Security Interest or PPSA Deemed Security Interest in respect of any Primary Franchise Asset in favour of the Supplier (where that Primary Franchise Asset has a purchase price of greater than \$50,000), the Supplier must, at its own cost, promptly do anything (including obtaining consents, signing documents, having others sign documents, supplying information, and entering into a subordination or priority agreement with any other secured party) to ensure that the Security Interest or PPSA Deemed Security Interest (as applicable) that arises out of the subcontract in respect of the Primary Franchise Asset is perfected, with the highest ranking possible, and is otherwise effective. Promptly after making any registrations under this Clause 37.2, the Supplier must provide evidence satisfactory to the Customer of any such registrations.

37.3 In this Clause a *Primary Franchise Asset* has the meaning given in the Franchise Agreement, and includes:

- (a) an asset of the Customer which falls into any of the following categories:
  - (i) loans made by the Customer to the Public Transport Ombudsman;
  - (ii) Rotable Items, Collision Spares and other Spares;
  - (iii) Special Tools;
  - (iv) customised vehicles required by mobile track maintenance gangs for daily maintenance requirements or recovery of trams;
  - (v) any item of rolling stock (being any vehicle which operates on or uses a tramway track, including a light inspection vehicle and a road/rail vehicle) which is owned by or leased to the Customer;
  - (vi) any returned assets;
- (b) an asset of the Customer used for the purposes of maintaining, replacing, repairing or renewing a Primary Franchise Asset and which forms or replaces part or all of the Primary Franchise Asset on completion of that maintenance, replacement, renewal or repair;
- (c) the rights and obligations of the Customer under any contract entered into by it under or for the purposes of the Franchise Agreement;
- (d) an asset or a liability of the Customer under the terms of any fare;
- (e) an asset or liability of the Customer which the Customer and PTV agree is a Primary Franchise Asset;
- (f) an asset or liability of the Customer designated as a Primary Franchise Asset by PTV under the Franchise Agreement; or
- (g) insurance policies taken out in respect of any of those above assets and all the proceeds of those policies.