



Metropolitan Bus Contracts Project

Local Services

Transaction Document Package for Kefford
(Oakleigh)

June 2008

MinterEllison

L A W Y E R S

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Local Services
Transaction Document Package for
Kefford (Oakleigh)

Tab	Document
1.	Metropolitan Bus Services Contract – Local Services
2.	Termination Transfer Agreement
3.	Termination Depot Option Deed
4.	AO Direct Deed – Kefford Properties Pty Ltd (as trustee for the Kefford Property Trust)
5.	Release Deed – W Sinclair & Sons
6.	Release Deed – Eastern Suburbs Omnibus
7.	RCTI Agreement
8.	Operator Authorisation Certificate
9.	Performance Bond (Copy)



Metropolitan Bus Services Contract

Local Services - Consolidated

The Director of Public Transport (**Director**)

W Sinclair & Sons Proprietary Limited

Eastern Suburbs Omnibus Services Proprietary Limited
(together the **Operators**)

Douglas Kefford Pty Ltd (**Parent Guarantor**)

MinterEllison

L A W Y E R S

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Table of Contents

Details	9
Agreed terms	10
1. Defined terms & interpretation	10
1.1 Defined terms	10
1.2 Interpretation	24
1.3 Priority of interpretation	25
2. Director's powers and discretions	25
2.1 Delegation	25
2.2 Director's discretion	25
2.3 Consents and approvals	26
2.4 Procurement	26
2.5 Transfer of functions	26
3. Conditions precedent	26
3.1 Conditions	26
3.2 Commitment to satisfy the conditions precedent	27
3.3 Satisfaction of conditions precedent	27
3.4 Consequences of non-fulfilment of conditions precedent	27
4. Warranties	27
4.1 Warranties Correct	27
4.2 Notification of Change	27
4.3 Reliance on Representations and Warranties	27
4.4 No representations or warranties by the Director	28
5. Term	28
5.1 Term	28
5.2 Renewal	28
5.3 Extension	29
6. Provision of Local Services	29
6.1 Local Services	29
6.2 Exclusivity	29
6.3 Separate service contracts	29
6.4 No ownership	29
6.5 Further term	29
7. Subcontracting	30
7.1 Consent required	30
7.2 Responsibility for subcontractor	30
7.3 Direct deeds	30
7.4 Associated Operator Warranties	30
7.5 Relationship with Associated Operators	30
8. Service Adjustments and New Services	30
8.1 Overview	30
8.2 Service Adjustments requested by Operator	31
8.3 Service Adjustments required by Director	31

8.4	New Services	31
8.5	Director's Response to Operator	32
8.6	Adjusted Operators' Service Plan	32
8.7	Effective Date of Service Adjustment or New Service	32
8.8	Adjusted Local Service Payments	32
8.9	Service Review	33
8.10	Urgent Service Changes	33
8.11	Review of Service Adjustments	34
8.12	Minimum requirements only	34
8.13	Provision of Flexible Services	34
8.14	Non Service Changes	34
9.	Other Services	35
9.1	Procurement	35
9.2	Rights to Other Services	35
9.3	Other Service Contracts	35
9.4	Effect of Other Services	35
9.5	Non-bus services and State projects	36
9.6	Review of Local Services	37
10.	Special Events	38
10.1	Request to provide Special Event Services	38
10.2	No obligation to provide Special Event Services	38
10.3	Operator's offer	39
10.4	Provision of Special Event Services by an Operator	39
10.5	Provision of Special Event Services by Another Operator	39
11.	Service plans, standards and obligations	40
11.1	Operators' Service Plan	40
11.2	Service standards and service obligations	40
12.	Buses – use, maintenance and standards	41
12.1	Requirements for Contract Buses	41
12.2	Non-compliant Contract Buses	42
12.3	Spares	42
12.4	Audit of condition	42
12.5	Emergencies	43
12.6	Compliance with Bus Replacement Program	43
13.	Charter services and Other Uses	43
14.	Acquisition of Buses	43
14.1	New Buses	43
14.2	Approval by Director	44
14.3	Acquisition and adjustments	44
15.	Contract Depots – use, maintenance and standards	44
16.	Acquisition of Depots	45
16.1	Application for New Depot	45
16.2	New Depot Covenants	46
16.3	Acquisition adjustments	46
17.	Metlink	46
17.1	Operator acknowledgements	46

17.2	Operator obligations	46
17.3	Timetables	47
17.4	Notification of damage to Bus Stops	47
17.5	Rebranding	47
17.6	Operator Website	47
18.	Ticketing and fares	48
18.1	Use and maintenance of the ATS	48
18.2	Fares and tickets	48
18.3	Fare Revenue protection measures	48
18.4	Audit	49
18.5	New ticketing or information systems	49
18.6	NTS	49
19.	Records, reporting and audit	50
19.1	Financial and Operational Records	50
19.2	Reporting	50
19.3	Safety and accreditation information	50
19.4	Audit	51
19.5	Other records	51
19.6	Misinformation	52
20.	Performance monitoring	52
20.1	General	52
20.2	Component elements	52
20.3	Incentive Adjustment	52
20.4	Data and information	52
20.5	Remedy of underlying performance problem	52
21.	Dealing with Assets	53
21.1	Restriction in relation to Contract Buses and Contract Depots	53
21.2	Notification in relation to Contract Depots	53
21.3	Restrictions in relation to Leases	53
21.4	Restrictions on Nominated Contract Buses	53
21.5	Consequences of dealings with Assets	53
22.	Staff	54
22.1	All Staff	54
22.2	Drivers	54
23.	Payments	54
23.1	Local Service Payments	54
23.2	Manner of payment	55
23.3	Set off	55
23.4	Payment Abatement	55
23.5	Disputed amounts	55
23.6	Corrections	56
23.7	Payment not evidence	56
23.8	Review	56
24.	Advertising	56
24.1	Director's consent	56
24.2	Restrictions	56
24.3	Director's share of advertising revenue	57

24.4	Operator to be compensated	57
25.	Livery	57
25.1	SmartBuses	57
25.2	Other Contract Buses	57
26.	Default and cure regime	57
26.1	Non-Compliance Events	57
26.2	Issue of Non-Compliance Notice	58
26.3	Dealing with Non-Compliance Notices	58
26.4	Agreement and Implementation of Cure Plan	59
27.	Step-in for Operator breach	59
27.1	Right to step-in	59
27.2	Step-in Powers	60
27.3	Protection of a Step-in Party	61
27.4	Step-out	61
28.	Termination	62
28.1	Termination Events	62
28.2	Show Cause Notice	63
28.3	Director's right to terminate	63
28.4	General powers	64
28.5	Specific powers	64
28.6	Director's specific Termination powers	65
28.7	Discharge or acquire Security Interest	65
28.8	Period for exercise	66
28.9	Co-operation in exercise of power of sale	66
28.10	Appointment of Attorney	66
28.11	Enforcement and other expenses	67
28.12	General indemnity	67
28.13	Equitable Relief	67
28.14	Receipt by Director	68
28.15	Third parties need not enquire	68
28.16	Notice, demand or lapse of time required by Law	68
28.17	Director and Attorney not restricted	68
28.18	Director and Attorney not mortgagee in possession or liable	68
28.19	Director may set off	68
28.20	Reinstating avoided transaction	68
28.21	Authorised Representatives and communications	69
28.22	Performance	69
28.23	Not a charge	69
29.	Interim Operator	70
29.1	Appointment	70
29.2	Operators to assist	70
30.	Acquisition on Termination	70
30.1	Termination Option	70
30.2	Conditions	70
30.3	Due Diligence - Contract Depots	71
30.4	Allocation Statement	71
30.5	Audit of Bus Condition	71

30.6	Leased Assets	71
30.7	Operators to facilitate	72
30.8	Transfer of Staff	72
30.9	Restrictions relating to Staff	73
30.10	Intellectual Property licences	73
30.11	Intellectual Property Indemnity	73
30.12	Operators' End of Term Option	73
31.	Termination arrangements	74
31.1	Going Concern	74
31.2	Operators to facilitate	75
31.3	Continuity Information	75
31.4	Access	75
31.5	Warranty as to Continuity Information	75
31.6	Access to Staff	76
31.7	No frustration	76
32.	Force majeure	76
32.1	Notification of Force Majeure Event	76
32.2	Effect of Force Majeure Event	76
32.3	Mitigation	76
32.4	Cessation of Force Majeure Event	76
33.	Insurance	77
33.1	Insurance policies	77
33.2	Insurance generally	77
33.3	Premiums	78
34.	Intellectual Property	78
35.	Indemnity and limitation of liability	78
35.1	Indemnity	78
35.2	Release	78
35.3	Exclusion of Indirect or Consequential Loss	79
35.4	Liability with respect to passengers and third parties	79
35.5	Proportionate liability	79
36.	Performance Bond	79
36.1	Provision	79
36.2	Replacement	80
36.3	Demands	80
36.4	No Injunction	80
36.5	Repayment	80
36.6	Notice	81
36.7	Return	81
37.	Confidentiality	81
37.1	Non-disclosure by the Operators	81
37.2	Excludes public knowledge	81
37.3	Others	81
37.4	No limitation	81
37.5	Non-disclosure by Director	81
37.6	Director may disclose	81
37.7	Disclosure if required by Law	82

37.8	Public disclosure	82
37.9	Publicity	83
38.	Practice Notes	84
39.	Dispute resolution	84
39.1	Notice of Dispute	84
39.2	Parties to meet	84
39.3	Referral to senior executives	84
39.4	Referral to Expert or Arbitrator	85
39.5	Issues for resolution by an Expert	85
39.6	Selection of Arbitrator or Expert	85
39.7	Procedure on arbitration	85
39.8	Procedure on resolution by Expert	85
39.9	Court proceedings and other relief	85
39.10	Exclusion	85
39.11	Performance not affected	85
40.	Goods and Services Tax	86
40.1	Interpretation	86
40.2	Consideration is GST exclusive	86
40.3	Gross up of consideration	86
40.4	Recipient created tax invoices	86
40.5	Reimbursement	86
41.	Guarantee and Indemnity	86
41.1	Guarantee	86
41.2	Indemnity	86
41.3	Continuing guarantee and indemnity	86
42.	General	87
42.1	Alterations and termination	87
42.2	Independent	87
42.3	Assignment	87
42.4	Costs	87
42.5	Survival	88
42.6	Counterparts	88
42.7	Contra Proferentem	88
42.8	No merger	88
42.9	Entire agreement	88
42.10	Trustee Capacity	88
42.11	Further action	88
42.12	Document subject to Transport Act and PTCA	89
42.13	Severability	89
42.14	Waiver	89
42.15	Rights held on trust	89
42.16	Director's compliance	89
42.17	Governing law and jurisdiction	89
42.18	Notices and other communications	89
42.19	Public Transport Ombudsman	90
42.20	VIPP Statement and VIPP Implementation Plan	90
	Signing page	92

Schedule 1	93
Schedule 2 – Contract Buses (clauses 1.1, 12 and 30.5)	95
Schedule 3 – Payments (clauses 1.1, 8.8, 8.10, 8.14, 20.3 and 23)	97
Schedule 4 – Performance Monitoring Regime (clause 20)	99
Schedule 5 – Warranties (clause 4)	106
Schedule 6 – Form of Performance Bond (clause 36.1)	108
Schedule 7 – Transfer Price (clauses 1.1 and 30)	110
Schedule 8 – Bus Loading Standards (clauses 1.1 and 12.1)	113
Annexure A – ATS Agreement	114
Annexure B – Termination Transfer Agreement	144
Annexure C – End of Term Depot Option Deed/Termination Depot Option Deed	180
Annexure D – VIPP Statement	192
Annexure E – VIPP Implementation Plan	193
Annexure F – Pro forma AO Direct Deed	195
Annexure G – Bus Replacement Program	228
Annexure H – Compliance Statement	230
Annexure I - Map of Orbital SmartBus Services	232
Annexure J – Operator Authorisation Certificate	234

Details

DATE:

23 JUN 2008

Name

The Director of Public Transport
under the *Transport Act 1983* (Vic)

on behalf of the **Crown in right of the State of Victoria** under the PTCA

Short form name

Director

Notice details

Level 14, 121 Exhibition Street, Melbourne, Victoria, 3000

Facsimile: 9655 8993

Attention: Director

Name

W Sinclair & Sons Proprietary Limited ABN 67 004 482 142

Short form name

Operator

Notice details

9 Slough Road, Altona, Victoria 3018

Name

Eastern Suburbs Omnibus Services Proprietary Limited ABN 51 004 231 396

Short form name

Operator

Notice details

9 Slough Road, Altona, Victoria 3018

Name

Douglas Kefford Pty Ltd

Short form name

Parent Guarantor

Notice details

9 Slough Road, Altona, Victoria 3018

Background

- A Under section 26(2) of the PTCA the Director is authorised, on behalf of the Crown, to enter into a *service contract* with an *accredited person* for the provision of *regular passenger services*.
- B The Director wishes to appoint the Operators to separately provide the Local Services in the manner set out in this document.
- C The parties have agreed to enter into this document as required by the PTCA to record the terms and conditions on which the Local Services will be provided.
- D The Parent Guarantor has agreed to guarantee the performance of the Operators and the Associated Operators under the Transaction Documents.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Accreditation means an accreditation under Part 2 of the PTCA to provide Local Services.

Airport Service means a *regular passenger service* the dominant purpose of which is to operate to and from a Metropolitan Airport only.

Allocation Statement means a written statement signed by the Director and given to the Minister under Division 5 of Part 3 of the PTCA.

Allocation Time means, in respect of an Allocation Statement, the date or time and date fixed by the Minister as the *relevant time* for the purposes of that Allocation Statement under Division 5 of Part 3 of the PTCA.

Amending Legislation means the *Transport Legislation Amendment Act 2007* (Victoria).

Another Operator means an operator of other *regular passenger services* in the Metropolitan Area other than an Operator or an Associated Operator.

Another Operator's Local Services means the *regular passenger services* provided by Another Operator.

AO Direct Deed means any deed between the Director, an Associated Operator and an Operator in a form approved by the Director but substantially in the form of Annexure F, or any deed having a similar effect.

ASIC means the Australian Securities and Investments Commission.

Assets means all the assets used in the Bus Operations including Contract Buses, Contract Depots, Plant and Equipment, Business Systems and the Bus Operations IP.

Associated Operator means:

- (a) a Subcontractor which is or becomes related to, or associated with, an Operator; or
- (b) an entity which is or becomes related to, or associated with, an Operator and makes Contract Buses and or Contract Depots available to an Operator for use in the provision of Local Services.

ATS means the automated ticketing system, revenue management system, retail agent network and marketing program supplied and operated by OneLink Transit Systems Pty Ltd for train, tram and bus services in the Metropolitan Area and all components of the ATS.

ATS Agreement means the agreement relating to the ATS substantially in the form of the pro forma agreement annexed as Annexure A.

Attorney means an attorney appointed by the Director under clause 28.10.

Authorisation includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, document, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by, with or of a Government Body.

Authorised Representative means a director or company secretary, or:

- (a) in respect of the Operators, a person the Nominated Operator notifies to the Director as being the authorised representative for each Operator for the purposes of the Transaction Documents where the Director has no notice of revocation of that authority; and
- (b) in respect of the Director, any Director's Associate or any person notified to the other parties as being his authorised representative for the purposes of the Transaction Documents.

Avoidance has the meaning given to it in clause 28.20.

Base Vehicle Service Kilometres means the number of Vehicle Service Kilometres provided by the Operators as at the Commencement Date.

BAV means the Bus Association Victoria Inc. and includes any successor entity or organisation to the Bus Association Victoria Inc.

BAV Services Agreement means the Memorandum of Understanding between Metlink and the BAV dated 2 August 2004.

Bus has the same meaning as under the PTCA.

Business Day means a day on which trading banks are open for the transaction of general banking business in Melbourne, other than a Saturday, Sunday or public holiday.

Business Systems means all information technology hardware, software and equipment (whether owned by an Operator or an Associated Operator or not) used or required in connection with the Bus Operations, including all applications software, network and other operational software, management systems (including the Management Information System), methodology, databases, work product, back-up and historic data files relating to, among other things, rostering, scheduling and timetabling and also including intranet, extranet and web-based applications and desktop computers.

Bus Loading Standards means the loading standards and requirements for Buses set out in Schedule 8.

Bus Operations means the business of providing the Local Services conducted by the Operators including the holding, maintenance and operation of the Assets and related activities.

Bus Operations IP means all the Intellectual Property (whether owned by an Operator or an Associated Operator or used under an IP Licence) used or required in connection with the Bus Operations, including all Intellectual Property in the Business Systems and the Management Information System, but excluding any Intellectual Property in the SmartBus Equipment.

Bus Operator means an operator of *regular passenger services* including each Operator and Another Operator.

Bus Replacement Program means the document approved by the Director which details the program for the replacement of Contract Buses by the Operators during the Term and which is annexed as Annexure G.

Bus Stop means each designated Bus stop along a Route at which Buses pick up and put down passengers.

Change in Control occurs when:

- (a) an Operator becomes a subsidiary of a person of which it was not a subsidiary at the date of this document;

- (b) a person's voting power in an Operator increases from below 50% to 50% or above after the date of this document; or
- (c) a person is able to control an Operator where that person was not able to control that Operator at the date of this document,

where the person referred to in paragraphs (a) or (c) did not have immediately prior to the relevant time directly or indirectly, any voting power in or control over the Operator.

Change in Law means the amendment, coming into effect or implementation after the date of this document of any Law including any applicable judgment of a relevant court of Law which changes a binding precedent.

Chargee has the meaning given in clause 28.7.

Claim includes any claim, proceeding, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at Law or otherwise).

Commencement Date means 1 July 2008.

Compliance Statement means a written resolution of the directors of the Nominated Operator:

- (a) resolving that each Operator has given it a copy of a Solvency Statement;
- (b) resolving that they have no reason to believe that any Operator will be unable to perform its obligations under the Transaction Documents;
- (c) resolving that each Operator has complied with its obligations in relation to:
 - (i) the Financial Records under clauses 19.1 and 19.5;
 - (ii) the Continuity Information and the Continuity Guide under clauses 31.3 and 31.4; and
 - (iii) insurance under clause 33; and
- (d) resolving that the Operators have managed the Bus Operations to ensure the Continuity of the Local Services,

in the form set out in Annexure H.

Continuity Guide has the meaning given to that term in clause 31.4.

Continuity Information means all information kept by the Operators as required by clause 31.

Continuity of the Local Services refers to:

- (a) the continued provision of Local Services during the Term in accordance with this document; or
- (b) the orderly handover of the Bus Operations and the transfer of the Assets by the Operators to a Step-in Party, Interim Operator or Successor Operator as contemplated by this document.

Contract Buses means the Buses used (with the approval of the Director) by the Operators or an Associated Operator in providing the Local Services which, at the Commencement Date, are those Buses listed in Schedule 2.

Contract Depots means the Depots used (with the approval of the Director) by the Operators or an Associated Operator in conducting the Bus Operations or to house the Contract Buses.

Corporations Act means the *Corporations Act 2001* (Cth).

Default Rate means a rate equivalent to 2% per annum above the base lending rate published by National Australia Bank Limited (or any other bank as the Director may, after consultation with the Operator, determine) during any period in which an amount payable under this document remains unpaid.

Depot means the land, buildings and improvements comprising a Bus depot.

Director includes any person who at any time holds, occupies, acts in or is entitled to perform the duties and functions of the office of the Director under a delegation.

Director's Associates means the Crown in right of the State, VicRoads, Metlink, the TTA, any relevant roads authority, any State Government Body, and any officer, employee, agent, contractor, consultant, delegate or adviser of, or to, any of them.

Discriminatory Change in Law means a Change in Law of the State, other than a Change in Law with respect to Tax, the terms of which apply directly and exclusively to Bus Operators or road infrastructure in the State except those changes effected by the Amending Legislation.

Dispose means to transfer, assign, sell, grant an exclusive licence over, or otherwise part with possession of something.

Driver means a member of Staff that is a driver of a Contract Bus.

Emergency Step-in Event has the meaning given to it in clause 27.1.

End of Term means the expiration of the Term by the effluxion of time.

End of Term Depot Option Deed means each deed in the form of that annexed as Annexure C under which an Operator that owns an Owned Depot (or an Associated Operator that owns an Owned Depot) grants to the Director an option to buy that Owned Depot at End of Term in accordance with clause 30.

End of Term Option has the meaning given to it in clause 30.12.

Exempt Staff means Staff nominated and identified on a list provided by the Nominated Operator to the Director on the Commencement Date, and then on each anniversary of the Commencement Date, as being excluded from transfer under clause 30, provided that nomination is accepted by the Director acting reasonably.

Exercise Event means the giving of:

- (a) a Termination Notice under clause 28.3; or
- (b) a Step-in Notice under clause 27.1.

Expert means the person appointed as an independent expert under clause 39.

External Administrator means an administrator, controller (as defined in the Corporations Act), receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Fare means any fare payable by a passenger to use the Local Services.

Fare Revenue means the money received from passengers as payment for Fares.

Financial Records means proper books of account and all other financial planning records of each Operator and the Associated Operators relating to the Bus Operations that would ordinarily be maintained by a prudent and competent operator of bus services comparable in size, scope and complexity to the Local Services including:

- (a) cash flow reports;

- (b) profit and loss statements;
- (c) balance sheets;
- (d) financial modelling reports; and
- (e) notes, documents and data supporting the records contemplated by (a) to (d) including Management Information Systems, ledgers, spreadsheets, payroll registers, customer invoices, vendor bills, bank statements, tax returns, insurance policies and ASIC lodgements.

Flexible Services means that proportion of the Local Services specified in the PSR which an Operator must, but has a discretion as to where and when it will, provide.

Force Majeure Event is any event or circumstance or combination of events and circumstances which:

- (a) was not caused by the party affected and is beyond the reasonable control of the party affected and is not a risk for which that party is responsible under this document but excluding:
 - (i) any Changes in Law other than a Discriminatory Change in Law; and
 - (ii) industrial action predominantly in relation to the bus industry or involving any Staff or employees of any Operator, an Associated Operator or an associate of either of them; and
- (b) cannot, or the effects of which cannot, be prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence expected by a skilled and experienced operator of bus services in Australia comparable to the size, scope and complexity of the Local Services (including the expenditure of all reasonable sums of money).

Greenfield Service means a *regular passenger service*:

- (a) which has the features identified in the Practice Note for New Services;
- (b) is designated by the Director as a Greenfield Service; and
- (c) which, at the time it is designated, is not the subject of a *service contract* of any Bus Operator.

Government Body means any court or tribunal with relevant jurisdiction, any local, state or national government or governmental, administrative, fiscal, or judicial body, department, commission, authority, tribunal, agency, entity, council, ministry, official or public or statutory person.

Immediate Termination Event means an event set out in clause 28.1(b).

Indirect or Consequential Loss means:

- (a) loss of contract payments;
- (b) loss of incentive payments;
- (c) loss of use or business opportunity;
- (d) payment of liquidated sums, penalties or damages under any document (other than a statute or Transaction Document);
- (e) loss of profit; and or

- (f) any other loss which, at Law, would be deemed to be an indirect or consequential loss arising from the act or omission in issue,

but excludes Loss arising from:

- (g) property damage or third party claims in respect of property damage;
- (h) personal injury; and
- (i) nervous shock or death.

Insolvency Event means when an Operator or an Associated Operator:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the Corporations Act;
- (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
- (g) has an application or order made or a resolution passed for its winding up or dissolution or for it to enter an arrangement, compromise or composition with, or assignment for the benefit of, its creditors, a class of them or any of them;
- (h) has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings and that enforcement, distress, execution or similar process is not set aside within five Business Days; or
- (i) any event occurs which, under the Laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Intellectual Property means any intellectual or industrial property, whether protected by statute, at common law or in equity and whether registered or unregistered, including any patent, rights in respect of inventions, copyright, design, trade secret, circuit layout design, right to have information kept confidential, technical information, process, technique, know how, trade mark or trade name, business name, branding, get up including livery, and logo.

Interim Operator means an entity appointed by the Director under clause 29.

IP Licence means the licence of Bus Operations IP by a third party to an Operator or an Associated Operator under which there is a right to use the Bus Operations IP.

Landlord means the owner of a Contract Depot where that owner is not an Operator or an Associated Operator.

Law means any statute, regulation, order, rule, subordinate legislation or other document, standard or direction enforceable under any statute, regulation, order, rule or subordinate legislation, and includes the general law.

Lease means a lease of a Contract Bus or Contract Depot.

Liquidation means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors generally or any class or group of them.

Local Service Payments means all the categories of payments made by the Director to the Nominated Operator relating to the provision of the Local Services under Schedule 3.

Local Services means *regular passenger services* of a local nature provided or to be provided by an Operator in the Region and or along the Routes:

- (a) which are specified in relation to that Operator in Part A of Schedule 1;
- (b) in accordance with the specifications contained in the PSR; and
- (c) in accordance with this document.

Loss means all loss, damage, liability, Claim, charge, cost and expense of every kind, including reasonable legal costs and expenses on a full indemnity basis.

Management Information System means the management information system established and maintained by the Operator under the PTCA Regulations.

Maximum Carrying Capacity means the maximum carrying capacity specified for, or applicable to, a particular Bus as determined by the appropriate Government Body or by the conditions of Accreditation.

Metlink means Metlink Victoria Pty Ltd.

Metlink KPIs means the key performance indicators applicable to the Operators' performance of their Metlink related obligations in this document which are set out in Part D of Schedule 4.

Metlink Master Style Guide means the document of that name created and published by Metlink and provided to all operators of public transport in the Metropolitan Area.

Metlink Operations Manual means the written operations manual of that or similar name to be developed and agreed during the Term between the Director, Metlink and the BAV outlining (among other things) the Metlink related obligations of Bus Operators.

Metlink Services Agreement means the agreement of that name between Metlink and the Director dated 16 April 2004.

Metropolitan Airport means Melbourne Airport, Avalon Airport or any other airport designated as a Metropolitan Airport by the Director.

Metropolitan Area has the meaning given under the Transport Act.

Minimum Level of Service means Local Services meeting the service levels set out in the PSR (including Flexible Services), as those levels are amended under this document, unless otherwise notified by the Director.

Minister means the State Minister for Public Transport.

Missed Services has the meaning given to that term in Schedule 3.

NBT Service has the meaning given in clause 9.5.

New Bus means a Bus (new or used) acquired under clause 14 after the Commencement Date for use in the provision of the Local Services.

New Depot means a Depot acquired under clause 16 after the Commencement Date for use in the provision of the Local Services.

New Service means a *new regular passenger service* that has the features identified in the Practice Note for New Services but excludes any Service Adjustment.

New Service Template means a template in a form approved by the Director containing all details relevant to the nature, implementation and provision of a New Service.

Nominated Contract Bus means a Contract Bus the acquisition of or the Lease of which is met in whole or in part by the Local Service Payments.

Nominated Operator means W Sinclair & Sons Proprietary Limited (ABN 67 004 482 142) of 9 Slough Road, Altona, Victoria 3018.

Non Compliance Event has the meaning given in clause 26.1.

Non Compliance Notice has the meaning given in clause 26.2.

Non Service Change means a change (including increase, decrease, omission or change in character or quality) in an Operator's obligations under this document which is not a Service Adjustment and includes a change to the Bus Replacement Program.

NTS means the Smartcard based ticketing and payment system known as the New Ticketing Solution to be introduced by the TTA and which will apply to the Local Services.

NTS Components means parts of the NTS comprising equipment, hardware or software and any materials or other things installed on any Asset.

NTS Provider means Keane Australia Micropayment Consortium Pty Ltd ACN 114 334 600.

NTS Services Agreement means an agreement entered into under clause 18.5(d).

Operating Payment has the meaning given to that term in Schedule 3.

Operational Incentive Amount has the meaning in Schedule 4.

Operational Records means those records of each Operator and the Associated Operators relating to the operational aspects of the Bus Operations of a kind that would ordinarily be maintained by a prudent and competent operator of bus services comparable in size, scope and complexity to the Local Services, and being:

- (a) Vehicle Service Kilometres and hours completed;
- (b) Special Event Service kilometres and hours completed;
- (c) school service kilometres and hours completed for dedicated school services;
- (d) cancellations and missed services, including reasons;
- (e) environmental incidents; and
- (f) any records relating to the operational aspects of the conduct of the Bus Operations required by the PTCA Regulations.

Operational Report means a detailed report and analysis by the Nominated Operator of its (and each other Operator's and each Associated Operator's) operational performance under the Transaction Documents including:

- (a) an analysis of particular Operational Records relating to cancellations and missed services and on time running records for at least a 5% random sample of total Local Services provided;
- (b) Special Event Service kilometres and hours completed;
- (c) details of complaints received; and
- (d) any other records agreed with the Director,

which report must be in the form set out in any relevant Practice Note and which enables the Director to measure the Operators' performance against any applicable Performance Benchmarks.

Operator Authorisation Certificate means a certificate signed by the Nominated Operator in the form set out in Annexure J certifying that, as at the Commencement Date, each Operator, each Associated Operator and the Drivers hold all Authorisations required to perform their respective obligations under the Transaction Documents.

Operators' Records includes the Continuity Information, the Financial Records and the Operational Records.

Operators' Service Plan means the Operators' plan for the provision of the Local Services which:

- (a) summarises the service hours and kilometres and delivers the Passenger Service Requirements;
- (b) is consistent with the template provided by the Director;
- (c) is approved by the Director before it becomes operative;
- (d) will be reconciled and verified as part of the OSP Reconciliation Process; and
- (e) will be updated by the Operators to reflect Service Adjustments and Non Service Changes made under clause 8.

OPR Indicators has the meaning given in paragraph 2.1(a)(i) of Schedule 4.

Orbital SmartBus Services means those (or parts of those) SmartBus Services designated by the Director as *Red Orbital*, *Green Orbital*, *Blue Orbital* and *Yellow Orbital* as at the Commencement Date and delineated in the routes in Annexure I. Subject to clause 9.6(c), the routes may be amended by the Director to improve efficiency in route design.

OSP Reconciliation Process has the meaning given to that term in clause 11.1(a).

Other Service Contract means a service contract relating to the provision of an Other Service.

Other Service means a New Service that is a Greenfield Service, an Orbital SmartBus Service or an Airport Service.

Owned Depot means a Depot (including a New Depot) title to which is in the name of an Operator, an Associated Operator or an associate of any of them.

Passenger Service Requirements (PSR) means the Director's requirements for Local Services specified in the document set out in Part B of Schedule 1 (as revised and reissued) including:

- (a) the origin and destination of each Route;
- (b) the stops which must be served along each Route;
- (c) the latest acceptable time for the first departure and the earliest acceptable time for the last departure, in each direction on each Route;

- (d) the minimum service levels (per hour) during the day, in each direction on each Route;
- (e) the maximum allowable journey time, in each direction on each Route;
- (f) additional short runs (not running the full length of the Route) which are designed to enhance peak services by alleviating vehicle over crowding at key locations;
- (g) service deviations which may be required to service certain schools in the morning and afternoons only;
- (h) points along each Route where services should be co-ordinated with train, tram or other passenger services;
- (i) school services, major services and any other special services;
- (j) Flexible Services; and
- (k) any other similar requirements notified to the Nominated Operator in writing.

Patronage Incentive Amount has the meaning in Schedule 3.

Patronage Indicator has the meaning in clause 1.2 of Schedule 4.

Performance Benchmarks means the benchmarks determined for any Performance Indicators that apply under the Performance Monitoring Regime.

Performance Bond means an unconditional on demand undertaking which meets the criteria set out in clause 36.1.

Performance Indicators means indicators of the Operators' performance in providing the Local Services being the Patronage Indicator, the OPR Indicators, the QPR Indicators and the Metlink KPIs.

Performance Monitoring Regime means the performance monitoring regime under clause 20 and Schedule 4.

Performance Problem has the meaning given to that term in clause 5(b)(i) of Schedule 4.

Plant and Equipment means all plant and equipment used by the Operators and each Associated Operator in providing the Local Services.

Power means any right, power, discretion or remedy of the Director or an Attorney under any Transaction Document or applicable Law.

Practice Note means a practice note issued by the Director under clause 38.

Practice Note for New Services means the Practice Note of that name issued by the Director on or about the Commencement Date under clause 38(d).

Pre Commencement Service Adjustment means service adjustments and or new services implemented by any Operator under a Previous Contract, but not approved by the Director prior to the Commencement Date.

Previous Contracts means in relation to each Operator:

- (a) the Transport Services Agreement – Metropolitan Buses dated on or about April 1998 between the Secretary and the Operator that expired on 31 December 2007; and
- (b) the Renewed Transport Services Agreement – Metropolitan Buses dated on or about December 2007 between the Director and the Operator that expires on 30 June 2008.

Project Party has the meaning given to that term in clause 9.5.

PTCA means the *Public Transport Competition Act 1995* (Victoria).

PTCA Regulations means the *Public Transport Competition Regulations 1999* (Victoria).

QPR Indicators has the meaning given in clause 3.2 of Schedule 4.

Region means an area of service (but not specific Routes) identified in Schedule 1.

Regional Area means a geographic area:

- (a) that is part of the Metropolitan Area;
- (b) in which an Operator provides Local Services;
- (c) in which at least three other Bus Operators operate *regular passenger services*; and
- (d) which reflects an area in which the provision of *regular passenger services* is managed by an area manager of the Department of Infrastructure.

Related Service Contract means a *service contract* in relation to the provision of *regular passenger services* in the Metropolitan Area (including services of a local nature or Other Services) under which an Operator, an Associated Operator or an associate of any of them is the operator.

Release Deed means a deed containing mutual releases in relation to Claims under the Previous Contracts entered into on or about the date of this document.

Renewal Conditions has the meaning given to that term in clause 5.2(a).

Route means a route identified in Schedule 1.

Safety Director means the Director, Public Transport Safety appointed under the Transport Act.

Sale Default means if an:

- (a) Immediate Termination Event occurs; or
- (b) a Show Cause Termination Event occurs and the response of the Nominated Operator to a Show Cause Notice is not acceptable to the Director; or
- (c) the Nominated Operator does not respond as required by clause 28.2.

Secretary means the Secretary to the Department of Infrastructure for and on behalf of the Crown in right of the State.

Security Interest means an interest which provides security for, or protects against default by, a person for the payment or satisfaction of a debt, obligation or liability including a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance or hypothecation (including a retention of title other than in the ordinary course of day to day trading and a deposit of money by way of security).

Service Adjustment means:

- (a) any change to the frequency of operation of a Local Service;
- (b) any change to the days or hours of operation of a Local Service;
- (c) any change to the passenger pick up or set down points for a Local Service that does not involve a change to the line of Route;
- (d) any Temporary Service Change;
- (e) the discretionary allocation of Flexible Services by an Operator; and
- (f) the implementation of any reallocation of Another Operator's Local Services agreed with the BAV and Another Operator (as contemplated by clause 9.6(a)(v)),

but excludes:

- (g) an Urgent Services Change;
- (h) the process of procuring any Other Service;
- (i) a New Service; and
- (j) Special Event Services.

Service Adjustment Template means a template in a form approved by the Director containing all details relevant to the nature, implementation and provision of the proposed Service Adjustment.

Show Cause Termination Event means an event set out in clause 28.1(a).

SmartBus means a Bus equipped with SmartBus Equipment.

SmartBus Equipment means the equipment designated by the Director as being required to be installed and or utilised on or at Contract Buses, Contract Depots, Routes and Bus Stops in relation to a SmartBus Service.

SmartBus Service means a *regular passenger service* designated by the Director as a SmartBus Service that will utilise SmartBuses and SmartBus Equipment.

Smartcard means a stored value card issued by or on behalf of the TTA.

Solvency Statement means a written resolution of the directors of an Operator that satisfies the requirements of a solvency resolution as that expression is defined in section 9 of the Corporations Act.

Special Events means events which take place in the Metropolitan Area including those of a sporting, cultural or community nature and for which it is unlikely that the Local Services provided by the Operators and other operators described in timetables will meet public demand. These include:

- (a) the Australian Grand Prix;
- (b) the Australian International Airshow; and
- (c) any other event that the Director so determines,

unless set out in Schedule 1.

Special Event Services means *road transport passenger services* provided in relation to Special Events under clause 10.

Staff means all persons whether officers, employees, agents or contractors of each Operator or an Associated Operator engaged in, or in connection with, the provision of the Local Services.

Staff Liabilities means the liabilities of each Operator and each Associated Operator in relation to the employment related entitlements and benefits of the Staff, whether arising under an award, a certified agreement or workplace agreement, under contract or under any Law, but excluding any accrued long service leave liabilities for the Staff (which are funded by the Director on a cash basis under Schedule 3).

State means the State of Victoria.

Statement of Financial Position means the statement showing the financial position of an Operator summarising its assets, liabilities and owners' equity at a point in time.

Step-in Party means the Director or any other entity approved by the Director to perform the Step-in Powers, provided that the Director agrees to consider any reasonable objection to an approved entity.

Step-in Period means the period from the date that a Step-in Party is appointed to the effective date set out in a Step-out Notice.

Step-in Powers means the Powers of a Step-in Party set out in clause 27.2.

Step-in Right means the right of the Director under clause 27.1.

Step-out Notice means a notice given by the Director to the Nominated Operator under clause 27.4.

Subcontractor means any subcontractor appointed by an Operator under clause 7.1(a)(i).

Successor Operator means an operator appointed by the Director to provide all or part of the Local Services or services of a similar kind to the Local Services following the Termination of this document (but does not include an Interim Operator).

Tax means any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding, including the GST, (together with any related interest, penalty, fine or expense in connection with any of them) levied or imposed by any Government Body, including any imposed on net overall income.

Temporary Service Change means a change to the level or provision of, or requirements for, a Local Service that will not last for more than four consecutive weeks, but excludes an Urgent Service Change and any Special Event Services.

Term means the term of this document referred to in clause 5.1 and any extension granted by the Director under clause 5.3.

Terminate means the exercise by the Director of his right to terminate this document before the End of Term under clause 28 and **Termination** has a corresponding meaning.

Termination Date has the meaning given to that expression in clause 28.3.

Termination Depot Option Deed means each deed in the form of that annexed as Annexure C under which an Operator that owns an Owned Depot (or the relevant Associated Operator that owns an Owned Depot) grants to the Director an option to buy that Owned Depots on Termination under clause 30.

Termination Event means a Show Cause Termination Event or an Immediate Termination Event, but the expiry of the Term does not constitute a Termination Event.

Termination Notice means a notice given under clause 28.3.

Termination Transfer Agreement means the agreement in the form of that set out in Annexure B.

Termination Transfer Agreement Date has the meaning given to that term in clause 30.2(e).

Ticket means any entitlement to travel on a Bus providing a Local Service and or any Other Service including Smartcard (or paper ticket where permitted by the Director).

Timetable means a chronological list of each Local Service to be provided by an Operator, on each day, including the times for arrival and departure and the times for arrival at each intermediate stopping point, as set out in Part B of Schedule 1.

Transaction Documents means, collectively:

- (a) this document;

- (b) any AO Direct Deeds;
- (c) the ATS Agreement;
- (d) the NTS Services Agreement;
- (e) the Termination Transfer Agreement;
- (f) each Termination Depot Option Deed;
- (g) any End of Term Depot Option Deed; and
- (h) any Related Service Contract.

Transfer Date means:

- (a) if a Transfer Notice is given at least 30 days prior to the Termination Date – the Termination Date; or
- (b) if a Transfer Notice is given less than 30 days prior to the Termination Date – the date that is 30 days after the Transfer Notice is given.

Transfer Notice means a notice given by the Director to the Nominated Operator under clause 30.1.

Transfer Price means the total purchase price calculated under Schedule 7 payable for the acquisition of the Assets under clause 30.

Transport Act means the *Transport Act 1983* (Victoria).

Transport Information means, in relation to the Local Services, the following information:

- (a) Timetables;
- (b) details of each Route, with Bus Stops and zones (where relevant) indicated;
- (c) details of Fares;
- (d) details of Contract Bus types (low floor or otherwise) operating the Local Services;
- (e) details of planned and unplanned disruptions to the Local Services, including alternative transport arrangements; and
- (f) any other information about the Local Services that a user of public transport services would reasonably require.

TTA means the Public Transport Ticketing Body operating as the Transport Ticketing Authority.

Urgent Service Change means a change to the Local Services of the kind referred to in clause 8.10.

Vehicle Service Kilometres has the meaning given to that term in Schedule 3.

VIPP means the Victorian Industry Participation Policy introduced by the State government in April 2001.

VIPP Implementation Plan means the plan set out in Annexure E, as amended from time to time in accordance with the VIPP.

VIPP Statement means the statement set out in Annexure D, as amended from time to time in accordance with the VIPP.

Warranties means the warranties in Schedule 5.

1.2 Interpretation

In this document, unless the context otherwise requires, the following rules of construction will apply in the interpretation of this document:

- (a) unless a contrary intention appears expressly, the term *may* when used in the context of a power, right or remedy exercisable by the Director means that:
 - (i) the Director can exercise that power, right or remedy in his absolute and unfettered discretion;
 - (ii) the Director has no obligation to any Operator or any other party to do so, or to consider whether to do so; and
 - (iii) no right, interest or expectation of any kind is created in any Operator in respect of that power, right or remedy or its exercise or otherwise;
- (b) words and expressions defined in the Transport Act or in the PTCA and italicised in this document will, unless a contrary intention appears expressly or unless the same word or expression is defined in this document, have the same meaning where used in this document;
- (c) the singular includes the plural and vice versa and a reference to any gender includes the other genders;
- (d) a reference to a clause, schedule or annexure is to a clause, schedule or annexure of or to this document;
- (e) a reference to a contract or document (including the PSR and the Bus Replacement Program) is to that contract or document as amended, novated, supplemented or replaced from time to time;
- (f) a reference to a person includes a corporation, firm, partnership, association, trust, joint venture, authority, Government Body or, other legal entity and vice versa;
- (g) a reference to any legislation or legislative provision is to that legislation or provision as amended, modified, re-enacted, consolidated or replaced from time to time and includes any regulation or other instrument issued under that legislation or provision;
- (h) a reference to a party or person includes the successors and permitted assigns of that party or person;
- (i) the terms *subsidiary*, *voting power*, *control*, *relative*, *body corporate* and *associate* have the meanings given to those terms in the Corporations Act;
- (j) if any amount is payable under this document on a day which is not a Business Day, that amount must be paid on the next day that is a Business Day;
- (k) headings and sub-headings are for convenience and do not affect interpretation;
- (l) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (m) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (n) a general obligation imposed on an Operator must not be read down or limited by reference to a more specific obligation, unless this document expressly provides otherwise;

- (o) where a party releases another party from Claims, it will be deemed to have released the other party from all Claims which it has, but for the execution of this document might have had, or may have in the future in respect of the relevant subject matter;
- (p) where a power, right or remedy is conferred on the Director under any Transaction Document, that power, right or remedy is in addition to, and not in substitution of, any other power, right or remedy conferred on the Director at Law or under another Transaction Document; and
- (q) the Director may rely on any waiver by any Operator of any rights or powers, including statutory rights or powers.

1.3 Priority of interpretation

- (a) If there is any inconsistency between a provision of a Transaction Document and a provision of the PTCA, the provision of the PTCA will prevail.
- (b) If there is any inconsistency:
 - (i) within the provisions of a Transaction Document, the provision which imposes the higher standard on an Operator will prevail; and
 - (ii) between the provisions of any two or more Transaction Documents, the Transaction Documents will be given priority in interpretation in the following order to the extent of any inconsistency:
 - (A) this document;
 - (B) any AO Direct Deeds;
 - (C) the ATS Agreement;
 - (D) the NTS Services Agreement;
 - (E) the Termination Transfer Agreement;
 - (F) the Termination Depot Option Deeds and any End of Term Depot Option Deeds; and
 - (G) any Related Service Contract.
- (c) Where there is an inconsistency between a direction or requirement of the Director, a Director's Associate or any other person entitled under a Transaction Document or otherwise to make such a direction or requirement and the provision of a Transaction Document then the Transaction Document provision will prevail.

2. Director's powers and discretions

2.1 Delegation

The Director is permitted under section 9(7) of the Transport Act and section 35(2) of the PTCA to delegate his powers under the Transaction Documents to another person. If he does so, he agrees to provide a copy of the delegation to the Nominated Operator within five Business Days of a request by the Nominated Operator and each Operator will be entitled to rely on that notice of delegation.

2.2 Director's discretion

The parties acknowledge and agree that in the interpretation of this document:

- (a) anything which the Director does, fails to do or purports to do under his executive powers or his functions and powers under any Law will not be deemed to be an act or omission by the Director under this document;
- (b) unless by Law, or in the exercise of his executive powers, the Director has a duty or is required to act or not act, the Director is not relieved from any Claim that an Operator may have against the Director for exercising or not exercising any of his functions or powers in a manner contrary to an express obligation of the Director under this document, the existence of any obligation and the existence and amount of any Claim to be assessed assuming clause 2.2(a) does not apply;
- (c) nothing in a Transaction Document will in any way:
 - (i) prevent the exercise of any statutory power or discretion by any Government Body;
 - (ii) require the Director to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of a Transaction Document if the Director regards that exercise as not in the public interest;
 - (iii) require the Director to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of a Transaction Document;
 - (iv) require the Crown in right the State to legislate in the future in a manner that is only consistent with the objectives and expected outcomes of a Transaction Document; or
 - (v) require the Director to act in any other way that the Director regards as not in the public interest.

2.3 Consents and approvals

Unless expressly provided otherwise, if the doing of any act, matter or thing under a Transaction Document is dependent on the consent or approval of the Director, the consent or approval may be given conditionally or unconditionally or withheld by the Director, in his absolute and unfettered discretion.

2.4 Procurement

A reference in this document to the Director's right to conduct a *procurement process*, to *procure* the Local Services on Termination, or to *procure* Other Services during the Term, includes the right to conduct a limited or open tender, engage in bilateral negotiations or award a service contract on any other basis and conditions whatsoever.

2.5 Transfer of functions

The Operator acknowledges that the Director may be reconstituted, renamed or replaced and that some or all of the powers of the Director may be transferred to, or vested in, a Government Body. If that occurs, references in the Transaction Documents to the Director must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers.

3. Conditions precedent

3.1 Conditions

This document (other than clauses 1, 2, 3, 37, 39, 41 and 42, which will commence on the date of this document) operates from the Commencement Date and is conditional on receipt by the Director of:

- (a) an Operator Authorisation Certificate;
- (b) evidence to the satisfaction of the Director that the Operators have complied with clause 33;
- (c) the Operators' Service Plan in a form satisfactory to the Director;
- (d) the Performance Bond;
- (e) a counterpart of a Release Deed in relation to each Previous Contract executed by the relevant Operator;
- (f) a counterpart of the Termination Transfer Agreement executed by each Operator and or any relevant Associated Operator as required; and
- (g) a counterpart of each Termination Depot Option Deed executed by the relevant Operator or the relevant Associated Operator as required,

unless otherwise waived by the Director.

3.2 Commitment to satisfy the conditions precedent

The Operators agree to use reasonable endeavours to satisfy, or procure the satisfaction of, the conditions precedent in clause 3.1 by the Commencement Date.

3.3 Satisfaction of conditions precedent

When the Director is satisfied that each of the conditions precedent in clause 3.1 has been satisfied, the Director agrees to notify the Nominated Operator in writing immediately.

3.4 Consequences of non-fulfilment of conditions precedent

If the conditions precedent in clause 3.1 are not satisfied by the Operators or waived by the Director by the Commencement Date, then the Director may terminate this document and any other Transaction Document to which he is a party by notice in writing to the Nominated Operator with immediate effect and:

- (a) this document will be of no further effect; and
- (b) afterwards no party will have any other rights or obligations under it, except under clauses 1, 2, 3, 37, 39, 41 and 42 which survive termination, and in respect of any obligations arising or rights accrued as a result of a breach of this document.

4. Warranties

4.1 Warranties Correct

The Operators and the Parent Guarantor represent and warrant to the Director that the Warranties are at the date of this document, and will be at the Commencement Date, true, correct and not misleading, except as disclosed in writing to and accepted by the Director prior to the relevant date.

4.2 Notification of Change

The Operators agree to notify the Director immediately on becoming aware that any of the Warranties has become untrue or misleading.

4.3 Reliance on Representations and Warranties

The Operators and the Parent Guarantor acknowledge that the Director has entered, or will enter, into the Transaction Documents in reliance on the Warranties.

4.4 No representations or warranties by the Director

The Operators and the Parent Guarantor acknowledge that, before entering into any Transaction Document, they made all enquiries that they wanted to make in relation to the subject matter of the Transaction Documents, and they did not rely on any representation or warranty by or on behalf of the Director. The Operators and the Parent Guarantor waive all Claims in connection with any representation or warranty made by or on behalf of the Director.

5. Term

5.1 Term

The term of this document commences on the Commencement Date, and subject to clause 5.3, expires on 30 June 2015 unless Terminated earlier under clause 28.

5.2 Renewal

- (a) The Renewal Conditions are that each Operator and each Associated Operator as the case may require has consistently throughout the Term:
 - (i) supported and cooperated with all interested parties in relation to the implementation of the State's public transport policy initiatives;
 - (ii) assisted the Director by providing Special Event Services where requested to do so;
 - (iii) cooperated with the Director, the State and neighbouring operators in relation to the procurement and operation of Other Services, State Projects and NBT Services (if any);
 - (iv) participated in industry related initiatives, including marketing and promotion by Metlink and new ticketing and or information systems;
 - (v) not hindered or prevented, and has cooperated with, the Director in the establishment and implementation of the Performance Monitoring Regime;
 - (vi) met, exceeded or demonstrated a continuous improvement in their performance measured against, the Performance Benchmarks.
- (b) The Renewal Conditions will be deemed to have been satisfied unless, at the date that is six months prior to the End of Term, a Non Compliance Notice issued in relation to a Non Compliance Event of the kind referred to in clause 26.1(e) has not been resolved under clauses 26.3 and 26.4 (as the case may require).
- (c) If the Renewal Conditions are deemed to have been satisfied under clause 5.2(b), the parties agree to enter into a new *service contract* for the provision of the Local Services for three years (but reduced by any period for which the Term is extended (if at all) under clause 5.3), commencing on the day after the End of Term (**New Contract**). The parties agree to enter into the New Contract no later than the date which is four months prior to the End of Term.
- (d) The New Contract will (except for its term) be on the same terms and conditions as this document. The Director will prepare the New Contract.
- (e) If any Operator or any Associated Operator is in breach of any Transaction Document after the date referred to in clause 5.2(b) and a Show Cause Termination Event has occurred, then the Director is not obliged to enter into the New Contract or, if he has, he may avoid it before it commences and no Operator will have any Claim against him.

5.3 Extension

The Director may:

- (a) by giving the Nominated Operator at least six months written notice; or
- (b) if the Renewal Conditions are not deemed to have been satisfied under clause 5.2(b), by giving the Nominated Operator written notice within five Business Days after the date referred to in clause 5.2(b),

extend the Term on the same terms and conditions as this document for 12 months.

6. Provision of Local Services

6.1 Local Services

Each Operator agrees to provide the Local Services listed next to that Operator's name in Part A of Schedule 1 during the Term.

6.2 Exclusivity

Each Operator's right to provide Local Services under this document is:

- (a) conferred under Part 3 of the PTCA; and
- (b) subject to this document and the PTCA, an exclusive right during the Term to the extent specified in Schedule 1.

6.3 Separate service contracts

The parties acknowledge that:

- (a) this document constitutes a separate and distinct *service contract* between the Director and an Operator in relation to that Operator's provision of Local Services under this clause 6;
- (b) the Operators have appointed the Nominated Operator to act as their representative in relation to certain matters of administration specified in this document;
- (c) in relation to each Operator's *service contract*, the *service contracts* held by the other Operators are Related Service Contracts; and
- (d) each Operator may be an *affected service contract holder* under Division 4 of Part 3 of the PTCA and, if it is, has the rights contained in that Division which are exercisable subject to the Practice Note for New Services.

6.4 No ownership

Nothing in, or contemplated by, the Transaction Documents confers on any Operator or any Associated Operator any ownership of, or property or proprietary right in or over, any Routes or the Region or, except to the extent stated in clauses 6.1 and 6.2, any other right or interest to operate any *regular passenger service* or other transport service.

6.5 Further term

- (a) Nothing in, or contemplated by, the Transaction Documents creates any right, interest or expectation of any kind in any Operator or any Associated Operator to provide, or be invited to provide, the Local Services after the Term.
- (b) Nothing in, or contemplated by, the Transaction Documents precludes any Operator from participating in any procurement process for the Local Services after the Term, except where there has been a Termination.

7. Subcontracting

7.1 Consent required

- (a) Each Operator agrees not to engage any subcontractor (other than another Operator) to perform any of its obligations under this document unless:
 - (i) it obtains the prior written consent of the Director; or
 - (ii) the proposed subcontracting relates to obligations which are not material and are not likely to materially adversely affect:
 - (A) the Operator's ability to provide Local Services; or
 - (B) the Continuity of the Local Services; or
 - (C) the Director's rights under a Transaction Document.
- (b) The Nominated Operator agrees to advise the Director in writing promptly of any subcontractor appointed by any Operator following receipt of the Director's consent under clause 7.1(a)(i).
- (c) Any Subcontractor engaged to provide a *regular passenger service* must hold the appropriate Accreditation.

7.2 Responsibility for subcontractor

An Operator:

- (a) is not, by reason of having engaged a subcontractor, relieved of any of its liabilities or obligations under this document;
- (b) is responsible for each subcontractor engaged by it as if all the acts and omissions of the subcontractor were its own acts and omissions; and
- (c) agrees, where this document requires it to do so, to procure that each Subcontractor it appoints engages in, or refrains from engaging in, conduct of the kind required or prohibited by this document.

7.3 Direct deeds

Each Operator agrees to procure that each Subcontractor engaged by it under clause 7.1(a)(i) if required by the Director enters into an AO Direct Deed with the Director before that Subcontractor commences the provision of any obligations under this document.

7.4 Associated Operator Warranties

The Operators and the Parent Guarantor represent and warrant that, at the time an Associated Operator is engaged, the Warranties are true in respect of that Associated Operator, except as disclosed in writing to the Director and approved by the Director prior to the consent given under clause 7.1.

7.5 Relationship with Associated Operators

The engagement of any Associated Operator to provide any of the Local Services under this clause 7 is a subcontract relationship between the relevant Operator and the Associated Operator and does not create any new relationship between the Director and the Associated Operator.

8. Service Adjustments and New Services

8.1 Overview

The parties acknowledge and agree that:

- (a) a Service Adjustment will be made under this clause 8;
- (b) a New Service will be awarded under Division 4 of Part 3 of the PTCA and in accordance with the Practice Note for New Services; and
- (c) a New Service (that is not an Other Service) awarded to an Operator under the PTCA will be implemented in accordance with clause 8.4.

8.2 Service Adjustments requested by Operator

- (a) The Nominated Operator may propose to the Director a Service Adjustment in respect of an Operator by submitting to the Director a Service Adjustment Template.
- (b) The Director may consult with stakeholders in determining the appropriateness of the relevant Operator's proposal to implement the Service Adjustment requested by the Nominated Operator.
- (c) The Director may liaise with the Nominated Operator in relation to any Service Adjustment Template and may require the Nominated Operator to resubmit the Service Adjustment Template with suggested amendments.
- (d) The Director is not required to consider any request for a Service Adjustment if he considers reasonably that the request constitutes a New Service.

8.3 Service Adjustments required by Director

- (a) The Director may give the Nominated Operator notice that he requires a Service Adjustment in respect of an Operator to be made (including details) (**Service Adjustment Notice**). The Director may give the Nominated Operator a new or modified PSR (**New PSR**) with any Service Adjustment Notice.
- (b) If the Nominated Operator considers it necessary to do so it may liaise with the Director in relation to any Service Adjustment Notice prior to submitting a Service Adjustment Template under clause 8.3(c).
- (c) The Nominated Operator agrees to submit to the Director a Service Adjustment Template that is consistent with the Service Adjustment Notice and any New PSR within 20 Business Days of receiving the Service Adjustment Notice (or two Business Days if the Service Adjustment required is a Temporary Service Change).
- (d) The Director may consult with stakeholders in determining the appropriateness of the relevant Operator's proposal to implement the Service Adjustment required by the Director.
- (e) The Director may liaise with the Nominated Operator in relation to any Service Adjustment Template and may request the Nominated Operator to resubmit the Service Adjustment Template with suggested amendments.

8.4 New Services

- (a) If an Operator has been awarded a New Service (other than an Other Service) by the Director under Division 4 of Part 3 of the PTCA and in accordance with the Practice Note for New Services, the Director agrees to give the Nominated Operator notice (**New Service Implementation Notice**) requesting the Nominated Operator to submit a New Service Template in relation to the New Service. The Director may give the Nominated Operator a new or modified PSR (**New PSR**) with any New Service Implementation Notice.

- (b) If the Nominated Operator considers it necessary to do so it may liaise with the Director in relation to any New Service Implementation Notice prior to submitting a New Service Template under clause 8.4(c).
- (c) The Nominated Operator agrees to submit to the Director a New Service Template that is consistent with the New Service Implementation Notice and any New PSR within 20 Business Days of receiving the New Service Implementation Notice.
- (d) The Director may liaise with the Nominated Operator in relation to any New Service Template and may request the Nominated Operator to resubmit the New Service Template with suggested amendments.

8.5 Director's Response to Operator

- (a) The Director agrees to notify the Nominated Operator within 20 Business Days (or two Business Days if the Service Adjustment required is a Temporary Service Change) of receiving the original or resubmitted Service Adjustment Template or New Service Template from the Nominated Operator under clause 8.2, 8.3 or 8.4 as the case may be that:
 - (i) the relevant Operator's proposal to implement the Service Adjustment is approved (and any conditions attached to that approval, including the date for commencement of the Service Adjustment);
 - (ii) provided the New Service Template is consistent with the offer submitted by the Nominated Operator, and accepted by the Director, in relation to the New Service, the New Service Template is approved;
 - (iii) the relevant Operator's proposal to implement the Service Adjustment is rejected (including reasons for the rejection); or
 - (iv) the Director requires further time to consider the Service Adjustment Template and the reasonable time by which the Director will have made his decision.
- (b) The date nominated by the Director as the date for commencement of an approved Service Adjustment or New Service as the case may be should, where reasonably practicable, allow sufficient time for the relevant Operator to meet the Performance Benchmark applicable to the relevant Metlink KPI.

8.6 Adjusted Operators' Service Plan

If a Service Adjustment or New Service is approved by the Director under clause 8.5, the Nominated Operator agrees to:

- (a) submit to the Director a new or revised Operators' Service Plan taking into account the relevant Service Adjustment or New Service as the case may be within 20 Business Days of receiving notification of approval from the Director; and
- (b) provide Metlink with the revised Transport Information relating to the approved Service Adjustment or New Service as the case may be in accordance with clause 17.2.

8.7 Effective Date of Service Adjustment or New Service

The Local Services will be amended from the date referred to in an approval notice given by the Director under clause 8.5(a)(i) or 8.5(a)(ii) to take into account the approved Service Adjustment or New Service as the case may be and the parties agree to amend Schedule 1 accordingly.

8.8 Adjusted Local Service Payments

The Local Service Payments will be adjusted under Schedule 3 to take into account a Service Adjustment or New Service approved by the Director.

8.9 Service Review

- (a) The Director may, on giving the Nominated Operator at least five Business Days prior notice, call for a meeting of the parties to review the Local Services (**Review Meeting**).
- (b) The issues to be discussed at a Review Meeting may include:
 - (i) government policies and initiatives with respect to the provision of bus services;
 - (ii) increasing patronage while maintaining an appropriate level of access to passenger transport services for all persons in a Region;
 - (iii) the effectiveness of the existing Routes;
 - (iv) proposals to effect an integrated bus network or provision of NBT Services;
 - (v) proposals for introducing Other Services and the resulting adjustments that may be required to the Local Services;
 - (vi) proposals for Service Adjustments and New Services;
 - (vii) proposals for improvements to the PSR and overcoming any identified inefficiencies;
 - (viii) trends or changes in demographics, land uses, traffic congestion and infrastructure that impact on the provision of the Local Services; and
 - (ix) any other issues that the Director reasonably considers appropriate.
- (c) Following a Review Meeting, the Nominated Operator may request, and or the Director may require, Service Adjustments and or New Services, in which case the relevant procedures outlined in this clause 8 must be initiated.
- (d) In relation to a Review Meeting, the Nominated Operator agrees to ensure that:
 - (i) appropriately qualified and authorised Staff are present;
 - (ii) it provides timely comments on interim findings arising from the Review Meeting; and
 - (iii) it provides to the Director information relating to the cost and operational implications of any recommended and proposed Service Adjustments.

8.10 Urgent Service Changes

- (a) In addition to its right under clauses 8.2, an Operator may, without prior notice to the Director, vary an aspect of Local Services it provides to maintain operation of a Route if it is reasonable for it to do so in response to an emergency and for so long as the emergency continues, including:
 - (i) to ensure the safety of the community, passengers or Staff; and
 - (ii) due to temporary road works or other obstacles beyond the reasonable control of that Operator affecting the completion of a timetabled Route.
- (b) The relevant Operator agrees to, as soon as is reasonably practicable, notify the Director of the change made and, in any event, within 48 hours after the variation is first effected. If that Operator considers on reasonable grounds that the duration of the temporary variation will be more than 48 hours, that Operator agrees to notify the Director accordingly and the variation will be deemed to be a request under clause 8.2 for a Service Adjustment in the nature of a Temporary Service Change.

- (c) The relevant Operator agrees to use its best endeavours to provide prospective users of Local Services provided by it and Metlink (in accordance with clause 17.2) with notice of the urgent variation (including revised daily Timetables if applicable).
- (d) The relevant Operator must revert to provision of the original Local Services as soon as the emergency has ceased, and in any event, within 48 hours after the variation is first effected (unless the Director has approved a request for an extension).
- (e) The Local Service Payments will be adjusted for Urgent Service Changes under Schedule 3.

8.11 Review of Service Adjustments

Within a reasonable period determined by the Director (having regard to the nature of the Service Adjustment) after a Service Adjustment has been implemented, the Director and the Nominated Operator agree to review jointly and evaluate the Service Adjustment and consider its appropriateness and whether any further action needs to be taken. Each review and evaluation will consider any complaints received regarding the Service Adjustment and the action taken in response to the complaints.

8.12 Minimum requirements only

The Operators' Service Plan sets out the minimum requirements only of the Operators to meet their obligations to provide the Local Services. The Operators are permitted to carry out or implement any additional measures they wish to ensure that they meet their obligations, provided that:

- (a) they do so in compliance with the Transaction Documents; and
- (b) the additional measures implemented are consistent with the PSR.

8.13 Provision of Flexible Services

- (a) The Nominated Operator agrees to submit a Service Adjustment Template to the Director in relation to any change any Operator makes to the way in which it provides the Flexible Services within two Business Days of making the change. The Nominated Operator also agrees to provide Metlink with the revised Transport Information relating to that change in accordance with clause 17.2.
- (b) The Local Service Payments will be adjusted for changes to Flexible Services under Schedule 3.

8.14 Non Service Changes

- (a) If the Director requires a Non Service Change affecting an Operator, the Director agrees to issue a written notice (**Non Service Change Notice**) to the Nominated Operator:
 - (i) detailing the change sought, including when it is to take effect, the changes (if any) required to this document and the relevant performance requirements; and
 - (ii) seeking details from the Nominated Operator of the impact (if any) on performance of Local Services and the relevant Operator's quote to implement the Non Service Change.
- (b) Not later than five Business Days after the receipt of a Non Service Change Notice, the Nominated Operator agrees to prepare and provide to the Director a submission (**NSC Submission**) which must:
 - (i) indicate the impact of the proposed Non Service Change on Local Services; and

- (ii) provide a detailed quotation (with supporting documents) for implementing the proposed Non Service Change, including any adjustment it considers necessary to the Local Service Payments.
- (c) Not later than five Business Days after the receipt of the NSC Submission, the Director agrees to:
 - (i) accept the NSC Submission and direct the Operator (by notice in writing to the Nominated Operator) to implement the Non Service Change and the Operator agrees to do so promptly, and the parties agree to amend Schedule 3 to reflect the adjustment to the Local Service Payments set out in the NSC Submission; or
 - (ii) reject the NSC Submission and direct the Operator (by notice in writing to the Nominated Operator) to implement the Non Service Change and the Operator agrees to do so promptly; or
 - (iii) advise the Operator (by notice in writing to the Nominated Operator) that the Director will not be proceeding with the proposed Non Service Change.
- (d) If the Director rejects the NSC Submission and issues a direction under clause 8.14(c)(ii), the Director will amend Schedule 3 to adjust the Local Service Payments to reflect the Director's reasonable assessment of the incremental cost increase or decrease to the Operator in implementing the Non Service Change. The Director's assessment may be disputed under clause 39.
- (e) A Non Service Change proposed by the Director must be within the general scope of the obligations of an Operator under this document.

9. Other Services

9.1 Procurement

Each Operator acknowledges that:

- (a) during the Term the Director may procure Other Services; and
- (b) the Service Adjustment process provided for in clause 8 does not apply to the procurement or implementation of any Other Service.

9.2 Rights to Other Services

If Division 4 of Part 3 of the PTCA does not apply to the particular Other Service then:

- (a) no Operator has any right, interest or expectation to be invited to provide that service; and
- (b) the Director may determine the method of procurement and award of any Other Service Contract.

9.3 Other Service Contracts

If an Operator is awarded the right to provide an Other Service, the provision of that Other Service will be documented and governed under an Other Service Contract and not this document.

9.4 Effect of Other Services

- (a) Each Operator acknowledges that the nature of an Other Service awarded to any other Operator, Another Operator or Bus Operator is that it may:
 - (i) cross over or through, or run along, any part or all of a Route or Region listed next to its name in paragraph 1 of part A of Schedule 1 (**Overlap**); and or

- (ii) consume, dispense with, or require a Service Adjustment to, parts or all of the Local Services provided by that Operator (**Adjustment**); and or
 - (iii) extinguish or modify its exclusive rights to provide Local Services to the extent necessary to enable the Other Service to be provided.
- (b) To the extent that an Other Service awarded to another operator results in an Overlap or an Adjustment:
 - (i) each Operator agrees not to do anything that will impede or frustrate the provision of the Other Service (except where it is complying with its obligations under this document);
 - (ii) the Adjustment will be effected under clause 8.3 as a Service Adjustment required by the Director;
 - (iii) subject to any payment under Schedule 3 and any adjustment to Local Service Payments, each Operator releases the Director and the Director's Associates from any Claim in relation to the award, provision and or operation of the Other Service on a Route or in a Region identified in paragraph 1 of part A of Schedule 1;
 - (iv) each Operator agrees not to make any Claim against Another Operator or Bus Operator who provides the Other Service on a Route or in a Region because of the award, provision and or operation of that Other Service to or by any other Operator, Another Operator or Bus Operator; and
 - (v) the Operators and the Director agree to participate in the process referred to in clause 9.6(a).

9.5 Non-bus services and State projects

- (a) Each Operator acknowledges that the State may, during the Term, establish directly or indirectly:
 - (i) additional non-bus transport services and or infrastructure (including any bus tracking system) (**NBT Service**); and or
 - (ii) undertake major projects in a Region or affecting the Routes but which do not involve the establishment directly or indirectly of additional non-bus transport services (**State Project**).
- (b) If requested in writing by the Director to do so, and subject to the obligations imposed on each Operator by the Transaction Documents, each Operator agrees to cooperate with the State and relevant Government Bodies and their agents and contractors (**Project Parties**) in relation to the establishment, commissioning and operation of any:
 - (i) NBT Service and State Project by:
 - (A) assisting the Project Parties to implement arrangements, procedures and protocols to minimise disruptions to the Bus Operations;
 - (B) providing any response, information, assistance or documentation reasonably requested by a Project Party within a reasonable time of the request;
 - (C) conducting the Bus Operations in a way that facilitates the completion and or operation of the NBT Service or State Project in a safe, expeditious and cost effective manner;

- (D) mitigating loss or damage suffered by any Operator as a result of the establishment, commissioning and or operation of the NBT Service or State Project ; and
 - (E) doing all other things reasonably required by a Project Party to facilitate the establishment, commissioning and or operation of the NBT Service or State Project,
- subject to being reimbursed for any direct and substantiated expenses solely related to compliance; and
- (ii) State Project by allowing the NBT Parties reasonable access to Contract Depots to facilitate any designing, constructing, testing and commissioning related to the State Project.
- (c) To the extent a NBT Service results in an Overlap or an Adjustment, each Operator:
- (i) consents to any Overlap and any Adjustment;
 - (ii) agrees not to do anything that will impede or frustrate the provision of the NBT Service (except where it does that thing in complying with its obligations under this document);
 - (iii) acknowledges that the Adjustment will be effected under clause 8.3
 - (iv) releases the Director and the Director's Associates from any Claim in relation to the award, provision and or operation of the NBT Service on a Route or in a Region identified in paragraph 1 of part A of Schedule 1; and
 - (v) agrees not to make any Claim against the provider of the NBT Service in relation to the provision of the NBT Service on a Route or in a Region identified in paragraph 1 of part A of Schedule 1 because of the award, provision and or operation of that NBT Service to or by any other Operator, Another Operator or Bus Operator.

9.6 Review of Local Services

- (a) If the net result of the implementation of the relevant Other Service, NBT Service or State Project (**OS Implementation**) is that the Vehicle Service Kilometres immediately after the OS Implementation are, or will be, less than the Base Vehicle Service Kilometres, then the Director and the Nominated Operator agree to meet to discuss and consider (**Review**) the following:
 - (i) the Operators' concerns about the impact of the Other Service, NBT Service or State Project on its Vehicle Service Kilometres;
 - (ii) the Director's pipeline of New Services and Service Adjustments affecting the Operators, including timing;
 - (iii) the Nominated Operator's opinion and submissions as to proposed future demand for additional local services, including any business case put forward by the Nominated Operator;
 - (iv) the Director's proposals to implement Other Services, NBT Services or State Projects affecting neighbouring Bus Operators; and
 - (v) the possibility of reallocating to any Operator some of Another Operator's Local Services, including any associated rights.

- (b) If a Review has already been conducted under clause 9.6(a), then the net result of an OS Implementation will be assessed by comparing the Vehicle Service Kilometres immediately after the OS Implementation to the Vehicle Service Kilometres immediately after the last Review was conducted.
- (c) If the Director proposes to implement an Orbital SmartBus Service that differs from those delineated in Annexure I, then prior to doing so the parties agree to participate in a Review process of the kind set out in clause 9.6(a).
- (d) Nothing in this clause 9.6:
 - (i) affects any acknowledgement, release, consent, covenant or undertaking of, or given by, any Operator under any other provision of this clause 9;
 - (ii) affects any procurement process that the Director is permitted to conduct in relation to Other Services under clause 2.4 or this clause 9;
 - (iii) creates any right, interest or expectation of any kind in any Operator to be awarded, or to provide, any New Services or Service Adjustment; and
 - (iv) obliges the Director to do anything under a *service contract* with Another Operator that would result in a service change or adjustment under that contract.

10. Special Events

10.1 Request to provide Special Event Services

- (a) Subject to clause 10.1(b), where a Special Event is within any Region or proximate to the Routes and the bus services required by the Director to service the Special Event are not provided for in the Operators' Service Plan as part of the Local Services, the Director agrees to request the Nominated Operator to provide, or to procure another Operator to provide, Special Event Services in relation to that Special Event.
- (b) Where the proposed Special Event Services are within more than one Bus Operator's region or proximate to more than one Bus Operator's routes or the total amount anticipated to provide the Special Event Services is expected to exceed \$100,000 (adjusted annually by the Annual CPI Index during the Term), then the Director may determine the method of procurement and award of the Special Event Services.
- (c) For the purpose of clause 10.1(b), the Annual CPI Index means the CPI Index for the most recent September Quarter at that time divided by the preceding September Quarter, where:
CPI Index means the Melbourne Consumer Price Index ABS Publication No. 6401.0; and
Quarter means the three months ending on 30 September.

10.2 No obligation to provide Special Event Services

- (a) No Operator is under any obligation to provide any Special Event Services requested by the Director under clause 10.1(a) but has the right to do so and the Nominated Operator agrees to notify the Director whether or not it or another Operator wishes to make an offer to do so within 10 Business Days of receiving the request.
- (b) No Operator is under any obligation (and has no automatic or proprietary right) to provide any Special Event Services requested by the Director under clause 10.1(b) but the Nominated Operator agrees to notify the Director whether or not it or another Operator wishes to make an offer to do so within 10 Business Days of receiving the request.

10.3 Operator's offer

- (a) If the Nominated Operator notifies the Director under clause 10.2 that it or another Operator intends to make an offer to provide the Special Event Services the Nominated Operator agrees to submit an offer as to the price (with relevant details including a plan of the manner in which the relevant Operator will provide the Special Event Services) at which the relevant Operator is prepared to provide the Special Event Services within a reasonable period after giving that notice (having regard to when the Special Event Services are required).
- (b) The Director may accept or reject an offer made under clause 10.3(a) and must notify the Nominated Operator of his decision within 10 Business Days of receiving the offer.
- (c) Despite clause 10.3(b) if an offer meets the specifications of the Special Event Services and is at the relevant Operator's marginal cost plus the Margin percentage applicable to Permanent Service Change Adjustments (described as NMP%) as set out in Schedule 3, then the Director agrees to accept the offer and clause 10.4 will apply.

10.4 Provision of Special Event Services by an Operator

If the Director accepts an offer made under clause 10.3(a):

- (a) the relevant Operator agrees to provide the Special Event Services in accordance with the plan submitted by the Nominated Operator under clause 10.3(a);
- (b) the Special Event Services will form part of the Local Services to be provided by that Operator until they have been completed and that Operator agrees that they will be provided in compliance with this document;
- (c) the provision of the Special Event Services does not require any Service Adjustment under clause 8; and
- (d) that Operator agrees to work with the Director and other stakeholders in relation to the planning of the Special Event Services.

10.5 Provision of Special Event Services by Another Operator

- (a) If the Nominated Operator does not give the notifications under clause 10.2 or 10.3(a) the Director may procure the Special Event Services from another person and the exclusive rights of the relevant Operator to provide Local Services in a Region or on the Routes are extinguished to the extent necessary to enable the Special Event Services to be provided but only for so long as the Special Event Services are provided.
- (b) Each Operator:
 - (i) acknowledges that Special Event Services are not *regular passenger services*;
 - (ii) acknowledges that the Special Event Services provided by another person may cross over or through, or run along, any part or all of any Route or Region;
 - (iii) agrees not to do anything that will impede or frustrate the provision of the Special Event Services; and
 - (iv) releases the Director and the Director's Associates from any Claim in relation to the award, provision and or operation of the Special Event Services by another person.

11. Service plans, standards and obligations

11.1 Operators' Service Plan

- (a) The Operators' Service Plan from the Commencement Date until it is updated under the OSP Reconciliation Process will consist of all of the spreadsheet documents titled *Operator's Service Plan* as at 30 June 2006 lodged by the Operators as part of the ITN process and approved by the Director.
- (b) The Nominated Operator agrees to lodge an updated Operators' Service Plan to 1 July 2008 with the Director by 31 July 2008 that complies with the *Operational Service Plan Template and Instructions* given by the Director to the Operators with the ITN and that reflects the Local Services and service levels in Schedule 1 at the Commencement Date.
- (c) The Director and the Nominated Operator agree to participate in good faith in a process developed and conducted by the Director to reconcile and verify the Operator's Service Plan lodged under clause 11.1(b) with Schedule 1 (**OSP Reconciliation Process**).
- (d) The OSP Reconciliation Process will commence on or about 1 August 2008 and must be completed by 30 September 2008. It will also take into account any Pre Commencement Service Adjustments that may have been approved by the Director under clause 3(b) of Schedule 1 since the Commencement Date.
- (e) In relation to any Pre Commencement Service Adjustments that are approved by the Director under clause 3(b) of Schedule 1 after the OSP Reconciliation Process has been completed, the Nominated Operator agrees to revise the Operators' Service Plan accordingly and submit it to the Director at the same time as Schedule 1 is amended under that clause.
- (f) Except as provided in this clause 11.1, an Operators' Service Plan can only be revised or amended under clause 8.

11.2 Service standards and service obligations

Each Operator agrees to, and agrees to ensure that each Associated Operator does:

- (a) comply with the Operators' Service Plan;
- (b) perform its obligations under this document:
 - (i) in a timely and expeditious way;
 - (ii) in a way that is designed to prevent injury to or death of persons and damage to property;
 - (iii) with the degree of skill, diligence, prudence and practice that would be expected by a skilled and experienced operator of bus services in Australia comparable to the size, scope and complexity of the Local Services provided by it;
 - (iv) in a proper, competent, courteous, safe and reliable manner; and
 - (v) in a manner that affords passengers with optimal comfort levels, having regard to the nature of the passenger service and the condition and amenities of the relevant Contract Bus;
- (c) provide at least the Minimum Level of Service;
- (d) use best endeavours to meet any applicable Performance Benchmarks;

- (e) provide Local Services having primary regard to the needs and interests of passengers and potential passengers and ensure that the Local Services are provided with a strong orientation towards customer satisfaction;
- (f) hold the necessary Accreditation and comply with all requirements to maintain that status during the Term;
- (g) comply with all applicable Authorisations and Laws in conducting the Bus Operations;
- (h) comply with any code of practice approved by the Minister under section 24A of the PTCA;
- (i) cooperate with the operators of other transport services (including Other Services, NBT Services and local bus services conducted by Bus Operators) in a manner which facilitates and does not impede or frustrate the provision of those other services;
- (j) comply with any Bus Leases;
- (k) comply with all safe working standards and practices reasonably required by the Director;
- (l) provide Local Services only on roadways that are approved or designated by the appropriate Government Body for use by the relevant class of bus traffic;
- (m) comply with any policies, protocols, standards, guidelines and reasonable directions of, or issued by, the Director or other Government Body relating to public transport;
- (n) provide all necessary instructions and directions to Drivers to ensure the provision of Local Services in the manner required by this document;
- (o) document and implement a process (with the other Operators) for:
 - (i) the management of passenger complaints that is consistent with Metlink's complaint handling process;
 - (ii) the handling of lost property; and
 - (iii) the provision of Transport Information to Metlink and passengers within the timeframes provided for in the Metlink KPIs;
- (p) conduct itself in a way that facilitates the exercise by a Step-In Party of the Step-in Powers and the transfer of the Local Services (and, if applicable, the Assets) to an Interim Operator or a Successor Operator under this document; and
- (q) otherwise comply with the Transaction Documents.

12. Buses – use, maintenance and standards

12.1 Requirements for Contract Buses

In performing their obligations under this document the Operators agree to, and agree to ensure that each Associated Operator does:

- (a) maintain enough Contract Buses to meet their obligations under this document;
- (b) only use the best available Contract Buses at the time having regard to reasonable operational requirements and the condition, cleanliness, features and age of all Contract Buses;
- (c) monitor and manage security and safety of Drivers and passengers on the Contract Buses;
- (d) if required by the Director, use a particular type of Contract Bus on a particular Route subject to the Director having first consulted with the Nominated Operator and being

satisfied that the Operators have sufficient Contract Buses to comply with the direction without having a material adverse effect on the provision of the Local Services and no material adverse cost impact;

- (e) use their best endeavours to meet the Bus Loading Standards and, if any of those standards are not met, immediately notify the Director;

and each Operator agrees that each Contract Bus must:

- (f) be operated in accordance with the Bus manufacturer's specifications, recommendations and service standards;
- (g) be operated and maintained in compliance with that Operator's Accreditation;
- (h) have a current bus inspection certificate issued by an independent authorised inspector;
- (i) not be used for any purpose other than the provisions of Local Services or Special Event Services other than in accordance with clause 13;
- (j) if it is a SmartBus, be fitted with, and comply with the Director's requirements for the use of, SmartBus Equipment;
- (k) be refurbished as often as is necessary to ensure that the Contract Buses meet the requirements of this document;
- (l) be clean and tidy when providing the Local Services or Special Event Services;
- (m) be in a safe operating condition at all times and be maintained, equipped and operated in compliance with all Laws that apply to the Contract Buses and the operation of a bus service in the State including the *Disability Standards for Accessible Public Transport 2002* (Cth) and accompanying guidelines under the *Disability Discrimination Act 2002* (Cth);
- (n) be fitted with appropriate security measures if required by the Director under clause 8.14;
- (o) display on each vehicle where specified by the Director, illuminated destination signs stating the destination and the Route number; and
- (p) meet or exceed any standards relating to vehicle design or presentation agreed between the Director and the BAV as being appropriate standard industry practice.

12.2 Non-compliant Contract Buses

The Operators agree to ensure that any Contract Bus that does not meet the requirements set out in clause 12.1 is removed from service as soon as practicable having regard to the nature of the failure and the best interests of passengers until it meets the requirements. The Operators agree to replace, or procure that an Associated Operator replaces, the non-compliant Contract Bus with a compliant one.

12.3 Spares

The Operators agree to maintain or procure the maintenance of an appropriate quality and quantity of spare parts and components during the Term to enable the Contract Buses to comply with the requirements of clause 12.1.

12.4 Audit of condition

The Operators agree to, and agree to ensure that each Associated Operator does, allow the Director access to the Contract Buses to check at least on an annual basis the compliance of each Contract Bus with the requirements in clause 12.1 or otherwise where the Director reasonably believes there has been a breach of clause 12.1. The Director agrees to give the Nominated Operator at least three Business Days prior written notice of a proposed inspection of a Contract

Bus (except in the case of an emergency), and agrees to ensure that the inspection is carried out in a manner that will not cause disruption to the provision of the Local Services.

12.5 Emergencies

- (a) An Operator and an Associated Operator may use replacement Buses which do not comply with the requirements of clause 12.1 or which are not Contract Buses (**Replacement Buses**) only in an emergency and only for the minimum period necessary to overcome the emergency and in any event, for no longer than 48 hours (unless otherwise approved by the Director prior to the expiry of the 48 hour period).
- (b) If a Replacement Bus is to be used in an emergency:
 - (i) the relevant Operator agrees to notify the Director as soon as practicable (and, in any event not later than 24 hours after it is first used) explaining the particulars of the emergency and details of the Replacement Bus used;
 - (ii) the relevant Operator agrees to ensure that the Replacement Bus is the best available Bus and at least complies with clauses 12.1(f), (g), (h), (l) and (m);
 - (iii) the relevant Operator agrees to ensure that the use of the Replacement Bus will not materially adversely affect the provision of the Local Services; and
 - (iv) the Local Service Payments will not be adjusted.

12.6 Compliance with Bus Replacement Program

- (a) The Operators agree to, and agree to ensure that each Associated Operator does, replace Contract Buses in accordance with the Bus Replacement Program and not otherwise add to, remove or withdraw any Contract Bus from service except if permitted under clauses 12.2, 14 or 21.
- (b) The Operators' costs of complying with clause 12.6(a) will be reflected in the change to the Fleet Payment under Schedule 3.

13. Charter services and Other Uses

If an Operator or an Associated Operator wishes to use a Contract Bus for a purpose other than the provision of Local Services or Special Event Services (including any charter service) (**Other Use**) that Operator may do so provided the Other Use does not adversely affect:

- (a) the Operators' ability to provide the Local Services; or
- (b) the Continuity of the Local Services; or
- (c) the Director's rights under a Transaction Document.

14. Acquisition of Buses

14.1 New Buses

- (a) If an Operator or an Associated Operator wishes to acquire a New Bus (other than as part of the Bus Replacement Program) in relation to which the Nominated Operator requests the Director to make New Fleet Payments under Schedule 3, the Nominated Operator agrees to submit a written application (**New Bus Application**) to the Director which specifies:
 - (i) the reasons for the acquisition; and

- (ii) details of the New Bus the relevant Operator or relevant Associated Operator proposes to acquire (including evidence that it satisfies the requirements for Contract Buses in clause 12.1).
- (b) If the Nominated Operator is not seeking any increase in the Local Service Payments in connection with the New Bus then it is not required to obtain the Director's prior consent to the acquisition, but agrees that the New Bus forms part of the Assets and is subject to the Director's acquisition on Termination rights set out in clause 30.
- (c) Each Operator covenants and agrees to ensure the relevant Associated Operator covenants that the acquisition of any New Bus under clause 14.1(a) or (b) will not adversely affect:
 - (i) the Operators' ability to provide the Local Services; or
 - (ii) the Continuity of the Local Services; or
 - (iii) the Director's rights under a Transaction Document.
- (d) If the Director directs an Operator or an Associated Operator to acquire a New Bus (other than as part of the Bus Replacement Program), the Nominated Operator agrees to submit a New Bus Application to the Director which specifies the details of the New Bus the relevant Operator or relevant Associated Operator proposes to acquire (including evidence that it satisfies the requirements for Contract Buses in clause 12.1).

14.2 Approval by Director

The Director may approve or reject the New Bus Application and agrees to advise the Nominated Operator of his decision within 15 Business Days of having received the New Bus Application.

14.3 Acquisition and adjustments

- (a) If a New Bus Application is approved any adjustment to the Local Service Payments resulting from the acquisition of a New Bus under this clause will be made in accordance with the provisions of Schedule 3.
- (b) The Director agrees to amend Schedule 2 as soon as practicable after a New Bus is acquired.

15. Contract Depots – use, maintenance and standards

The Operators agree to, and agree to ensure that each Associated Operator and associate of an Operator or an Associated Operator that owns a Contract Depot does:

- (a) provide and maintain enough suitably located Contract Depots to meet their obligations under this document;
- (b) maintain and repair the Contract Depots so as to ensure that the Contract Depots are always in a condition which enables the Operators to comply with their obligations under this document;
- (c) comply with any Contract Depot Leases; and
- (d) not change the use of a Contract Depot without the Director's consent if that change would adversely affect:
 - (i) the Operators' ability to provide the Local Services; or
 - (ii) the Continuity of the Local Services; or
 - (iii) the Director's rights under a Transaction Document.

16. Acquisition of Depots

16.1 Application for New Depot

- (a) If an Operator, an Associated Operator or an associate of any of them wishes to acquire a New Depot and the Nominated Operator requests the Director to increase the components of the Local Service Payments connected with that New Depot then the Nominated Operator agrees:
 - (i) to submit a written application (**New Depot Application**) to the Director which specifies:
 - (A) details of the New Depot the relevant Operator or relevant Associated Operator proposes to acquire;
 - (B) the reasons for the acquisition;
 - (C) if the acquisition will be by way of purchase or Lease;
 - (D) whether the terms of the purchase or any Lease contain unusual or onerous terms and if so, the relevant details of those terms; and
 - (E) the adjustments to the Local Service Payments; and
 - (ii) that any Lease of the New Depot forms part of the Assets and is subject to the Director's acquisition on Termination rights set out in clause 30; and
 - (iii) that where the freehold is acquired either:
 - (A) the New Depot will be added to the land the subject of an existing Termination Depot Option Deed; or
 - (B) a new Termination Depot Option Deed relating to the New Depot will be delivered to the Director by the owner; and
 - (C) the New Depot will be the subject of any End of Term Depot Option Deed delivered under clause 30.12.
- (b) If the Nominated Operator is not seeking any increase in the Local Service Payments in connection with the New Depot then the Nominated Operator is not required to obtain the Director's prior consent to the acquisition, but agrees:
 - (i) to notify the Director of the proposed acquisition as soon as reasonably practicable but in any event at least 30 Business Days prior to the acquisition;
 - (ii) that any Lease of the New Depot forms part of the Assets and is subject to the Director's acquisition on Termination rights set out in clause 30;
 - (iii) that where the freehold is acquired either:
 - (A) the New Depot will be added to the land the subject of an existing Termination Depot Option Deed; or
 - (B) a new Termination Depot Option Deed relating to the New Depot will be delivered to the Director by the owner; and
 - (C) the New Depot will be the subject of any End of Term Depot Option Deed delivered under clause 30.12; and
 - (iv) to advise the Director as soon as practicable whether the terms of the purchase or any Lease contain unusual or onerous terms and if so, the relevant details of those terms.

16.2 New Depot Covenants

- (a) Each Operator covenants, and agrees to ensure any relevant Associated Operator or associate covenants, that the acquisition of any New Depot will not adversely affect the:
 - (i) Operators' ability to provide the Local Services; or
 - (ii) Continuity of the Local Services; or
 - (iii) Director's rights under a Transaction Document; or
 - (iv) operating efficiency of the Bus Operations in a material way.
- (b) The Director may reject a New Depot Application where he reasonably considers that the acquisition may adversely affect the:
 - (i) Operators' ability to provide the Local Services; or
 - (ii) Continuity of the Local Services; or
 - (iii) Director's rights under a Transaction Document; or
 - (iv) operating efficiency of the Bus Operations in a material way.

16.3 Acquisition adjustments

If a New Depot Application is approved by the Director the parties agree that clauses 4 and 6 of Schedule 3 apply in relation to any adjustment to the Local Service Payments that is required.

17. Metlink

17.1 Operator acknowledgements

Each Operator acknowledges that:

- (a) Metlink currently provides various services to the Director relating to the whole public transport network in the Metropolitan Area under the Metlink Services Agreement;
- (b) BAV currently provides various services to Metlink under the BAV Services Agreement to assist Metlink to fulfil its obligations under the Metlink Services Agreement;
- (c) as at the date of this document the Director, Metlink and BAV are negotiating the terms of a new tripartite agreement (**Metlink Tripartite Agreement**); and
- (d) during the Term the Director, Metlink and the BAV intend to develop the Metlink Operations Manual.

17.2 Operator obligations

On and from the Commencement Date, each Operator agrees to, and agrees to ensure that each Associated Operator does:

- (a) provide Metlink with complete, current, accurate and timely Transport Information relating to each Local Service (including in relation to New Services, Service Adjustments and Urgent Service Changes);
- (b) provide Metlink with complete, current, accurate and timely Transport Information in relation to Special Event Services awarded to an Operator under clause 10;
- (c) use its best endeavours to meet the Performance Benchmarks for Metlink KPIs;
- (d) provide Metlink with all support reasonably requested by Metlink in relation to its network marketing function and obligations;
- (e) recognise Metlink's advocacy role in relation to public transport;

- (f) comply with the Metlink Master Style Guide;
- (g) participate if requested by Metlink (including attending meetings) in the activities of any specially focused committee or working group established by Metlink;
- (h) provide Metlink with all support reasonably requested by Metlink in relation to its revenue protection function and obligations;
- (i) provide Metlink with all support reasonably requested by Metlink in relation to any improvement projects undertaken by Metlink;
- (j) provide Metlink with all support reasonably requested by Metlink in relation to its data collection and survey function, including allowing Metlink staff and authorised representatives access to the Bus Operations and the Assets; and
- (k) cooperate with the BAV to enable it to comply with its obligations under the Metlink Tripartite Agreement.

17.3 Timetables

- (a) Each Operator acknowledges that:
 - (i) the principal sources for passengers of Transport Information for the Local Services are the Metlink website and printed Transport Information at Bus Stops;
 - (ii) Metlink is responsible for the content and maintenance of the Metlink website;
 - (iii) a centralised arrangement exists between Metlink and the Director under which Metlink is responsible for the printing and distribution to passengers of Timetables in booklet form (**Metlink Printing Arrangement**);
 - (iv) Metlink is responsible for the printing, installation and maintenance of Timetables and other Transport Information at Bus Stops, and in some cases has subcontracted that responsibility to third parties; and
 - (v) the efficacy of the Metlink website and Transport Information at Bus Stops is dependent on the Operators' compliance with their obligations under clause 17.2(a).
- (b) The Operators have chosen to opt into the Metlink Printing Arrangement and therefore agrees not to print any Timetables or collateral material itself.
- (c) In addition to its obligation under clause 17.2(a), each Operator agrees to do all things necessary to support and facilitate the efficacy of the Metlink website.

17.4 Notification of damage to Bus Stops

Each Operator agrees to, and agrees to ensure that each Associated Operator does, notify Metlink (in the form approved by Metlink) as soon as it, or a Driver, becomes aware of:

- (a) any structural damage to a Bus Stop; or
- (b) any damage to a Timetable or other signage containing Transport Information situated at a Bus Stop.

17.5 Rebranding

If an Operator changes its name, logo, branding or livery then that Operator agrees to replace promptly (at its own cost) all affected Timetables and signage.

17.6 Operator Website

- (a) The Operators may (at their own cost) maintain a website relating to the Local Services.

- (b) If they do so, Transport Information contained on that website must be:
 - (i) consistent with Transport Information provided to Metlink under clause 17.2(a); and
 - (ii) directly linked to Metlink's website.

18. Ticketing and fares

18.1 Use and maintenance of the ATS

- (a) Each Operator acknowledges that it has signed an ATS Agreement and agrees to comply, and ensure that each Subcontractor complies, with the ATS Agreement until the ATS is replaced.
- (b) Each Operator agrees to cooperate with the Director to ensure that the Director does not breach any obligation he owes to any person from whom he licenses the ATS provided that the Director has notified the Nominated Operator of those obligations.
- (c) If the ATS malfunctions during the running of any Local Service so that Tickets cannot be issued or validated correctly, the relevant Operator agrees to complete that service.

18.2 Fares and tickets

- (a) Each Operator agrees to, and agrees to ensure that each Subcontractor who provides *regular passenger services* does, charge Fares to passengers for their use of the Local Services in accordance with the Victorian Fares and Ticketing Manual, by either offering Tickets for sale by cash payment or by honouring pre-sold Tickets.
- (b) Each Operator and each Subcontractor who provides *regular passenger services* acts as the agent of the Director for the purpose of selling Tickets, reloading pre-sold Tickets in bus consoles and in relation to collecting Fare Revenue.
- (c) Each Operator acknowledges that all Fare Revenue received by it and each Subcontractor who provides *regular passenger services* in cash or through the use of the ATS or any other operative ticketing system belongs to, and remains the property of, the Director.
- (d) Each Operator is responsible for all Fare Revenue received by it and each Subcontractor who provides *regular passenger services* from cash sales or through the use of the ATS or any other operative ticketing system from the time it is collected until it is remitted to the Director. Each Operator is also responsible for any shortfall between recorded Ticket sales and cash collected by it.
- (e) Within 72 hours of the conclusion of each day of operation of the Local Services, each Operator agrees to, and agrees to ensure that each Subcontractor who provides *regular passenger services* does, deposit the gross amount of Fare Revenue for that day into the bank account nominated by the Director.

18.3 Fare Revenue protection measures

Each Operator agrees to, and agrees to ensure that each Subcontractor who provides *regular passenger services* does:

- (a) use its best endeavours to ensure passengers have the correct Tickets and that those Tickets have been validated;
- (b) use its best endeavours to ensure that passengers travelling as concession card holders have proof of their concession status;
- (c) use its best endeavours to monitor passengers to ensure that they are in possession of a valid Ticket while on board a Contract Bus;

- (d) direct passengers to purchase a valid Ticket if intercepted without one; and
- (e) inform the Director of any matter relating to Fare evasion in relation to the Bus Operations of which it should have been aware.

18.4 Audit

In addition to the Director's rights under clause 19, the Director may audit each Operator's performance of its obligations under this clause 18 at any time. The Director may conduct any surveys, inspections or other checks and question and observe any Staff for this purpose. To facilitate this right of audit each Operator agrees to, and agrees to procure that each relevant Associated Operator does, allow the Director access to the relevant Staff, Assets, the Operational Records relating to Fare Revenue and the components of, and any data and information generated by, any ticketing or information system in use and the Director agrees to ensure that the processes are carried out on reasonable notice and in a manner that will not cause disruption to the provision of the Local Services.

18.5 New ticketing or information systems

- (a) Each Operator acknowledges that during the Term new ticketing and or information systems may be developed and implemented, or any existing system may be materially upgraded, including the proposed implementation of the NTS (which will be phased in ultimately to replace the ATS).
- (b) Each Operator agrees to, and agrees to ensure that each Associated Operator does, cooperate with the Director, the TTA and any provider of a new ticketing or information system (and their contractors) in relation to the installation, testing and implementation of that system, including allowing reasonable access to the relevant Assets and Staff.
- (c) The Director may request the Operators to enter into a relevant service agreement (on terms consistent with those applicable to operators of other services substantially similar to the Local Services) with the TTA or the provider of that new ticketing or information system (including the NTS Provider in relation to the NTS).
- (d) On receiving a request under clause 18.5(c), the Nominated Operator agrees to negotiate in good faith and on behalf of the Operators with the Director and the TTA or the provider of that new ticketing or information system (including the NTS Provider in relation to the NTS) with the objective of the Operators entering into the relevant service agreement. The Operators agree that the Nominated Operator would not be acting in good faith if it refused to enter into, or unduly delayed the entry into, the relevant service agreement where that agreement did not impose obligations on the Operators materially more onerous than those existing under this document or under any existing or proposed industry arrangements with respect to the new ticketing or information system (including the NTS).
- (e) The Director agrees to adjust the Local Service Payments to the extent necessary to reflect any increase or decrease in the Operators' reasonable direct incremental costs of complying with the relevant service agreement demonstrated and substantiated to the satisfaction of the Director.

18.6 NTS

- (a) Each Operator agrees to comply with its obligations under the NTS Services Agreement and any other agreement entered into under clause 18.5(d).
- (b) Each Operator agrees to allow the NTS Components to be installed and maintained on its Assets and will facilitate that installation and maintenance by allowing the NTS Provider and the TTA reasonable access to its Assets for any reasonable purpose.

- (c) Each Operator:
 - (i) acknowledges that consequential amendments may need to be made to this document when the NTS is implemented to support and facilitate the operation of the NTS and the provision of the Local Services utilising the NTS (**NTS Consequential Amendments**); and
 - (ii) agrees to amend this document as requested by the Director to effect the NTS Consequential Amendments.
- (d) The Director agrees to adjust the Local Service Payments to the extent necessary to reflect any increase or decrease in the Operators' reasonable direct incremental costs of complying with clause 18.6(c) demonstrated and substantiated to the satisfaction of the Director.

19. Records, reporting and audit

19.1 Financial and Operational Records

The Financial Records, Operational Records and any Statement of Financial Position must be:

- (a) prepared in accordance with applicable industry accounting standards;
- (b) prepared in accordance with the PTCA Regulations; and
- (c) fit for purpose and be prepared and maintained to a standard expected by a skilled and experienced operator of bus services in Australia comparable to the size, scope and complexity of the Local Services.

19.2 Reporting

- (a) The Nominated Operator agrees to provide the Director with a copy of a Compliance Statement and a copy of the Solvency Statement for each Associated Operator for each financial year (or part of a financial year) during the Term within two months of the end of each financial year during the Term.
- (b) The Nominated Operator agrees to provide the Director with an Operational Report for each month of service within fourteen days after the end of each month.
- (c) The Operational Report provided by the Nominated Operator in the Contract Month following the end of a Contract Year shall include details of any Other Use (and related revenue) and any advertising revenue during that Contract Year.
- (d) If, at any time during the Term, the Director believes reasonably that the solvency of an Operator is in doubt and that is likely to affect adversely the Continuity of the Local Services, the Director may request the Nominated Operator to provide a Solvency Statement and a Statement of Financial Position in respect of that Operator certified by its directors. The Nominated Operator agrees to comply with the Director's request promptly.
- (e) The Nominated Operator agrees to notify the Director in its monthly Operational Report (or immediately where the circumstances reasonably require) of any Local Service that is not provided including reasons why.

19.3 Safety and accreditation information

- (a) Except where the Director advises it is not required, the Nominated Operator agrees to notify the Director immediately in writing if the Safety Director, under the PTCA or PTCA Regulations:
 - (i) initiates an inquiry in respect of an Operator or an Associated Operator;

- (ii) changes the conditions attaching to an Operator's Accreditation or an Associated Operator's Accreditation;
 - (iii) refuses to renew an Operator's Accreditation or an Associated Operator's Accreditation;
 - (iv) suspends an Operator's Accreditation or an Associated Operator's Accreditation; or
 - (v) disqualifies an Operator or an Associated Operator from holding an Accreditation.
- (b) Except where the Director advises it is not required, the Nominated Operator agrees to notify the Director in writing if:
 - (i) an Authorisation of an Operator or an Associated Operator to provide bus services in another Australian State or Territory is suspended or revoked; or
 - (ii) an application by an Operator or an Associated Operator to obtain an Authorisation to provide bus services in another Australian State or Territory is refused.
- (c) Each Operator consents, and agrees to procure any Associated Operator's consent where necessary, to the Safety Director and the Secretary providing to the Director any information:
 - (i) which the PTCA, PTCA Regulations or Safety Director acting under the PTCA require that Operator or an Associated Operator to provide to the Safety Director or the Secretary;
 - (ii) relating to any inquiry or investigation, or the outcome of any inquiry or investigation, undertaken under the PTCA or the PTCA Regulations in relation to that Operator's Accreditation or an Associated Operator's Accreditation; and
 - (iii) relating to any conditions attaching to that Operator's Accreditation or an Associated Operator's Accreditation.

19.4 Audit

- (a) If the Director reasonably considers there is a breach under this document or any information provided is materially false or there has been a material omission or a Step-in Right has occurred, each Operator agrees to, and agrees to ensure that each Associated Operator does, allow the Director and his selected staff and advisers access to inspect its relevant records (and any documents relating to, or from which any Operational Record has been created (**Supporting Documents**)) of that Operator and each Associated Operator if required, on the giving of reasonable notice to the Nominated Operator and at a mutually convenient time, in order to:
 - (i) verify any information supplied to him under this document; and
 - (ii) monitor the performance of that Operator under this document.
- (b) The Director is permitted to take copies of any records and Supporting Documents that he inspects under clause 19.4(a).
- (c) The Director agrees to take all reasonable steps to ensure that any inspection conducted by him is conducted in a manner that minimises interference with the Bus Operations.

19.5 Other records

Each Operator agrees to and agrees to ensure that each Associated Operator does keep and maintain during the Term, and for at least two years after the expiration of the Term, all documents and records (including Financial Records) relating to the conduct of the Bus

Operations or performance under this document required to be kept by that Operator under the Transport Act, the PTCA or any other Law.

19.6 Misinformation

Any of the following conduct by the Nominated Operator, any other Operator or an Associated Operator amounts to a Show Cause Termination Event for the purpose of clause 28.1:

- (a) deliberately recording or including (or deliberately failing to record or include) any matter in the Operators' Records which renders those records untrue or misleading;
- (b) deliberately including (or deliberately failing to include) anything in any Compliance Statement, Operational Report or Statement of Financial Position that renders them untrue or misleading; or
- (c) repeatedly failing to provide an Operational Report or failing to provide a Compliance Statement or Statement of Financial Position by the time specified in this clause 19.

20. Performance monitoring

20.1 General

- (a) The performance of the Operators in providing the Local Services will be monitored and measured, and any incentive payments or deductions will be calculated and made, under this clause 20 and Schedule 4.
- (b) Payment deductions calculated under Schedule 4 are *civil penalty provisions* for the purposes of the PTCA and for which the Operators are jointly and severally liable.

20.2 Component elements

The Performance Monitoring Regime consists of the following components:

- (a) the Patronage Incentive Regime (**PIR**) described in Part A of Schedule 4;
- (b) the Operational Performance Regime (**OPR**) described in Part B of Schedule 4;
- (c) the Qualitative Performance Regime (**QPR**) described in Part C of Schedule 4; and
- (d) the Metlink Performance Regime (**MPR**) described in Part D of Schedule 4.

20.3 Incentive Adjustment

The PIR and the OPR are linked to, and have a direct effect on, financial payments under this document. Schedule 3 provides for the calculation and payment of any Patronage Incentive Amount (which can only be a positive amount) and any Operational Incentive Amount (which may be an incentive or a penalty).

20.4 Data and information

The Director agrees to measure the Operators' performance under the Performance Monitoring Regime using:

- (a) information and data set out in the Operators' Records provided to the Director under this document; and
- (b) data collected from any information system implemented by the Director relating to the Local Services.

20.5 Remedy of underlying performance problem

A failure to meet a relevant Performance Benchmark will not itself constitute a Non-Compliance Event or a Termination Event but may, if remedial action required by the Director is not carried

out, trigger the cure regime in clause 26 and ultimately lead to Termination of this document under clause 28.3.

21. Dealing with Assets

21.1 Restriction in relation to Contract Buses and Contract Depots

Subject to clauses 21.3 and 21.4, each Operator agrees not to, and agrees to procure that each Associated Operator does not:

- (a) create or allow to exist any Security Interest over any Contract Bus, Contract Depot or Lease; or
- (b) Dispose of any Contract Bus or Contract Depot or other Asset (directly or indirectly), other than in accordance with the Bus Replacement Program or unless the Asset Disposed of is being replaced by an asset having a similar or better functionality or condition,

where the effect of that action would materially and adversely affect:

- (c) the Operators' ability to provide the Local Services; or
- (d) the Continuity of the Local Services; or
- (e) the Director's rights under a Transaction Document.

21.2 Notification in relation to Contract Depots

Each Operator agrees to, and agrees to procure that each Associated Operator does, provide reasonable prior notification to the Director of any proposed Disposal of a Contract Depot.

21.3 Restrictions in relation to Leases

Each Operator agrees not to, and must procure that each Associated Operator does not, except with the prior written consent of the Director:

- (a) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of a Lease;
- (b) suspend the performance of any of its obligations under a Lease;
- (c) do or permit anything that would enable or give grounds to another party to do anything referred to in clauses 21.3(a) or (b) in relation to a Lease; or
- (d) materially amend or supplement any provision of a Lease, or waive or grant any indulgence in respect of any material provision of that Lease that would have an effect on the exercise of any power or the performance of any obligation under that Lease,

where the effect of that action would materially and adversely affect:

- (e) the Operators' ability to provide the Local Services; or
- (f) the Continuity of the Local Services; or
- (g) the Director's rights under a Transaction Document.

21.4 Restrictions on Nominated Contract Buses

Despite clause 21.3 each Operator agrees not to, and agrees to procure that each Associated Operator does not, without the Director's prior written consent, Dispose of any Nominated Contract Bus (directly or indirectly), other than in accordance with the Bus Replacement Program.

21.5 Consequences of dealings with Assets

If the Director considers that any action of an Operator or an Associated Operator breaches clauses 21.4 or under clause 21.1 or 21.3 is likely to result in one or more of the consequences in

clauses 21.1(c), 21.1(d), 21.1(e) or clauses 21.3(e), 21.3(f), 21.3(g), then the Director may issue a Show Cause Notice under clause 28.2.

22. Staff

22.1 All Staff

- (a) Each Operator agrees to, and agrees to procure that each Associated Operator does, ensure that all Staff are properly trained, experienced and otherwise fit and proper, in relation to the duties to be performed by them as part of that Operator's performance of its obligations under this document.
- (b) Each Operator agrees to use its best endeavours to ensure that all Staff comply with applicable Laws and are properly authorised and accredited.
- (c) Each Operator agrees to ensure that all Staff are provided appropriate training including in the following areas:
 - (i) with regard to service requirements of passengers with disabilities;
 - (ii) with regard to the management of confrontational or difficult passengers and personal safety; and
 - (iii) with regard to occupational health and safety issues.
- (d) If an Operator becomes aware that any member of Staff is not fit and proper for any of the reasons referred to in clauses 22.1(a) to (c), that Operator agrees to take appropriate action to ensure that its ability to perform its obligations under this document is not at risk in any material way.

22.2 Drivers

- (a) Each Operator agrees to conduct regular checks to ensure that each Driver holds any Authorisation required to drive Buses and to ensure that each Driver:
 - (i) has a thorough and detailed knowledge of the Fares, Routes and Timetables;
 - (ii) engages in training in accordance with appropriate industry practice, failing which, as reasonably required by the Director;
 - (iii) is attired in a clean, well maintained appropriate uniform provided or designated by that Operator; and
 - (iv) has been the subject of appropriate security checks by that Operator.
- (b) If an Operator becomes aware that any Driver is not fit and proper for any of the reasons referred to in clause 22.2(a), that Operator agrees to take appropriate action to ensure that its ability to perform its obligations under this document is not at risk in any material way.

23. Payments

23.1 Local Service Payments

- (a) As consideration for the provision by each Operator of Local Services the Director agrees to make the Local Service Payments to the Nominated Operator on behalf of the Operators under, and in accordance with, the terms of Schedule 3.
- (b) The Nominated Operator will be responsible for allocating Local Service Payments among the Operators and none of the other Operators will have any Claim against the Director relating to the payment or allocation of Local Service Payments.

23.2 Manner of payment

All payments required to be made under this document must be made in the manner, and by the time, specified in Schedule 3.

23.3 Set off

- (a) The Director may set off against any payment due and payable by him under a Transaction Document any amount payable by any Operator to the Director, Metlink or TTA. If the amount payable to the Director is unascertained, the Director may estimate that amount and set off in respect of the estimate, subject to the Director accounting to the Nominated Operator when that amount is ascertained.
- (b) Each Operator agrees to make all payments under the Transaction Documents due to the Director without set off, counterclaim or deduction, unless otherwise agreed by the Director.

23.4 Payment Abatement

- (a) Subject to clause 23.4(d), if there is a Non-Compliance Event or a Termination Event, the Director may, by written notice to the Nominated Operator, reduce part or all of the Local Service Payments for the period to which the notice relates by the amount specified in the Director's notice.
- (b) If there is a Force Majeure Event, the Director may, by written notice to the Nominated Operator, reduce part or all of the Local Service Payments for so long as the Force Majeure Event exists to the extent that costs incurred by the Operators and the Associated Operators during that period were non-recurring in nature and or reasonably avoidable by them under their obligations under clause 32.3.
- (c) The reduction of any or all of the Local Service Payments under clause 23.4(a) or (b) must be a proportionate reduction having regard to the Local Services that have not been provided as a consequence.
- (d) The Director is not entitled to withhold any Fleet Payment for so long as an Operator is dealing with the Non-Compliance Event or Termination Event under this document.
- (e) For so long as a Force Majeure Event, a Non-Compliance Event or a Termination Event exists, in addition to any other remedies the Director has under a Transaction Document (including payments which have accrued and are due to the Director), the Director may issue a notice to the Nominated Operator advising the Operators that they will not qualify for any Patronage Incentive Amount or Operational Incentive Amount otherwise payable under this document.
- (f) The Director's rights under this clause are in addition to, and do not limit or affect, any other rights that the Director has under any Transaction Document or at Law in relation to the relevant Force Majeure Event, Non-Compliance Event or Termination Event.

23.5 Disputed amounts

If the Director disputes in good faith all or part of the monthly Local Service Payment payable to the Nominated Operator he:

- (a) agrees to notify the Nominated Operator of the amount disputed and the reasons;
- (b) may withhold from payment to the Nominated Operator the amount disputed until resolution of the dispute;
- (c) agrees to pay the undisputed portion of the Local Service Payment to the Nominated Operator; and

- (d) agrees to pay to the Nominated Operator on behalf of the relevant Operator interest at the Default Rate on any amount determined to have been wrongly withheld.

23.6 Corrections

The Director may correct any accidental or erroneous inclusion or exclusion of any matter to be taken into account in determining the amount paid to the Nominated Operator in a payment period, or correct figures in any computation or an arithmetical error in any computation, in the next monthly payment due to the Nominated Operator.

23.7 Payment not evidence

No payment by the Director will be evidence that an Operator's obligations have been performed satisfactorily. Payments shall be deemed to be on account only and do not affect the Director's rights against any Operator.

23.8 Review

- (a) If, because of a change in:
 - (i) any of the cost index multipliers referred to in clause 9 of Schedule 3; or
 - (ii) any circumstance not contemplated by the parties as at the Commencement Date that affects any of the matters referred to in Schedule 3 (other than a Service Adjustment or a Non Service Change which are dealt with under clause 8),a party reasonably believes that the level of Local Service Payments should be reviewed, that party (and in the case of any Operator, the Nominated Operator) may give written notice (**LSP Review Notice**) to the other party substantiating the particulars of the change in circumstances and its actual or anticipated effect on the level of the Local Service Payments and requesting that they meet to discuss and consider the level of Local Service Payments (**Review**).
- (b) The Director and the Nominated Operator agree to meet to conduct the Review no later than 10 Business Days after the LSP Review Notice has been received.
- (c) The parties acknowledge that:
 - (i) nothing in this clause 23.8 confers on either of them any right to adjust the Local Service Payments as a result of the Review; and
 - (ii) the Local Service Payments can only be adjusted as a result of a Review by mutual agreement.

24. Advertising

24.1 Director's consent

Each Operator agrees:

- (a) not to enter any new advertising arrangement; and
- (b) not to extend, renew or alter the terms of any advertising arrangement in existence as at the Commencement Date (**Existing Contract**),

with a third party relating to advertising on or within a Contract Bus unless it obtains the Director's prior written consent to that advertising and the terms of any new or renewed advertising agreement.

24.2 Restrictions

Any advertising on or within a Contract Bus:

- (a) must comply with all applicable Laws;
- (b) must comply with voluntary codes of conduct established by the advertising industry;
- (c) must not depict political, religious or other subject matter which is contentious;
- (d) must not depict subject matter which is offensive; and
- (e) must not resemble or be capable of confusion with directional or informational signs either by shape, size or colour.

24.3 Director's share of advertising revenue

The Director is entitled to 30% of the gross advertising revenue and fees received by the Operators and any Associated Operators from an advertiser.

24.4 Operator to be compensated

Where the Director refuses to grant his consent to the renewal of an Existing Contract under clause 24.1(b) (other than where it would be inconsistent with clause 24.2), the Director agrees to pay the Nominated Operator (in respect of the relevant Operator) an amount:

- (a) equal to 70% of advertising revenue from the Existing Contract for the previous year of the Term;
- (b) applied for the remainder of the Term or the remainder of the term of the Existing Contract (whichever is the shorter); and
- (c) indexed annually to the Melbourne Consumer Price Index (ABS Publication No. 6401.0).

25. Livery

25.1 SmartBuses

- (a) The Director may specify the livery to be adopted by any Operator on any SmartBuses used by that Operator.
- (b) Each Operator agrees to comply with the specifications under clause 25.1(a) as soon as practicable.
- (c) The Director agrees to reimburse the relevant Operator (by payment to the Nominated Operator) for its reasonable direct incremental costs of complying with clause 25.1(a) demonstrated and substantiated to the satisfaction of the Director.

25.2 Other Contract Buses

Subject to clause 25.1, the Nominated Operator agrees that it will notify and consult with the Director before a change in the livery on any of Contract Buses is effected.

26. Default and cure regime

26.1 Non-Compliance Events

The following are Non-Compliance Events:

- (a) any breach of this document by any Operator which does not constitute a Termination Event;
- (b) a fact, matter or circumstance exists that, in the reasonable opinion of the Director, is likely to result in a Termination Event if not attended to promptly;
- (c) a breach of any Transaction Document (other than this document) or any Lease by any Operator or an Associated Operator which would have a material adverse effect on that

Operator's ability to provide the Local Services required to be provided by it or otherwise comply with its obligations under the Transaction Documents;

- (d) if any of the Warranties or any other representation, warranty or statement made by any Operator, an Associated Operator or the Parent Guarantor in a Transaction Document is or was untrue or misleading in a material respect when made or repeated and, if that fact had been known to the Director before signing this document the Director, in his reasonable opinion, would not have entered into any of the Transaction Documents or would have entered into them on materially different terms; and
- (e) the Director reasonably considers that any Operator and or any Associated Operator has failed to satisfy any Renewal Condition,

and as soon as practicable following becoming aware of a Non-Compliance Event the relevant Operator must give notice to the Director setting out in reasonable detail the relevant event or surrounding circumstances.

26.2 Issue of Non-Compliance Notice

- (a) Where a Non-Compliance Event occurs, the Director may give the Nominated Operator written notice (**Non-Compliance Notice**):
 - (i) stating that a Non-Compliance Event has occurred (except where the relevant Operator has provided that information under clause 26.1);
 - (ii) setting out reasonable details of the Non-Compliance Event and surrounding circumstances (except where the relevant Operator has provided that information under clause 26.1);
 - (iii) if the relevant Operator has given notice to the Director under clause 26.1 then representatives of the Nominated Operator and Director must consult as to an appropriate remedy and timetable to effect that remedy; and
 - (iv) if the relevant Operator did not issue a notice under clause 26.1 or if the consultation under clause 26.2(a)(iii) did not resolve matters to the Director's satisfaction, requiring the relevant Operator to do either or both of the following:
 - (A) implement any immediate temporary measure to alleviate the impact or effect of the Non-Compliance Event having regard to the severity of the Non-Compliance Event, pending a permanent cure being achieved following remedy in accordance with a Cure Plan; and or
 - (B) agree a plan of rectification setting out all measures that the relevant Operator proposes to take to cure the Non-Compliance Event (**Cure Plan**) with the Director within 10 Business Days (or such lesser number which is 10 Business Days in aggregate from the issue of Non-Compliance Notice where consultation has occurred first) of the Non-Compliance Notice.
- (b) In determining whether any Operator is required to implement an immediate temporary measure under clause 26.2(a)(iv)(A), the Director agrees to act reasonably having regard to the impact of the Non-Compliance Event on the continued provision of the Local Services in a safe and reliable manner and otherwise in accordance with this document.

26.3 Dealing with Non-Compliance Notices

- (a) If the Director's Non-Compliance Notice requires any Operator to implement an immediate temporary measure to rectify the Non-Compliance Event, the relevant Operator agrees to implement the temporary measure required within any reasonable period

stipulated by the Director in his Non-Compliance Notice having regard to the nature of the temporary measure.

- (b) If the Director's Non-Compliance Notice requires an Operator to agree a Cure Plan with the Director, the Cure Plan will set out:
 - (i) each measure, and the time for each measure to be implemented, that that Operator considers necessary and proposes to take to cure the Non-Compliance Event or the circumstances or events giving rise to the Non-Compliance Event;
 - (ii) the measures to be taken by that Operator to alleviate the impact or effect of the Non-Compliance Event;
 - (iii) the period within which that Operator will cure the Non-Compliance Event (or the events or the circumstances giving rise to the Non-Compliance Event) (**Cure Period**);
 - (iv) the form and timing of reports to be provided by the Nominated Operator to the Director as to the status of any Cure Plan; and
 - (v) the operational arrangements to be implemented by that Operator to integrate the cure with the continued provision of the Local Services.

26.4 Agreement and Implementation of Cure Plan

- (a) If the Director and an Operator agree the Cure Plan within the period specified in clause 26.2(a)(iv)(B), the Director agrees to provide the Nominated Operator with written notice either:
 - (i) approving the Cure Plan submitted by that Operator; or
 - (ii) specifying amendments to the Cure Plan as agreed between the Nominated Operator and the Director and the Cure Plan will be deemed to have been amended accordingly.
- (b) On receipt of notice that the Cure Plan has been approved or amended, the relevant Operator agrees to implement and pursue diligently that Cure Plan and ensure that, to the extent necessary, any Associated Operator pursues any applicable elements of the Cure Plan with a view to curing the Non-Compliance Event.
- (c) The Nominated Operator may (on one occasion only) by notice in writing to the Director request an extension to the Cure Period provided that:
 - (i) it does so prior to the expiration of the existing Cure Period;
 - (ii) it sets out complete particulars of the reasons why the extension is requested and any revisions to the Cure Plan; and
 - (iii) it provides evidence to the Director's satisfaction that the relevant Operator has pursued diligently and is continuing to pursue diligently a cure in accordance with the Cure Plan.
- (d) If the Nominated Operator submits a request under clause 26.4(c), the provisions of clause 26.4(a) apply in relation to the giving of the Director's approval to the extension request and any revised Cure Plan.

27. Step-in for Operator breach

27.1 Right to step-in

- (a) If:

- (i) a Termination Event occurs; or
- (ii) the Director reasonably forms the opinion that unless the Director exercises some or all of his Step-in Powers there is or is likely to be:
 - (A) a significant risk to the health or safety of the public; or
 - (B) a material risk of substantial damage to any of the Assets which may adversely affect Continuity of the Local Services; or

(C) a material risk to the environment, (each an **Emergency Step-in Event**),

the Director may give written notice (**Step-in Notice**) to the Nominated Operator advising it that a Step-in Party will exercise the Step-in Powers during the Step-in Period and clauses 28.4 to 28.22 (inclusive) apply, unless provided otherwise in those clauses.

- (b) During any Step-in Period, the Operators' rights are suspended to the extent necessary to permit the Step-in Party to exercise those Step-in Powers.
- (c) The Step-in Right of the Director may be exercised in conjunction with, and is without prejudice to, his right to Terminate this document under clause 28.

27.2 Step-in Powers

- (a) A Step-in Party may do anything necessary to ensure Continuity of the Local Services, including anything:
 - (i) that an Operator is permitted to do under this document as if it were that Operator and to the exclusion of that Operator, including conducting the Bus Operations in accordance with this document;
 - (ii) that the Director considers necessary to remedy any relevant event that gave rise to the Step-in Right;
 - (iii) incidental to the matters in clauses 27.2(a)(i) and (ii); and
 - (iv) in relation to any Asset.
- (b) Each Operator acknowledges that a Step-in Party is not under any obligation to remedy any Termination Event or Emergency Step-in Event or to mitigate or overcome any risk or risk consequences, in respect of which the Step-in Party exercises the Step-in Powers.
- (c) Each Operator agrees to cooperate, and procure that each Associated Operator cooperates, with the Step-in Party in the exercise of the Step-in Powers, including:
 - (i) giving and procuring necessary access to all Assets and Staff; and
 - (ii) giving necessary access to the Step-in Party to any information in relation to the Bus Operations that the Step-in Party reasonably requires to ensure Continuity of the Local Services, including the Operators' Records.
- (d) Where the Step-in Right is exercised other than as a result of an Emergency Step-in Event (unless caused by an Operator):
 - (i) the Operators agree to pay to the Director on demand all reasonable and proper costs and all Losses incurred in relation to the Step-in Powers (except for the Step-in Party's costs, to the extent that they arise from fraud, default or negligence on the part of the Step-in Party), less the amount of any Local Service Payments that the Director would otherwise have been obliged to pay under this document if the step-in had not occurred. The Director is permitted to set off any reasonable and

proper costs and all Losses payable to him under this clause 27 against any Local Service Payments payable under this document; and

- (ii) the Operators agree to indemnify the Step-in Party from and against all reasonable and proper costs and all Losses in respect of, or arising from, the exercise of the Step-in Powers or arising in connection with the event which triggered the Step-in Right, except to the extent that they arise from fraud, wilful default or gross negligence on the part of the Step-in Party.
- (e) The Director:
 - (i) agrees to use reasonable endeavours to ensure the Step-in Party acts in good faith and conducts the Bus Operations to the standard of a reasonable and prudent operator of bus services in Australia comparable to the size, scope and complexity of the Local Services; and
 - (ii) acknowledges that where the Step-In Right is exercised in circumstances that do not result in Termination, the Step-In Period is intended to be temporary and, where clause 27.4(a) applies, to conclude with the giving of a Step-Out Notice.

27.3 Protection of a Step-in Party

Subject to any Law to the contrary, each Operator acknowledges that a Step-in Party will not be liable to it in respect of:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) for any Loss (including consequential loss) which results,
except where it arises from fraud, wilful default or gross negligence on the part of the Step-in Party.

27.4 Step-out

- (a) When:
 - (i) the Termination Event which resulted in the Director exercising his Step-in Right has been remedied to the satisfaction of the Director and the Director is satisfied that there is no risk of a recurrence of the Termination Event; or
 - (ii) the Director is satisfied that the circumstances that gave rise to the Emergency Step-in Event no longer exist,the Director agrees to give the Nominated Operator a Step-out Notice.
- (b) The Director agrees that the Step-out Notice will allow the Operators a reasonable period to resume the conduct of the Bus Operations.
- (c) The Director and the Nominated Operator agree to consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Operators resuming the conduct of the Bus Operations is effected with the least interruption to the Bus Operations.
- (d) Each Operator acknowledges that during the Step-in Period the Director may exercise any rights he has to Terminate this document under clause 28 and also to exercise the option set out in clause 30 and in that case:
 - (i) that Operator has no right to resume the conduct of the Bus Operations; and
 - (ii) the Step-in Party will continue to conduct the Bus Operations until a Successor Operator is appointed.

28. Termination

28.1 Termination Events

- (a) The following events amount to Show Cause Termination Events in relation to the Operators:
- (i) a failure to implement an immediate temporary measure to rectify a Non-Compliance Event under clause 26.3(a);
 - (ii) a failure by an Operator to agree a Cure Plan with the Director under clause 26.4(a);
 - (iii) a failure by an Operator to pursue diligently a Cure Plan under clause 26.4(b);
 - (iv) a failure by an Operator to cure the Non-Compliance Event to the reasonable satisfaction of the Director;
 - (v) a persistent or repeated failure by any Operator or any Associated Operator to comply with a Transaction Document in circumstances where the Director has previously notified the Nominated Operator of the failures or non-compliances and has put the Nominated Operator on notice that continued failures or non-compliances would constitute a persistent or repeated failure or non-compliance for the purposes of this clause;
 - (vi) any Operator threatens to abandon, withdraw, cease or suspend the provision of the Local Services required to be provided by it;
 - (vii) an event entitling the counterparty under a Related Service Contract to terminate that Related Service Contract occurs;
 - (viii) an acquisition of a New Bus or New Depot by any Operator or an Associated Operator in contravention of clauses 14 or 16;
 - (ix) where clause 21.5 applies;
 - (x) a failure by any Operator or any Associated Operator to cooperate during a Step-in Period as required by clause 27.2(c);
 - (xi) a purported assignment or subcontracting (subject to clause 7.1) by any Operator of a Transaction Document or any of its obligations under any Transaction Document without the prior consent of the Director;
 - (xii) any Operator or any Associated Operator engages in any conduct of the kind set out in clause 19.6;
 - (xiii) any other material breach of a Transaction Document by any Operator or any Associated Operator that is, in the Director's reasonable opinion, likely to have a material adverse effect on the provision of the Local Services (including the jeopardising of passenger safety), the Continuity of the Local Services or any of the Director's rights under the Transaction Documents;
 - (xiv) a failure by any Operator to take appropriate action in relation to any fraud, dishonesty, misconduct or contravention of any Law that is serious in nature by an Associated Operator or any Staff;
 - (xv) a Change in Control occurs that has not been approved by the Director;
 - (xvi) a failure by an Operator or an Associated Operator to comply with any of the obligations in clause 31.3 or clause 31.4; and or

- (xvii) an Operator or an Associated Operator abandons, withdraws or suspends the provision of, or ceases to provide, the Local Services required to be provided by it because of industrial action predominantly in relation to the bus industry or involving any Staff or employees of that Operator, that Associated Operator or an associate of either of them.
- (b) The following events constitute Immediate Termination Events:
 - (i) at any time an Operator or an Associated Operator ceases to hold the appropriate Accreditation;
 - (ii) an Operator or an Associated Operator abandons, withdraws or suspends the provision of, or ceases to provide, the Local Services required to be provided by it other than because of a Force Majeure Event, an Emergency Step-in Event or industrial action predominantly in relation to the bus industry or involving any Staff or employees of that Operator, that Associated Operator or an associate of either of them;
 - (iii) an Operator or an Associated Operator has been found guilty of an offence against the PTCA or the PTCA Regulations committed during the Term which would materially and adversely affect:
 - (A) the Operators' ability to provide the Local Services; or
 - (B) the Continuity of the Local Services; or
 - (C) the Director's rights under a Transaction Document;
 - (iv) an Operator or an Associated Operator has acted fraudulently or dishonestly in relation to the provision of the Local Services required to be provided by it or the performance of any of its obligations under the Transaction Documents;
 - (v) an Operator or an Associated Operator has acted with gross neglect and the conduct is likely to have a material adverse effect on the provision of the Local Services; and or
 - (vi) an Insolvency Event happens in relation to an Operator or an Associated Operator.
- (c) If a Termination Event arises as a sole consequence of a Force Majeure Event, that Termination Event will not be treated as a Termination Event for the purposes of this document.

28.2 Show Cause Notice

If the Director believes that a Show Cause Termination Event has occurred and is subsisting in relation to an Operator, the Director may issue the Nominated Operator with written notice setting out details of the alleged Show Cause Termination Event, the Director's intention in relation to that event and requiring the Nominated Operator to make written submissions within 10 Business Days as to why this document should not be terminated which should include any Cure Plan the relevant Operator may propose (**Show Cause Notice**).

28.3 Director's right to terminate

- (a) Where a Sale Default occurs the Director may terminate this document on written notice given to the Nominated Operator (**Termination Notice**) effective on the date specified in the Termination Notice (**Termination Date**) and, in that case, clauses 28.4 to 28.22 (inclusive) apply.

- (b) This right to terminate is without prejudice to the Step-in Right and the Director's right to exercise all legal and equitable rights and remedies available to him in respect of the Termination Event, whether under this document or otherwise.

28.4 General powers

The Director or a Step-in Party may, without demand or notice to anyone (unless notice is required as described in clause 28.16), do all things that a mortgagee in possession of the Assets can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee in possession of the Assets;
- (b) given to a receiver under the Corporations Act; and
- (c) specified in clauses 28.5 and 28.6,

provided that, if the Director has given a Step-In Notice, neither the Director or the Step-in Party may do anything contemplated in or permitted by clause 28.6.

28.5 Specific powers

The Director or a Step-in Party may do everything they think necessary to do any or all of the following in connection with their Powers to ensure Continuity of the Local Services, whether in their or an Operator's name or otherwise and whether or not they have possession of the Assets, including:

- (a) **(recover, possess and control)** access, recover, manage, take or give up possession or control of any Assets;
- (b) **(receive income and profits)** receive the income and profits of the Assets;
- (c) **(carry on business)** carry on, promote, restructure or participate in each Operator's business in relation to the Assets, and access the land or premises of that business;
- (d) **(insurance)** insure the Assets and settle and compromise insurance claims;
- (e) **(improve or invest)** maintain, invest, deposit, improve or alter the Assets to improve their value or saleability or to obtain income or returns from them (including to acquire or take on lease any asset as part of the Assets or build, rebuild, pull down or alter a structure or improvement on any Depot);
- (f) **(deposited documents)** complete and deal with any document deposited with the Director relating to Assets, including any transfer in blank;
- (g) **(assume obligations)** assume obligations of any Operator;
- (h) **(accounts)** operate bank accounts forming part of the Assets and open and operate further bank accounts in any Operator's name and to the Operator's exclusion;
- (i) **(contracts, instruments and rights)** perform or observe any Operator's obligations or enforce or exercise any Operator's rights, powers, discretions or remedies (or refrain from doing so) under:
 - (i) a contract, instrument, arrangement forming part of the Assets (including voting and proxy rights);
 - (ii) a Transaction Document (including to cure an Exercise Event) or other document entered into by the Director in exercise of a Power,

and, only if the Director has given a Termination Notice, vary, terminate or rescind any of them or novate or otherwise transfer to any person any Operator's obligations under any of them;

- (j) **(Liquidation)** initiate and participate in any Liquidation of any person (including voting at meetings and appointing proxies);
- (k) **(proceedings)** commence, prosecute, defend, discontinue, compromise, submit to arbitration and settle proceedings in connection with this document or the Assets, whether in or before a Government Body;
- (l) **(raise money)** obtain financial accommodation (including from the Director or Director's Associate) and give guarantees, in each case with or without granting a Security Interest over the Assets and regardless of priority ranking;
- (m) **(receipts)** give receipts for money and other property he receives;
- (n) **(employ and delegate)** employ and discharge staff, professional advisers, consultants, contractors, agents and auctioneers for the purposes of this document, and at the remuneration that the Director thinks fit, and to delegate to any person any of his Powers (including this right of delegation);
- (o) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and
- (p) **(incidental power)** do anything expedient or incidental to exercise any of his Powers, without limiting those Powers.

28.6 Director's specific Termination powers

In addition to the powers in clause 28.5, where the Director has given a Termination Notice, the Director may do any or all of the following in connection with his Powers, whether in his or any Operator's or an Associated Operator's name or otherwise and whether or not he has possession of the Assets:

- (a) **(sell, assign or exchange)** sell, assign or help sell all or any Assets to any person or exchange it for any other property or rights, on terms the Director thinks fit, with or without other property;
- (b) **(options, Lease, rights)** grant, acquire, renew, vary, accept the surrender of or terminate an option, Lease or other right over the Assets on the terms he thinks fit, and with or without any other property;
- (c) **(sell to Director)** without limiting any other provision of this document, sell any of the Assets to the Director or Successor Operator as contemplated in clause 30; and
- (d) **(hive off)** promote the formation of any company to acquire any Assets.

28.7 Discharge or acquire Security Interest

- (a) The Director may, provided he has given a Termination Notice, do any one or more of the following:
 - (i) purchase a debt or liability secured by a prior Security Interest over or in respect of any of the Assets;
 - (ii) pay the amount required to discharge or satisfy that debt or liability; and
 - (iii) take a transfer or assignment of that Security Interest and any guarantee, document or right ancillary or collateral to it (including any Security Interest over other property if the debt or liability repaid was secured over both Assets and other property).
- (b) If the Director exercises his rights in this clause 28.7:

- (i) the relevant Operator is indebted to the Director for the same amount paid by the Director or the amount of the debt or liability acquired (whichever is higher) and that amount is immediately payable to the Director;
- (ii) the Director may rely on a written notice from the holder of any Security Interest (**Chargee**), or on an ancillary or collateral document, as to the amount and property secured by that Security Interest;
- (iii) the Chargee need not enquire whether any amount is owing under a Transaction Document; and
- (iv) the relevant Operator irrevocably directs any Chargee to give the Director any information it requires in connection with the Security Interest.

28.8 Period for exercise

The Director acknowledges that the powers under clauses 28.4 to 28.7 can only be exercised during:

- (a) any Step-in Period (except the powers in clause 28.6); and or
- (b) the period from the Termination Date to the date on which completion occurs under the Termination Transfer Agreement.

28.9 Co-operation in exercise of power of sale

- (a) If the Director wishes to exercise a right to sell any Assets, each Operator agrees to do or cause to be done all things necessary to enable an expeditious sale and transfer to the purchaser for the value as estimated by the Director, in the manner and on terms the Director thinks fit.
- (b) To the extent that the Director sells any Asset pursuant to his Powers under this clause for a sale price that is less than the Transfer Price for that Asset, the Director agrees to compensate the relevant Operator for the amount of the shortfall.

28.10 Appointment of Attorney

- (a) Each Operator for valuable consideration, to secure the performance of the obligations of the Operator under this document, irrevocably appoints the Director and each Authorised Representative of the Director separately as its attorney to do any or all of the following on that Operator's behalf and in that Operator's or the attorney's name after an Exercise Event occurs:
 - (i) anything which that Operator is required to do under a Transaction Document or under Law in connection with a Transaction Document;
 - (ii) anything which the Attorney considers necessary or expedient to give effect to a Power or exercise of a Power, or to perfect any Transaction Document, including by signing any document for that purpose; and
 - (iii) anything which an attorney is expressly empowered to do under a Transaction Document on that Operator's behalf.
- (b) Each Operator agrees (and agrees to procure any Associated Operator) to ratify anything done by its Attorney under this power of attorney. An Attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

28.11 Enforcement and other expenses

Each Operator agrees to pay or reimburse on demand by the Director all costs and expenses of the Director and an Attorney (and any of their respective officers, employees and agents) in connection with:

- (a) exercising, enforcing or protecting a Power, or attempting to do so;
- (b) a Sale Default or the exercise or procuring performance or satisfaction of the Step-in Powers;
- (c) any Government Body enquiry concerning the Operator or any of its Associated Operators, or the involvement of the Director in the Transaction Documents;
- (d) maintaining, preserving or protecting the Assets; and
- (e) obtaining professional advice from a person or consultant about any matter of concern to the Director or an Attorney in connection with a Transaction Document or the Assets.

This includes any legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

28.12 General indemnity

- (a) The Operators indemnify the Director, his Authorised Representatives and any Attorney (and its respective officers, employees and agents) against, and agree to pay to the Director on demand amounts equal to, any Loss arising as a result of or in connection with:

- (i) an indemnity given by the Director to an administrator of any Operator;
- (ii) the Assets;
- (iii) a Sale Default;
- (iv) the Director acting or relying in good faith on any notice or communication from the Nominated Operator or any Operator; and
- (v) the Director relying on information supplied by or on behalf of the Nominated Operator or any Operator which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis) and any professional consultant's fees in connection with the above.

- (b) The Director or an Attorney need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in a Transaction Document. Unless otherwise stated, each indemnity or reimbursement obligation is separate and independent of each other obligation of the party giving it, is absolute, irrevocable, unconditional and payable on demand and continues despite any settlement of account, termination of any Transaction Document.

28.13 Equitable Relief

- (a) Each Operator acknowledges that damages will not be an adequate remedy for:
 - (i) any Sale Default;
 - (ii) any breach of clause 27 or any circumstance where a Step-in Party is prevented or frustrated from exercising the Step-in Powers; or
 - (iii) any breach of clause 30,

(each a **Specific Breach**).

- (b) Each party to this document agrees that, without limiting any other right, remedy or action it has in connection with any actual or threatened **Specific Breach** by the other party, it is entitled to seek equitable relief (including specific performance or injunctive or declaratory relief) to restrain any actual or threatened **Specific Breach** by the other party and the other party agrees not to oppose the granting of relief on the basis that the party seeking the relief has not or will not suffer any actual loss or damage.

28.14 Receipt by Director

A receipt given by the Director or an Attorney (or by their Authorised Representative) for any money payable to it, or any asset receivable by it, relieves the person paying that money or delivering the asset from all liability to enquire as to the dealing with, or application of, that money or asset.

28.15 Third parties need not enquire

A person dealing with the Director or an Attorney is protected from any impropriety or irregularity of that dealing, and need not enquire whether any of them has been properly appointed or has executed or registered an instrument or exercised a Power properly or with authority.

28.16 Notice, demand or lapse of time required by Law

If a notice, demand or lapse of time is required by Law before the Director can exercise a Power, then:

- (a) that notice, demand or lapse of time is dispensed with to the extent allowed by that Law; or
- (b) if not allowed to be dispensed with, but the period of notice, demand or lapse of time is allowed by that Law to be shortened or fixed, it is shortened and fixed to one day.

28.17 Director and Attorney not restricted

The Director or an Attorney need not:

- (a) exercise a Power, give a consent or make a decision under this document unless a Transaction Document expressly provides otherwise; or
- (b) resort to a Power before resorting to any other Power.

28.18 Director and Attorney not mortgagee in possession or liable

To the extent permitted by Law, the Director and any Attorney will:

- (a) not be, nor account or be liable as, mortgagee in possession due to exercise of a Power; or
- (b) not be liable to anyone for any Loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

28.19 Director may set off

The Director may, without any demand or notice, set off and apply indebtedness he owes to any Operator against any money owing to him by any Operator or an Associated Operator under any Transaction Document, whether or not the amount owed by the Director, an Operator or the Associated Operator is immediately payable or is owed alone or with any other person. Each Operator irrevocably authorises the Director to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

28.20 Reinstating avoided transaction

Each Operator agrees that if a payment or other transaction relating to an Exercise Event is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or

settled (each an **Avoidance**), then even though the Director knew or should have known of the Avoidance:

- (a) each Power and the Operator's liability under each Transaction Document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) that Operator will immediately execute and do anything required by the Director to restore the Director to his position immediately before the Avoidance (including reinstating any Transaction Document).

This clause 28.20 survives any termination or full or partial discharge or release of any Transaction Document.

28.21 Authorised Representatives and communications

Each Operator irrevocably authorises the Director to rely on a certificate by any person purporting to be a director or company secretary of the Nominated Operator as to the identity and signatures of its Authorised Representatives, and to rely on any notice or other document contemplated by any Transaction Document which bears the purported signature (whether given by facsimile or otherwise) of its Authorised Representative. Each Operator warrants that those persons have been authorised to give notices and communications under or in connection with the Transaction Documents.

28.22 Performance

For the purposes of clauses 28.4 to 28.22:

- (a) if a time is not specified for the performance by an Operator of an obligation under this document, it must be performed promptly;
- (b) the Director may do anything which an Operator fails to do as required by, or in accordance with, this document. This does not limit or exclude the Director's Powers in any way;
- (c) powers under the Transaction Documents are cumulative and do not limit or exclude Powers under Law; and
- (d) full or partial exercise of a Power does not prevent a further exercise of that or any other Power. No failure or delay in exercising a Power operates as a waiver or representation.

28.23 Not a charge

The parties agree that this clause 28:

- (a) is not a charge and does not create a Security Interest in favour of the Director;
- (b) does not give or grant the Director any proprietary interest by way of security or otherwise in an Operator, an Associated Operator or the Assets; and
- (c) grants the Director contractual rights only, which rights may be exercised by the Director or the Attorney,

and any reference to clause 28 to the Director having or engaging similar rights to that of a mortgagee (or having the right to appoint a receiver or the like) are not intended to confer a right in the nature of a security on the Director.

29. Interim Operator

29.1 Appointment

The Director may appoint an entity to provide the Local Services or services substantially similar to the Local Services on a temporary or interim basis following Termination, on terms agreed between the Director and the Interim Operator.

29.2 Operators to assist

Each Operator acknowledges that Continuity of the Local Services is crucial to the Director and the users of the Local Services and agrees to comply with the provisions of clause 30 and 31 and otherwise to cooperate in all respects and do all things reasonably requested by the Director to facilitate the transfer of the Bus Operations (including, if applicable, the transfer of the Assets) to the Interim Operator following the giving of a Termination Notice.

30. Acquisition on Termination

30.1 Termination Option

Subject to clause 30.6 and clause 30.10 each Operator grants, and agrees to procure that each Associated Operator grants, to the Director or his nominee (**Purchaser**) an option to acquire (by way of sale, assignment or novation as the case requires) all of the Assets used in the Bus Operations (to the extent that they are not owned by the Director), at the Transfer Price, to be exercised by notice (**Transfer Notice**) to the Nominated Operator at any time after the Director gives the Nominated Operator a Termination Notice under clause 28.3 and before the Termination Date.

30.2 Conditions

Subject to clauses 30.6 and 30.10, each Operator agrees to, and agrees to procure that each Associated Operator does, sell, assign or novate the Assets to the Purchaser on the following terms and conditions:

- (a) the purchase price for the Assets will be the Transfer Price;
- (b) the Assets must be free from encumbrances in the nature of Security Interests (except if the transfer is effected under an Allocation Statement);
- (c) the Purchaser may conduct due diligence on the Assets;
- (d) in relation to the Owned Depots, in accordance with the Termination Depot Option Deed;
- (e) the Termination Transfer Agreement will be entered into between the Purchaser and each vendor or assignor of Assets within 14 days of the date that the Nominated Operator receives the Transfer Notice (**Termination Transfer Agreement Date**); and
- (f) each Operator for valuable consideration, to secure the performance of its obligation (and the obligation of each Associated Operator who is a vendor of Assets) under clause 30.2(e) to enter into the Termination Transfer Agreement, irrevocably appoints (and will procure that each Associated Operator appoints) the Director as its attorney to complete all schedules to, and execute, the Termination Transfer Agreement and all ancillary documents and to do all other things necessary to complete the transactions contemplated by the Termination Transfer Agreement, if that Operator and or an Associated Operator has not signed the Termination Transfer Agreement by the Termination Transfer Agreement Date. Each Operator agrees (and agrees to procure each Associated Operator) to ratify anything done by the Director acting under this power of attorney.

30.3 Due Diligence - Contract Depots

Each Operator grants, and agrees to procure that any Associated Operator or associate of the Operator or of any Associated Operator that owns an Owned Depot grants, to the Director, the Director's Associates and a Successor Operator, the right of access to that Owned Depot to carry out the usual purchaser's due diligence including, without limitation, as to the condition of improvements on the property, the extent of contamination of the property and, where the contamination has or may have migrated from the property, the extent of any contamination of the surrounding property.

30.4 Allocation Statement

- (a) The parties acknowledge and agree (and each Operator agrees to procure that the Associated Operators acknowledge and agree) that:
 - (i) this clause 30 (other than clause 30.12) is a transfer provision for the purposes of Division 5 of Part 3 of the PTCA;
 - (ii) each Operator and each Associated Operator are people to whom the Allocation Statement mechanism under the PTCA applies;
 - (iii) the Assets may be transferred by Allocation Statement under the PTCA if the transfer process provided for in this clause 30 is not completed due to any action or inaction on the part of an Operator or an Associated Operator; and
 - (iv) the Assets are *relevant property* for the purposes of Division 5 of Part 3 of the PTCA.
- (b) If the Termination Transfer Agreement has not been entered into by the Termination Transfer Agreement Date the Director may, as soon as practicable after the Termination Transfer Agreement Date, sign and give to the Minister an Allocation Statement allocating the Assets to the Purchaser with effect from the Transfer Date at the Transfer Price.
- (c) Despite that the Termination Transfer Agreement may have been entered into, if the Director considers that the transfer of any Asset under that Termination Transfer Agreement may not occur on or before the Transfer Date, the Director may sign and give to the Minister an Allocation Statement allocating that Asset to the Purchaser with effect from the Transfer Date at the Transfer Price.
- (d) The Director agrees to take all reasonable steps to:
 - (i) procure the Minister's approval of an Allocation Statement given under clause 30.4(b) or (c); and
 - (ii) ensure that the Allocation Time fixed by the Minister for the purpose of that Allocation Statement is the Transfer Date and that the purchase price for the Assets is the Transfer Price.

30.5 Audit of Bus Condition

Prior to the Transfer Date the Director and a valuer appointed under Schedule 7 may inspect any or all of the Contract Buses to be transferred under this clause for the purpose of ascertaining their condition and the extent of compliance with clause 12.1.

30.6 Leased Assets

- (a) Where an Asset is leased under a finance Lease each relevant Operator agrees to, and agrees to procure that each Associated Operator does, where requested by the Director, use its reasonable endeavours to procure the assignment or novation of that Lease to the Purchaser by the Transfer Date. If that assignment or novation is considered by the Director to be unlikely to be effected by the Transfer Date then each relevant Operator

agrees to, and agrees to procure that each Associated Operator does, exercise any right it has to acquire ownership of that Asset and transfer it under this clause.

- (b) Where an Asset is leased under an operating Lease each relevant Operator agrees to, and agrees to procure that each Associated Operator does, where requested by the Director use its reasonable endeavours to procure the assignment or novation of its interest in that Lease to the Purchaser by the Transfer Date.

30.7 Operators to facilitate

- (a) Each Operator agrees to facilitate (and procure that each Associated Operator facilitates) the transfer of the Assets under this clause 30, and will not do anything which is likely to frustrate that transfer.
- (b) Following the giving of a Transfer Notice, each Operator agrees to, and agrees to procure that each Associated Operator does, allow the Purchaser reasonable access to the Assets and the Staff to facilitate completion of the sale, assignment or novation of the Assets under this clause.

30.8 Transfer of Staff

- (a) Each Operator agrees to, and agrees to procure that each Associated Operator does, use its best endeavours to ensure that an appropriate number of Staff (having regard to the number, skills, qualifications and experience of Staff required by the Operators to operate the Bus Operations but excluding the Exempt Staff) (**Available Staff**) are available to be offered employment by the Purchaser under clause 30.8(b).
- (b) The Director agrees to procure any Purchaser to make offers of employment to all of the Available Staff which:
 - (i) are on terms no less favourable considered as a whole to the Available Staff than their terms of employment with an Operator or Associated Operator;
 - (ii) provide for continuity of Staff Liabilities and entitlements in relation to long service leave;
 - (iii) meet the relevant criteria of offers of acceptable alternative employment set out in the enterprise or workplace agreement certified or lodged under the *Workplace Relations Act 1996* (Cth) applicable to the Staff; and
 - (iv) take effect from the end of the Term.
- (c) In relation to Available Staff who accept offers of employment from the Purchaser (**Transferring Staff**), the relevant employer Operator agrees to pay to the Purchaser an amount (**Transferring Staff Payment**) for assuming the Staff Liabilities of those Transferring Staff calculated as follows:

$$\text{Transferring Staff Payment} = (1 - T) \times SLTS$$

where:

T = the corporate tax rate (expressed as a decimal figure) applicable on the Transfer Date;

$SLTS$ = the aggregate of the Staff Liabilities for all Transferring Staff (less the Sick Leave Discount) calculated and valued by an independent actuary who:

- (i) is jointly appointed by the Director, the relevant Operator and the Purchaser;
- (ii) must apply relevant Australian accounting standards; and

- (iii) must apply any assumptions agreed to by the Director, the relevant Operator and the Purchaser; and

Sick Leave Discount = 80% of the Staff Liabilities that relate specifically to the sick leave entitlements of the Transferring Staff,

and which will be deducted as set out in Schedule 7 item 1.

- (d) In relation to Available Staff who do not accept an offer by the Purchaser under clause 30.8(b) (**Non-Transferring Staff**) the relevant employer Operator remains liable for, and agrees to indemnify the Director and Purchaser for, any Staff Liabilities for the Non-Transferring Staff.

30.9 Restrictions relating to Staff

Unless required under any award, certified agreement or workplace agreement, under contract or any Law each Operator agrees not to, and agrees to ensure that each Associated Operator does not, vary, or purport or promise to vary, the terms or conditions of employment of any member of Staff (other than the Exempt Staff) or to engage additional Staff after a Termination Notice is given.

30.10 Intellectual Property licences

- (a) To the extent that any Bus Operations IP that is owned by an Operator or an Associated Operator is not transferred under this clause 30, each relevant Operator agrees to grant, and agrees to procure that each Associated Operator grants, to the Director or any Successor Operator, Interim Operator or Step-in Party appointed by the Director, an irrevocable, perpetual, non-exclusive, royalty free, transferable licence (with a right to sub-licence) to use that Bus Operations IP for the purpose of permitting any Successor Operator, Interim Operator or Step-in Party to provide or promote the Local Services or equivalent services during any Step-in Period or following Termination and for no other purpose.
- (b) To the extent that an Operator or an Associated Operator makes use of Intellectual Property in conducting the Bus Operations which is not owned by it or the Director, each relevant Operator agrees to use its best endeavours to ensure, and agrees to procure that each Associated Operator uses its best endeavours to ensure, that they will be able to assign or novate that Intellectual Property under clause 30.1 or to grant a licence to that Intellectual Property if required on the terms stated in clause 30.10(a).

30.11 Intellectual Property Indemnity

Each Operator agrees to, and agrees to procure that each Associated Operator does, indemnify and hold the Director and any Successor Operator, Interim Operator or Step-in Party harmless against all Losses arising out of or in connection with the Director's or any Successor Operator's, Interim Operator's or Step-in Party's use of the Intellectual Property in a manner contemplated by clause 30.10 infringing any third party's rights in the Intellectual Property.

30.12 Operators' End of Term Option

- (a) Despite any other provision of this document each Operator and any relevant Associated Operator may, at least 18 months before the End of Term, grant to the Director or his nominee an option to acquire all of the Assets used in the Bus Operations on the same terms as if he had a Termination option under clause 30.1 to 30.11 inclusive (**End of Term Option**) that is exercisable in the manner referred to in clause 30.12(b).
- (b) The End of Term Option will be granted by the delivery to the Director of written notice and (if the option relates to the freehold in any Contract Depot) a counterpart of the Termination Depot Option Deed:

- (i) varied by:
 - (A) replacing the definition of Option Period with the following:

Option Period means the period beginning on the date of delivery of this document to the Director as required by clause 30.12(b) of the Service Contract and ending at 5.00pm on the date on which the Term of the Service Contract expires.
 - (B) amending clause 4 of the Termination Depot Option Deed to read as follows:

To exercise the option, the Grantee agrees to deliver to the Grantor before the end of the Option Period:

 - (a) an option exercise notice in the form in Schedule 1; and
 - (b) two copies of the Contract executed by the Grantee with the day of sale completed as the day on which the Grantee exercises the option; and
- (ii) executed by the Operators and or any relevant Associated Operator as required, **(End of Term Depot Option Deed)**.
- (c) Where the End of Term Option is exercised:
 - (i) the Director may, by giving at least two months written notice, extend the Term on the same terms and conditions as this document for six or 12 months;
 - (ii) the Director will prepare and deliver to each Operator and any relevant Associated Operators a transfer agreement in substantially the same form as the Termination Transfer Agreement for execution by each Operator and any relevant Associated Operators and the power of attorney granted by the Operators under clause 30.2(f) will apply to allow the Director to execute the transfer agreement if an Operator has not provided the executed transfer agreement to the Director within five Business Days. For the purposes of this clause 30 and the End of Term Depot Option Deed the transfer agreement will be referred to as the Termination Transfer Agreement; and
 - (iii) all references in clauses 30.1 to 30.11 and Schedule 7 to:
 - (A) the Transfer Date will be deemed to be references to the date that is 30 days after delivery of the counterpart of the End of Term Option Deed under clause 30.12(b);
 - (B) the Termination Notice will deemed to be references to the counterpart of the End of Term Option Deed delivered by the Operators under clause 30.12(b); and
 - (C) the Transfer Notice will deemed to be references to the notice by which the Director exercises the option granted under clause 30.12(b).

31. Termination arrangements

31.1 Going Concern

Each Operator agrees to, and agrees to procure that each Associated Operator does, maintain and manage the Assets in a way that a Successor Operator, Interim Operator or Step-in Party is able at

any time to take over the Bus Operations as a going concern where this document is Terminated under clause 28.3.

31.2 Operators to facilitate

If the Bus Operations are to be transferred to an Interim Operator or a Successor Operator following Termination, the Operators agree to, and agrees to procure that each Associated Operator does, facilitate in all respects the transfer of the Bus Operations to the Interim Operator or Successor Operator as the case may be, including the assignment, transfer or novation of any relevant contract used in the Bus Operations.

31.3 Continuity Information

The Operators agree to, and agrees to ensure that each Associated Operator does, maintain, keep up to date and make available for a Step-in Party, a proposed Interim Operator or a proposed Successor Operator, key information (in a readily discernable, accessible and usable form) relating to the Bus Operations that would assist any of these entities to take over all or part of the Bus Operations, including:

- (a) all Operational Records;
- (b) details of each Operator's and each Associated Operator's management and organisational structure, including a listing of all positions;
- (c) details of each Operator's and each Associated Operator's management team (including responsible officers), identifying their names, roles, responsibilities and contact details;
- (d) an asset register for Assets;
- (e) a register of Plant and Equipment;
- (f) details of all computer and other information systems and data including the Business Systems;
- (g) a register of all relevant contracts and other arrangements entered into by each Operator and each Associated Operator;
- (h) details of Staff Liabilities;
- (i) full maintenance records for the Contract Buses;
- (j) the Management Information System;
- (k) any books, records or other documents that each Operator is required to keep under the PTCA Regulations, nominated by the Director; and
- (l) any other information that the Director reasonably requests each Operator to keep.

31.4 Access

- (a) As and from the Commencement Date, the Operators agree to, and agrees to procure that each Associated Operator does, prepare and maintain a detailed and complete guide as to the location of the Continuity Information at a location specified by the Director (**Continuity Guide**).
- (b) The Operators agree to, and agrees to procure that each Associated Operator does, ensure that a Step-in Party, Successor Operator or Interim Operator has immediate access to the Continuity Guide and Continuity Information at Termination or step-in under clause 27.

31.5 Warranty as to Continuity Information

Each Operator warrants that any Continuity Information provided to, or inspected by, the Director, a proposed Interim Operator or a proposed Successor Operator will be true and correct

in all material respects and not misleading, by omission or otherwise, as at the time it is provided or inspected.

31.6 Access to Staff

Further to its obligation under this clause each Operator agrees to provide, and procure that each Associated Operator provides, access to Staff at all reasonable times to an Interim Operator or a Successor Operator, but only to the extent that the access does not materially interfere with the Bus Operations.

31.7 No frustration

Each Operator agrees not to, and agrees to procure that each Associated Operator does not, do anything which directly or indirectly avoids, or materially prejudices or frustrates the transfer of the Bus Operations as a going concern following Termination of this document under clause 28.3.

32. Force majeure

32.1 Notification of Force Majeure Event

If either an Operator (including an Associated Operator) or the Director (**Affected Party**) is prevented from performing any of its obligations under this document by a Force Majeure Event other than a Discriminatory Change in Law or, in the case of a Discriminatory Change in Law that performance is rendered unlawful, the Affected Party agrees to immediately give the other party a written notice containing the:

- (a) full particulars of the Force Majeure Event;
- (b) nature and likely duration of the Force Majeure Event;
- (c) obligations of the Affected Party the performance of which is prevented; and
- (d) nature and extent of the effect of the Force Majeure Event on those obligations.

32.2 Effect of Force Majeure Event

- (a) The non-financial obligations of the Affected Party are suspended to the extent that they are affected by the Force Majeure Event, from the date the Affected Party gives the written notice under clause 32.1 until cessation of the Force Majeure Event.
- (b) The Term will not be extended by the period of a Force Majeure Event.

32.3 Mitigation

An Affected Party agrees:

- (a) to take all necessary and reasonable steps to minimise and or remove the effects of that Force Majeure Event; and
- (b) to take all action reasonably practicable to mitigate any Loss suffered by the other party as a result of the Affected Party's inability to perform any of its obligations under this document.

32.4 Cessation of Force Majeure Event

On the cessation of the Force Majeure Event which is the subject of a written notice under clause 32.1, the Affected Party agrees:

- (a) to immediately give written notice to the other party of the cessation of the Force Majeure Event; and
- (b) to resume performance of any obligations suspended as a result of the Force Majeure Event.

33. Insurance

33.1 Insurance policies

During the Term, the Operators agree to effect and maintain, and procure that each Associated Operator effects and maintains:

- (a) public liability insurance for at least \$20 million per incident:
 - (i) covering claims in respect of:
 - (A) damage to any real or personal property; and
 - (B) the injury to, or death of, any person,in conducting the Bus Operations and performing the obligations under the Transaction Documents;
 - (ii) which extends to cover the vicarious liability of the Director, the State and the Director's Associates in respect of any acts and omissions of the Operators and the Associated Operators; and
 - (iii) including a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against the insureds;
- (b) workers' compensation insurance in respect of the Staff against any common law or statutory liability;
- (c) insurance coverage against third party property damage for at least \$10 million for all Contract Buses and Replacement Buses;
- (d) compulsory third party motor vehicle insurance in respect of the Contract Buses and the Replacement Buses; and
- (e) any other insurances which the Director reasonably requires and which are commonly effected by the operators of Buses and bus services comparable in Australia to the size, scope and complexity of the Bus Operations provided those insurances can be obtained on payment of a reasonable premium.

33.2 Insurance generally

- (a) The Operators agree that all insurances which they or an Associated Operator effects in compliance with this document will, subject to any Operator's and any Associated Operator's compliance with the requirements of any relevant Lease, be effected with insurers having a minimum long term credit rating of at least BBB+ (Standard & Poor's Australia) and BBB+ (Moody's Investors Service).
- (b) The Nominated Operator agrees to provide notice to the Director of any intended cancellation of insurances effected in compliance with this document by any Operator or Associated Operator.
- (c) The Nominated Operator agrees:
 - (i) to give the Director acceptable proof of currency and coverage of the insurances referred to in clause 33.1 before the Commencement Date and at least annually and at all other times during the Term as reasonably requested by the Director; and
 - (ii) to use reasonable endeavours (including paying any reasonable premium) to have each policy endorsed to include a non imputation clause to the effect that any non disclosure or misrepresentation by one insured party does not affect another

insured party provided that the non disclosure or misrepresentation was not made with the connivance of that other insured party.

33.3 Premiums

The Operators agree to pay, and agree to procure that each Associated Operator pays, all premiums in respect of all insurance policies referred to in clause 33.1 by the due date for payment of those premiums.

34. Intellectual Property

- (a) Subject to clause 34(b) and to the extent that it is lawfully able to do so, each Operator grants to the Director an irrevocable, perpetual, non-exclusive, royalty free, transferable licence (with the right to sub-license) to use and reproduce that Operator's relevant Intellectual Property in any publication of the Director's including timetables.
- (b) The licence granted under clause 34(a) is subject to the Director taking all usual and reasonable steps to protect the Operators' relevant Intellectual Property.
- (c) Each Operator agrees to, and agrees to procure that each Associated Operator does, indemnify and hold the Director and any Successor Operator, Interim Operator or Step-in Party harmless against all Losses arising out of or in connection with the Director's or any Successor Operator's, Interim Operator's or Step-in Party's use of the Intellectual Property in a manner contemplated by this clause infringing any third party's rights in the Intellectual Property.

35. Indemnity and limitation of liability

35.1 Indemnity

- (a) Each Operator indemnifies and agrees to keep indemnified the Director, the State and the Director's Associates (**Indemnified Persons**), from and against all Losses that may be incurred or sustained by any or all of the Indemnified Persons in respect of or arising from:
 - (i) any act, omission or neglect on the part of the Operators, any Associated Operator, any associate of theirs or any of their respective Staff in connection with the performance of their obligations under the Transaction Documents;
 - (ii) any Non-Compliance Event;
 - (iii) any Termination Event; or
 - (iv) any death, personal injury, loss or damage suffered by passengers or by any third party enjoying or affected by the provision of the Local Services caused or contributed to by any Operator, any Associated Operator, any associate of theirs or any of their respective Staff.
- (b) This indemnity will not apply to the extent that the Loss is caused or contributed to by fraud, wilful default or a negligent act or negligent omission on the part of the Indemnified Persons.
- (c) This indemnity will not exclude any other right of the Director or the Indemnified Persons to be indemnified by any Operator.

35.2 Release

Each Operator releases to the full extent permitted by Law the Indemnified Persons from all Losses which arise from any Operator's and the Associated Operators performance of their

obligations under the Transaction Documents, except to the extent that an act, omission or neglect of an Indemnified Person has caused or contributed to those Losses.

35.3 Exclusion of Indirect or Consequential Loss

- (a) Despite any other provision of a Transaction Document, the Director is not liable to make any payment to any Operator, by way of indemnity, damages or otherwise, in respect of any Indirect or Consequential Loss incurred or sustained by that Operator as a result of any act, omission or neglect of the Director or the Director's Associates.
- (b) Despite any other provision of a Transaction Document, an Operator is not liable to make any payment to the Director, by way of indemnity, damages or otherwise, in respect of any Indirect or Consequential Loss incurred or sustained by the Director as a result of any act, omission or neglect of the Operator.

35.4 Liability with respect to passengers and third parties

The Operators acknowledges that the Director will not be responsible for the actions of the Operators, any Associated Operator or an associate of any of them and that, otherwise than as expressly provided in this document, the Operators and each Associated Operator agrees to provide the Local Services and comply with their respective obligations under the Transaction Documents at their own cost and risk without recourse to the Director, the State or government funds or guarantees.

35.5 Proportionate liability

Each Operator indemnifies, and agrees to make whole and agrees on demand by the Director to indemnify the Director for the difference (if any) between:

- (a) the amount of any Loss suffered or incurred by the Director for which, but for Part IVAA of the *Wrongs Act 1958* (Victoria), the Director would have been entitled to recover from that Operator arising out of or in connection with an act or omission of that Operator under a Transaction Document; and
- (b) the liability of that Operator to the Director as determined by the court under Part IVAA of the *Wrongs Act 1958* (Victoria) arising out of or in connection with an act or omission of that Operator,

subject to the Director using his reasonable endeavours to mitigate the amount of any Loss to the extent not prejudicial to his interests.

36. Performance Bond

36.1 Provision

The Operators agree to, on or before the Commencement Date, procure the issue to the Director of a performance bond (**Performance Bond**) which:

- (a) is in the form set out in Schedule 6;
- (b) is issued by a financial institution (as defined in the Banking Act 1959 (Cth)) (**Issuer**) having a minimum long term credit rating of at least A- (Standard & Poor's Australia) and A3 (Moody's Investors Service) (**Required Rating**);
- (c) is payable at an office of the Issuer in Melbourne;
- (d) is for an amount of one month's Local Service Payment; and
- (e) expires no earlier than:
 - (i) three years after it is issued; or

- (ii) 12 months after the due date for end of the Term,
whichever is earlier.

36.2 Replacement

The Operators agree to procure the issue to the Director of a replacement Performance Bond:

- (a) at least 12 months prior to the expiration of the current Performance Bond; and
- (b) if the rating of the Issuer falls below the Required Rating, within five Business Days after being requested by the Director to do so.

36.3 Demands

- (a) The Director may make a demand under the Performance Bond:
 - (i) in respect of any amount that he considers is due and payable (but which has not been paid) by any Operator to him or the TTA under a Transaction Document or in connection with any Operator's conduct of the Bus Operations; or
 - (ii) for the amount of any Loss suffered or incurred by him as a result of a Termination Event or Non-Compliance Event occurring; or
 - (iii) in connection with any breach of warranty by any Operator or an Associated Operator under the Termination Transfer Agreement that results in a warranty claim being made under the Termination Transfer Agreement.
- (b) The Director may make a demand under the Performance Bond for the full amount then undrawn if a replacement Performance Bond is not provided to the Director in accordance with clause 36.2. The amount paid to the Director will be paid by him to the Nominated Operator as soon as the replacement Performance Bond is provided.
- (c) The Director may make a demand in respect of an amount referred to in clauses 36.3(a) or (b) irrespective of whether or not the amount is, or the circumstances relating to the amount are:
 - (i) in dispute;
 - (ii) subject to the dispute resolution procedures set out in clause 39 or in another Transaction Document; or
 - (iii) subject to any court or other proceeding.

36.4 No Injunction

Each Operator agrees not to take any steps to restrain or injunct the Director from making a demand under the Performance Bond or the Issuer paying any amounts under the Performance Bond.

36.5 Repayment

If the Issuer makes a payment to the Director as a result of a demand made under the Performance Bond in accordance with clauses 36.3(a) or (b) and all or part of the amount in respect of which demand was made was not actually, or did not become, payable by an Operator to the Director (**Relevant Amount**), then the Director agrees to pay to the Nominated Operator the Relevant Amount plus interest at the Default Rate on the Relevant Amount on a daily basis from the date that the Issuer met the demand in respect of the Relevant Amount until the date that the Relevant Amount is paid to the Nominated Operator.

36.6 Notice

The Director agrees to, as soon as practicable after he makes a demand under the Performance Bond, give notice to the Nominated Operator specifying the amount of the demand and the Director's reason for making the demand.

36.7 Return

- (a) The Director agrees to provide the Performance Bond to be replaced to the Nominated Operator in exchange for the replacement Performance Bond.
- (b) The Director agrees to return the Performance Bond to the Nominated Operator as soon as practicable after the date falling 12 months after the end of the Term.

37. Confidentiality

37.1 Non-disclosure by the Operators

Each Operator agrees to treat as confidential all information:

- (a) obtained from the Director in connection with the Transaction Documents; or
- (b) created by that Operator in the course of conducting the Bus Operations that is, by its nature, confidential and commercially sensitive to the Director,

and agrees not to divulge or disclose the information to any person other than:

- (c) another Operator, the Associated Operators and the Staff to the extent that they need to have the information for the performance of their duties in respect of this document;
- (d) to that Operator's advisers in connection with this document, including its bankers, accountants, lawyers and insurance brokers; or
- (e) with the Director's consent.

37.2 Excludes public knowledge

For the purposes of this clause, information is not confidential if it is public knowledge, otherwise than as a result of a breach of this clause, or if it is trivial or obvious.

37.3 Others

Each Operator agrees to ensure that its and the Associated Operator's Staff and advisers are aware of, and comply with, the provisions of this clause.

37.4 No limitation

Nothing in this clause limits any Operator's obligations under any other provision of a Transaction Document.

37.5 Non-disclosure by Director

Subject to clauses 37.6, 37.7 and 37.8 the Director agrees to treat as confidential all information obtained from each Operator that is, by its nature, confidential and that is commercially sensitive to the Operator.

37.6 Director may disclose

Nothing in a Transaction Document prevents the Director from disclosing any information (including any of the Transaction Documents) which the Director:

- (a) reasonably considers relevant to the exercise by a Step-in Party of Step-in Powers;
- (b) reasonably considers relevant to the appointment and engagement of an Interim Operator or a Successor Operator;

- (c) reasonably considers relevant to be disclosed for the purpose referred to in clause 31;
- (d) is required to disclose in the performance of his obligations under the Transaction Documents;
- (e) needs to disclose to his professional advisers for the purpose of obtaining their advice;
- (f) is required to publish in connection with the performance of his functions;
- (g) needs to disclose to obtain the full benefit of his rights under the Transaction Documents;
or
- (h) is required by Law or constitutional convention to disclose to Parliament, the State, Cabinet, another Minister of the Crown, or any other Government Body,

except that:

- (i) he must not disclose any Financial Records or any Statement of Financial Position for any of the purposes referred to in clauses 37.6(a), (b) or (c); and
- (j) he may only disclose rostering information held by an Operator or an Associated Operator to a Step-in Party appointed under clause 27.1 or to a Successor Operator where this document is Terminated under clause 28.3.

37.7 Disclosure if required by Law

Nothing in the Transaction Documents prevents any party from disclosing any information which it is required to disclose by Law.

37.8 Public disclosure

- (a) Nothing in the Transaction Documents prevents the Director, State, the Minister or any State Government Body from disclosing any information which it is required to disclose:
 - (i) under the *Freedom of Information Act* 1982 (Victoria);
 - (ii) under the *Ombudsman Act* 1973 (Victoria);
 - (iii) to satisfy the disclosure requirements of the State Auditor General and to satisfy the requirements of Parliamentary accountability, or, in the case of the Minister, to fulfil his or her duties of office;
 - (iv) under State Government procurement practices and procedures; or
 - (v) in the State's annual report in respect of all operators of *regular passenger services*.
- (b) Each Operator agrees to use all reasonable endeavours to assist the Director, State, the Minister or a State Government Body in meeting their obligations under clause 37.8(a) provided the Director bears any direct material and substantiated costs of compliance.
- (c) Without limiting clause 37.8(a), the Director or any Operator may, provided they give reasonable prior written notice to the other of them, publish:
 - (i) any information reasonably necessary to explain the nature of, reasons for and or consultation on, any PSR changes or proposed PSR changes;
 - (ii) any information in connection with the procurement of all or any part of the Local Services following Termination, provided that the information may only be published during the period of, or during the period leading up to, the procurement;

- (iii) any Operational Report delivered to the Director under clause 19, provided that any advertising revenue and revenue in relation to any Other Use of Contract Buses by the Operators or Associated Operators is excluded;
 - (iv) the results, on a Route, section of a Route, Bus Stop or other comparable basis, of any passenger counts;
 - (v) any information in connection with the provision of the Local Services by any Operator in accordance with the Bus Loading Standards;
 - (vi) the Transaction Documents, excluding details of the Local Service Payments; and
 - (vii) any information that is reasonably necessary to secure the Continuity of the Local Services.
- (d) Each Operator acknowledges that, in relation to a Regional Area, either the Director or the BAV may publish:
- (i) the aggregate amount of service payments and performance incentives paid to Bus Operators for providing *regular passenger services* in that Regional Area;
 - (ii) the results, on a route, section of a route, bus stop or other comparable basis, of any monitoring or measurement of the operational performance of the Bus Operators in providing *regular passenger services* in that Regional Area;
 - (iii) the results of any customer surveys, patronage surveys and revenue protection measures published by Metlink and any fare evasion information in relation to that Regional Area; and
 - (iv) ticketing and revenue information in relation to that Regional Area.
- (e) Each Operator acknowledges that, in relation to the Metropolitan Area, either the Director or the BAV may publish:
- (i) details of any breaches and defaults by Bus Operators of their obligations to provide *regular passenger services*, including the number and nature of, and penalties and remedial action taken in relation to, those breaches and defaults; and
 - (ii) detailed descriptions of the specifications for buses used in the provision of *regular passenger services* and the total amount to be spent on maintenance of those buses.

37.9 Publicity

Subject to clause 37.8, the other provisions of this document and except for notices, documentation or information which any Operator is required to disclose to the Australian Stock Exchange Limited, each Operator:

- (a) agrees not to, and must ensure that its Associated Operators do not, make any public announcement or statement or issue any media release in relation to the Local Services or the Transaction Documents (**Public Announcement**) without the prior consent of the Director, except if the Public Announcement is of a kind generally made by operators operating a bus service in Australia comparable to the size, scope and complexity of the Bus Operations in the ordinary course of their business;
- (b) agrees to give the Director a draft of any proposed Public Announcement which requires the Director's consent and use its reasonable endeavours to agree with the Director the wording and timing of that Public Announcement before it is made; and

- (c) agrees to as soon as practicable, give a copy of any Public Announcement, agreed to or approved by the Director under this clause 37.9, to the Director.

38. Practice Notes

- (a) The Director may, provided he has first consulted with the BAV:
 - (i) issue Practice Notes to the Operators or an Associated Operator in relation to any provision of the Transaction Documents; and
 - (ii) vary or revoke any Practice Note.
- (b) Subject to clause 38(c), Practice Notes are intended to facilitate the administration of the Transaction Documents but are not contractually binding on the Director, the Operators or an Associated Operator.
- (c) Where a provision of a Transaction Document permits the Director to:
 - (i) specify the form or content of any document or other information to be prepared or provided by the Operators or an Associated Operator; or
 - (ii) otherwise specify the requirements with which the Operators or an Associated Operator are to comply,the Director may do so by issuing a Practice Note to the Operators or an Associated Operator and any Practice Note issued under this clause 38(c) is binding on the Director, each Operator and an Associated Operator for the purposes of the provision of the Transaction Document under which it is issued.
- (d) Despite any other provision in this clause 38, any Practice Note issued by the Director regarding the procurement and provision of:
 - (i) new *regular passenger services* (in accordance with the PTCA as amended by the Amending Legislation); and
 - (ii) Orbital SmartBus Services,will be contractually binding on the parties provided that it is consistent with the PTCA and has been agreed with the BAV.

39. Dispute resolution

39.1 Notice of Dispute

If a dispute or difference arises under or in connection with this document, either party (and in the case of any Operator, the Nominated Operator) may give the other written notice expressing the nature of the dispute or differences (**Dispute Notice**).

39.2 Parties to meet

As soon as practicable after receipt by a party of a Dispute Notice the Director and the Nominated Operator agree to ensure that senior and relevant Authorised Representatives of theirs meet and attempt to resolve the issue.

39.3 Referral to senior executives

If the issue is not resolved within 10 Business Days of the receipt of the Dispute Notice, it will be immediately referred to the most senior executive officers of the Director and the Nominated Operator who will personally or through their nominated delegates (who must be senior to the persons who met under clause 39.2) meet as soon as practical and attempt to resolve the issue.

39.4 Referral to Expert or Arbitrator

If the issue is not resolved within 20 Business Days of the receipt of the Dispute Notice, either the Director or the Nominated Operator may:

- (a) if the issue is of a technical nature or if this document requires, refer it for resolution to a person who is an independent expert in its subject matter (**Expert**); or
- (b) if the issue is not of a technical nature, refer it to an independent person (**Arbitrator**) for arbitration.

39.5 Issues for resolution by an Expert

An issue is of a technical nature if it is of a kind that, if it were litigated, could be resolved on expert evidence alone. If the parties are unable to agree whether or not an issue is of a technical nature, the opinion of the Director as to whether or not the issue should be referred to an Expert prevails.

39.6 Selection of Arbitrator or Expert

If the parties are unable to agree on who to appoint as an Arbitrator or an Expert the Director may make the appointment. In making the appointment, the Director agrees to select a person who is independent of the parties and who is suitably qualified.

39.7 Procedure on arbitration

Subject to any other provision of this document to the contrary, an arbitration is to be conducted in accordance with the *Commercial Arbitration Act 1984* (Victoria) and subject to that Act, with the expedited commercial arbitration rules of the Institute of Mediators & Arbitrators (Australia).

39.8 Procedure on resolution by Expert

- (a) The Expert appointed under clause 39.4 or 39.6 acts as an expert and not as an arbitrator.
- (b) Each party to a dispute which is referred to the Expert for determination must have a reasonable opportunity to make submissions to the Expert.
- (c) The costs of the Expert must be borne in equal shares by the parties.
- (d) The Expert's decision is final and binding on the parties to the dispute, except to the extent of fraud, gross negligence or a manifest error.

39.9 Court proceedings and other relief

- (a) A party may not start court proceedings in relation to any issue or dispute under this document unless it has complied with this clause.
- (b) This clause does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensatable in damages.

39.10 Exclusion

This clause does not apply to any dispute relating to or arising out of the exercise or non-exercise by the Director of any right or discretion conferred on the Director by the PTCA or otherwise by Law.

39.11 Performance not affected

Despite the parties having a dispute or difference, they agree to continue to perform their respective obligations under the Transaction Documents.

40. Goods and Services Tax

40.1 Interpretation

Words or expressions used in this clause 40 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

40.2 Consideration is GST exclusive

Any consideration or amount to be paid or provided for a supply made under or in connection with this document, unless specifically described as **GST inclusive**, does not include GST payable on that supply.

40.3 Gross up of consideration

If a party (**Supplier**) makes a supply under or in connection with this document on which GST is imposed (not being a supply the consideration for which is stated specifically as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) agrees to also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

40.4 Recipient created tax invoices

The parties agree to enter into an agreement in the form provided by the Director which allows the Director to issue recipient created tax invoices in respect of the Local Services provided under this document.

40.5 Reimbursement

If a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a Loss incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Loss relates.

41. Guarantee and Indemnity

41.1 Guarantee

The Parent Guarantor unconditionally and irrevocably guarantees to the Director the due and punctual performance of each Operator's and the Associated Operators' obligations under the Transaction Documents.

41.2 Indemnity

As a separate and independent obligation, the Parent Guarantor indemnifies the Director against any Loss of the Director as a result of or in connection with any obligation of an Operator or an Associated Operator that is being guaranteed by the Parent Guarantor being unenforceable, invalid or illegal or an Operator or an Associated Operator failing to comply with its obligations under the Transaction Documents.

41.3 Continuing guarantee and indemnity

The guarantee and indemnity in this clause 41 is a continuing guarantee and remains in full force and effect until all obligations of the Operators and the Associated Operators under the Transaction Documents have been fully performed and is not prejudiced or adversely affected by anything which would otherwise reduce or discharge that liability, including:

- (a) any waiver or concession in relation to, or any amendment under, any Transaction Document;
- (b) any obligation of an Operator or an Associated Operator that is being guaranteed by the Parent Guarantor being unenforceable, invalid or illegal; or
- (c) any Insolvency Event occurring in respect of any party.

42. General

42.1 Alterations and termination

Each Operator agrees not to amend or terminate any Transaction Document without the Director's prior written consent.

42.2 Independent

- (a) The relationship of the Director and each Operator is that of principal and contractor. Nothing constitutes the Director as a partner of any Operator, nor as party to a joint venture with any Operator. Except as is expressly provided in this document, neither party is the agent of the other or has the power to bind the other.
- (b) Each Operator agrees not to hold itself out as the agent of the Director unless this document otherwise authorises it to do so.

42.3 Assignment

- (a) An Operator may only assign a Transaction Document or a right under a Transaction Document with the prior written consent of the Director.
- (b) Each Operator agrees to obtain the Director's prior written consent to any Change in Control relating to it during the Term.
- (c) The consent of the Director under clauses 42.3(a) or (b) will not be unreasonably withheld where the assignment, transfer or change is to:
 - (i) a relative of that Operator;
 - (ii) a relative of the person having effective control of that Operator (where that Operator is a body corporate); or
 - (iii) a body corporate under the effective control of a person referred to in clause 42.3(c)(i) or (ii),
 provided that:
 - (iv) in the case of a Change in Control situation, that Operator retains its Accreditation; or
 - (v) in the case of an assignment or transfer, the assignee or transferee obtains Accreditation and enters into a new *service contract* with the Director on the same terms and conditions as set out in this document and providing for any other matter that the Director considers reasonably to be relevant.

42.4 Costs

- (a) Each party agrees to pay its own costs of negotiating, preparing and executing the Transaction Documents.
- (b) Each Operator and any relevant Associated Operator will be responsible for any capital gains tax liability triggered by the transfer of the Assets under clause 30.

- (c) The parties acknowledge that the Operators' and relevant Associated Operators' reasonable costs for the preparation of vendor's statements in relation to Owned Depots transferred under clause 30 will be capped at \$25,000 in aggregate. The Director agrees to pay any reasonable costs relating to the preparation of the vendor's statements in excess of that cap that are demonstrated and substantiated to the satisfaction of the Director.

42.5 Survival

Any indemnity or any obligation of confidence under this document is independent and survives termination of this document. Any other term by its nature intended to survive termination of this document survives termination of this document.

42.6 Counterparts

This document may be executed in counterparts. All executed counterparts constitute one document.

42.7 Contra Proferentem

The Transaction Documents are not to be interpreted against the interests of a party merely because that party proposed the relevant Transaction Document or some provision in it or because that party relies on a provision of the relevant Transaction Document to protect itself.

42.8 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

42.9 Entire agreement

The Transaction Documents constitute the entire agreement between the parties in connection with their subject matter and supersede all previous agreements or understandings between the parties in connection with their subject matter.

42.10 Trustee Capacity

- (a) Each Operator agrees to advise the Director at the time it enters into any Transaction Document whether it does so as the trustee of any trust.
- (b) If an Operator does enter into a Transaction Document in a trustee capacity, it warrants that:
- (i) its appointment as trustee of the relevant trust is valid and subsisting and it is not aware of any action to remove or replace it as trustee;
 - (ii) the trust deed for the relevant trust authorises its entry into the Transaction Documents; and
 - (iii) it has a right of recourse to the assets of the relevant trust sufficient to cover any Claim that may be made against it under the Transaction Documents.
- (c) Each Operator agrees not to engage any Subcontractor who acts in a trustee capacity under clause 7 unless and until it has obtained warranties from the Subcontractor covering those matters set out in clause 42.10(b).

42.11 Further action

Each party agrees to do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to the Transaction Documents and any transactions contemplated by them.

42.12 Document subject to Transport Act and PTCA

Nothing in this document will affect or limit any powers or rights that the parties may have under the Transport Act or the PTCA, except where those powers or rights have been expressly waived by the party entitled to the benefit of the right or power.

42.13 Severability

A term or part of a term of this document that is illegal or unenforceable may be severed from this document and the remaining terms or parts of the terms of this document continue in force.

42.14 Waiver

Unless otherwise provided in this document, a party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

42.15 Rights held on trust

Each Operator acknowledges and agrees that:

- (a) a waiver, release, acknowledgement or indemnity in favour of the Director's Associates is held on trust by the Director for the benefit of any of the Director's Associates; and
- (b) the consent of the Director's Associates referred to in clause 42.15(a) is not required for any alterations to this document.

42.16 Director's compliance

The Director is not obliged to do anything prescribed or contemplated for him (or the State) in any document referred to in a Transaction Document (other than another Transaction Document) or that relates to the provision of *regular passenger services* unless either the Director:

- (a) is expressly required to do the same thing by another provision of a Transaction Document; or
- (b) agrees in writing to do so.

42.17 Governing law and jurisdiction

This document is governed by the Laws of the State and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State.

42.18 Notices and other communications

- (a) A notice, demand, consent, approval or communication given under this document (Notice) must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this document); and
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 42.18(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and

- (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

- (c) Any notice, demand, consent, approval or communication by the Director to, or consultation with, an Operator under this document must be given to, or be with, the Nominated Operator on behalf of the relevant Operator, unless otherwise expressly provided in this document.
- (d) Any notice or communication received by the Director from, or any consultation with, the Nominated Operator will be deemed to have been authorised by the Operator on whose behalf the Nominated Operator purports to be acting.

42.19 Public Transport Ombudsman

- (a) Each Operator agrees to (and agrees to procure that each Associated Operator does) comply with the charter issued by Public Transport Ombudsman Limited (PTO) as if it was a member of PTO, including abiding by any decision of PTO which affects the Local Services.
- (b) Clause 42.19(a) does not confer on any Operator or an Associated Operator any of the rights of a member of PTO under the constitution of PTO, which rights vest in BAV in its representative capacity as a member of PTO.

42.20 VIPP Statement and VIPP Implementation Plan

- (a) The Operators:
 - (i) undertake that the VIPP Statement and VIPP Implementation Plan (if any) are accurate statements as to the intentions of the Operators at the date of this document; and
 - (ii) agree that a copy of the VIPP Statement and VIPP Implementation Plan:
 - (A) may be provided to the State Government Bodies responsible for administering and monitoring compliance with the VIPP; and
 - (B) may be included on a register, or in a report, of VIPP performance which is made available to other State Government Bodies.
- (b) Each Operator agrees to procure a statement from each of its Associated Operators for the purposes of complying with the VIPP and oblige each Associated Operator to comply with the requirements set out in this clause.
- (c) Each Operator agrees to allow the Director and the State to:
 - (i) have access to the Operational Records; and
 - (ii) obtain information from officers, employees, consultants and advisers of the Operator and from the persons, firms or corporations nominated in the VIPP Statement,for the purpose of monitoring compliance with the VIPP Statement and VIPP Implementation Plan.
- (d) The Nominated Operator agrees to notify the Director in writing of any material departure from the VIPP Statement or VIPP Implementation Plan.

- (e) Each Operator authorises the Director to divulge details of the VIPP Statement or VIPP Implementation Plan as necessary to make the enquiries contemplated in clause 42.20(c).

Signing page

EXECUTED as an agreement.

Dated 23 JUN 2008

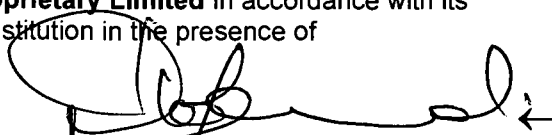

Signature
Hector McKenzie

~~[Name and title] Delegate of the Director of Public Transport~~

Witnessed by:

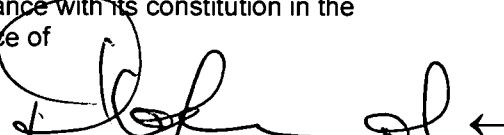

←
ERICA KHENG LI CHAN
525 Collins Street, Melbourne
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Executed by **W Sinclair & Sons
Proprietary Limited** in accordance with its
constitution in the presence of


Signature of director
DOUGLAS KEFFORD
Name of director (print)

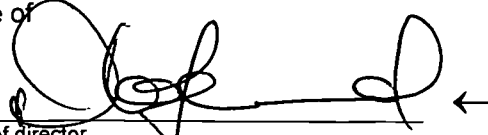

←
Signature of director/company secretary
(Please delete as applicable)
BRAM KEFFORD
Name of director/company secretary (print)

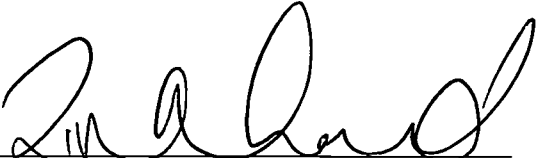
Executed by **Eastern Suburbs Omnibus
Services Proprietary Limited** in
accordance with its constitution in the
presence of


←
Signature of director
DOUGLAS KEFFORD
Name of director (print)


←
Signature of director/company secretary
(Please delete as applicable)
BRAM KEFFORD
Name of director/company secretary (print)

Executed by **Douglas Kefford Pty Ltd** in
accordance with its constitution in the
presence of


←
Signature of director
DOUGLAS KEFFORD
Name of director (print)


←
Signature of director/company secretary
(Please delete as applicable)
BRAM KEFFORD
Name of director/company secretary (print)

Schedule 1 – Local Service Specifications and PSR (clauses 1.1, 6.2, 8.2 and 8.7)

PART A

1. Exclusive Routes

Each Operator's right to provide Local Services is an exclusive right, subject to the PTCA and this document (including the exceptions set out in clause 2 of this Schedule), in respect of the Routes set out next to its name below and shown in Figure 1. The Local Services set out below constitute the Minimum Level of Service.

- (a) Local Services to be provided by W Sinclair & Sons Proprietary Limited

Description of Routes:

- Route 630 Elwood - Monash University.
- Route 900 Caulfield - Rowville
- School Route 2001 (Warrigal Road - Star of The Sea)
- School Route 2002 (Hawthorn Road to Monash University)
- School Route 2003 (Warrigal Road to Star of The Sea)
- School Route 2004 (Warrigal Road to Star of The Sea)
- School Route 2005 (Star of the Sea to Ormond)
- School Route 2006 (Kilvington Girls to Monash University)
- School Route 2000 (Star of the Sea to East Boundary Rd)
- School Route 2010 (Star of the Sea to Ormond/Monash University)
- School Route 2011 (Star of the Sea to Monash University)

The Operator's right to provide the Local Services includes the right to provide those services within the area extending 400m from the Region boundaries and from each line of Route, unless they are school services or services operating to industrial work areas.

- (b) Local Services to be provided by Eastern Suburbs Omnibus Services Proprietary Limited

- Route 605 (Gardenvale - Princes Bridge (City))

The Operator's right to provide the Local Services includes the right to provide those services within the area extending 400m from the Region boundaries and from each line of Route, unless they are school services or services operating to industrial work areas.

2. Exceptions to Operators' exclusivity

Each Operator acknowledges that:

- (a) it has no exclusive rights to provide Local Services:
- (i) in the area within a one kilometre radius of transport nodes (including train stations, tram and bus interchanges) or Principal, Major or Specialised Activity

Centres defined and identified in the State planning document (as updated) titled *Melbourne 2030 – planning for sustainable growth* (released in October 2002);

- (ii) in the area within a two kilometre radius of the General Post Office, Melbourne;
 - (iii) in the area extending 400 metres beyond the boundary of Another Operator's region or any route operated by it; and
 - (iv) on the routes delineated in Annexure I (as amended by the Director under this document), but only to the extent necessary to allow for the provision of Orbital SmartBus Services.
- (b) its exclusive rights to provide Local Services are subject to (and extinguished or modified to the extent necessary to allow for) the provision by other Bus Operators of any *regular passenger services* being provided as at the Commencement Date that cross over or overlap with, or are provided within, a Route or Region, including as specified below:

- (i) W Sinclair & Sons Pty Ltd

Overlapping sections of Routes:

- Route 630 -North Road East Brighton between Kooyong and Hawthorn Roads
- Route 630 -North Road Ormond between Tucker and Koornang Roads
- Route 630 -North Road Murrumbeena between Marlborough Street and Crosbie Road
- Route 630 – North Road between Huntingdale R/S and Monash University.
- Route 900 – Wellington Rd between Clayton Rd and Dandenong Rd – Route 631 (Moorabbin/Grenda)
- Route 900 – Wellington Rd between Clayton Rd and Dandenong Rd – Route 703,733 (Ventura)
- Route 900 – Wellington Rd between Henderson Rd and Haverbrack Dve – Route 802 (Grenda)
- Route 900 – Wellington Rd between Henderson Rd and Brandon Park Dve – Route 804 (Grenda)
- Route 900 – Wellington Rd between Garnett Rd and Haverbrack Dve – Route 804 (Grenda)
- Route 900 – Wellington Rd between Garnett Rd and Stud Road – Route 754 (Ventura)
- Route 900 – Wellington Rd between Jacksons Rd and Stud Rd – Route 691 (Croydon)
- Route 900 – Wellington Rd between Wanda St and Brandon Park Dve – Route 848 (Grenda)
- Route 900 – Wellington Rd between Henderson Rd and Jacksons Rd – Route 862 (Grenda)

- Route 900 – Wellington Rd between Brandon Park Dve and Jacksons Rd – Route 850 (Grenda)

Points of cross over on Routes:

- Route 630 - North Rd at Warrigal Rd (Route 700 (Ventura))
- Route 630 - North Rd at Golf Rd / Golf Links Ave (Route 733 (Ventura))
- Route 900 – Wellington Rd at Springvale Rd – Route 888/889 (Grenda)

Other operators' routes crossing over into Region

- Not applicable

(ii) Eastern Suburbs Omnibus Service Pty Ltd

Overlapping sections of Routes

- Route 605 -Punt Road Richmond between Swan Street and Alexandra Avenue

Points of cross over on Routes:

- Route 605 - Kooyong Rd at Glen Eira Rd (Route 623 (Driver))

(c) its exclusive rights to provide Local Services are subject to (and extinguished or modified to the extent necessary to allow for) the procurement and provision by any person after the Commencement Date of:

- (i) New Services awarded to other Bus Operators in accordance with Division 4, Part 3 of the PTCA and the Practice Note for New Services;
- (ii) NBT Services (refer to clause 9);
- (iii) Special Event Services (refer to clause 10);
- (iv) replacement bus services during periods of disruption to tram or rail services;
- (v) Night Rider services;
- (vi) Greenfield Services (refer to clause 9);
- (vii) Airport Services (refer to clause 9); and
- (viii) Orbital SmartBus Services.

3. Service adjustments prior to the Commencement Date

- (a) The description and level of Local Services specified in Parts A and B of this Schedule 1 respectively includes service adjustments and or new services requested by the Director, and in relation to which the Director has approved the Nominated Operator's payment claims, under a Previous Contract prior to the Commencement Date.

- (b) The Director and the Nominated Operator agree to revise Parts A and or B of this Schedule 1 (as applicable) within 10 Business Days after the Nominated Operator's outstanding payment claims for Pre Commencement Service Adjustments are processed and approved by the Director.

Figure 1 – Map showing Routes of W Sinclair & Sons Proprietary Limited and Eastern Suburbs Omnibus Services Proprietary Limited

PART B

The Timetables applicable for each Route as at the Commencement Date will together constitute the PSR unless and until a formal PSR document is created and inserted (by agreement between the Director and the Operator) into this Part B.

Attached are Route timetables listed below. School Routes as specified below.

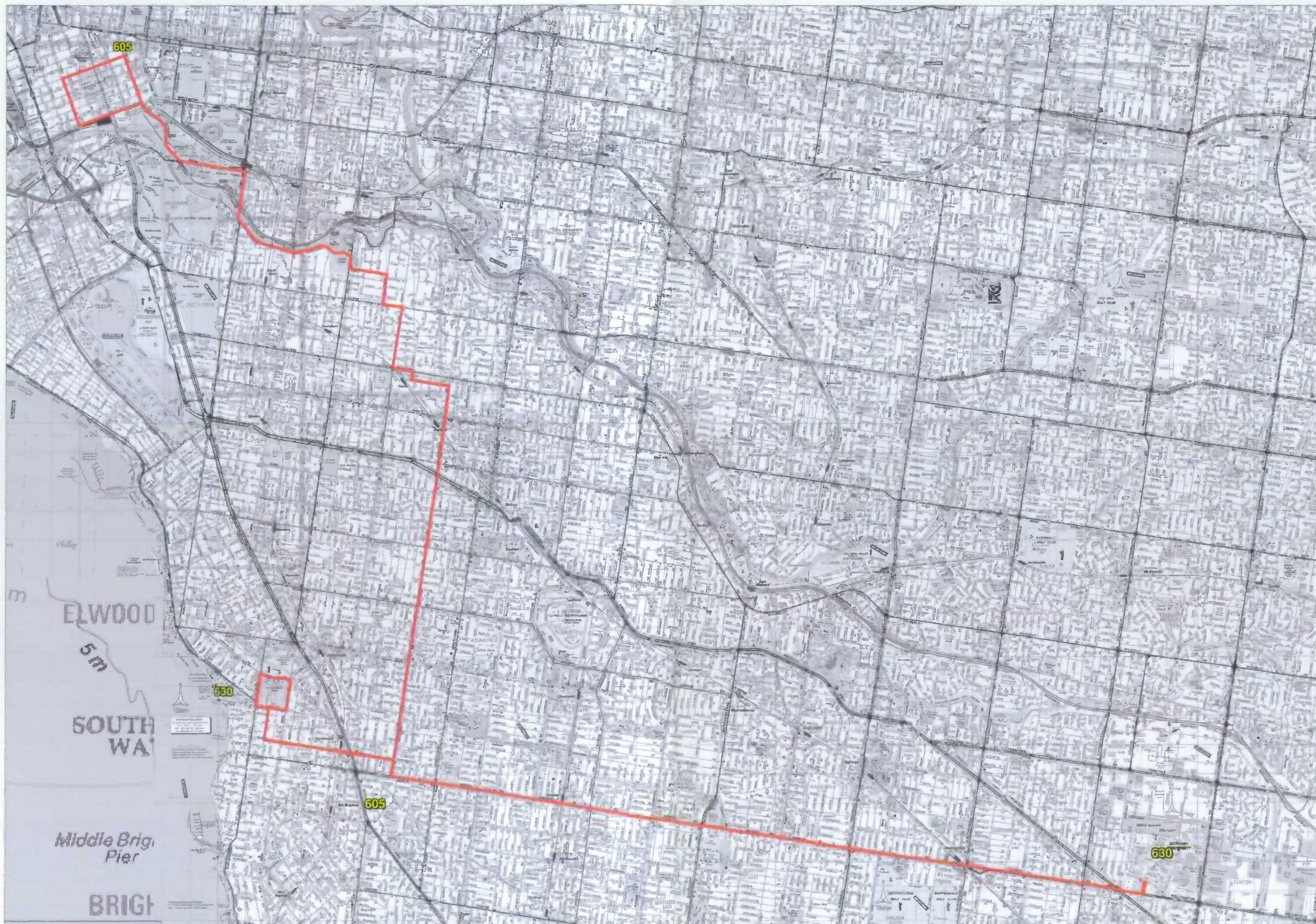
W Sinclair & Sons Proprietary Limited

- Route 630 Elwood - Monash University T/T Apr-04
- Route 900 Caulfield – Rowville T/T 16 October 2007
- School Route 2001 - 7.40am from Warrigal Road along North Road to arrive at Star of The Sea at 8.05am effective 14/03/08
- School Route 2002 - 8.15am from Hawthorn Road along North Road to arrive at Monash University at 8.45am effective 14/03/08
- School Route 2003 - 7.50am from Warrigal Road along North Road to arrive at Star of The Sea at 8.15am effective 14/03/08
- School Route 2004 - 8.00am from Warrigal Road to arrive at Star of The Sea at 8.25am
- School Route 2005 - 3.25pm express from Star of The Sea along North Road to arrive at Ormond at 3.35pm effective 14/03/08
- School Route 2006 - 3.40pm from Kilvington Girls along North Road to arrive at Monash University at 4.00pm effective 14/03/08
- School Route 2000 - 3.30pm from Star of The Sea along North Road, Tucker Road, Centre Road, East Boundary to arrive at 3.50pm effective 14/03/08
- School Route 2010 - 3.25pm express from Star of The Sea along North Road to Ormond then drop off only to Monash University to arrive at 3.55pm effective 14/03/08
- School Route 2011 - 3.30pm from Star of The Sea along North Road to Monash University to arrive at 4.00pm effective 14/03/08

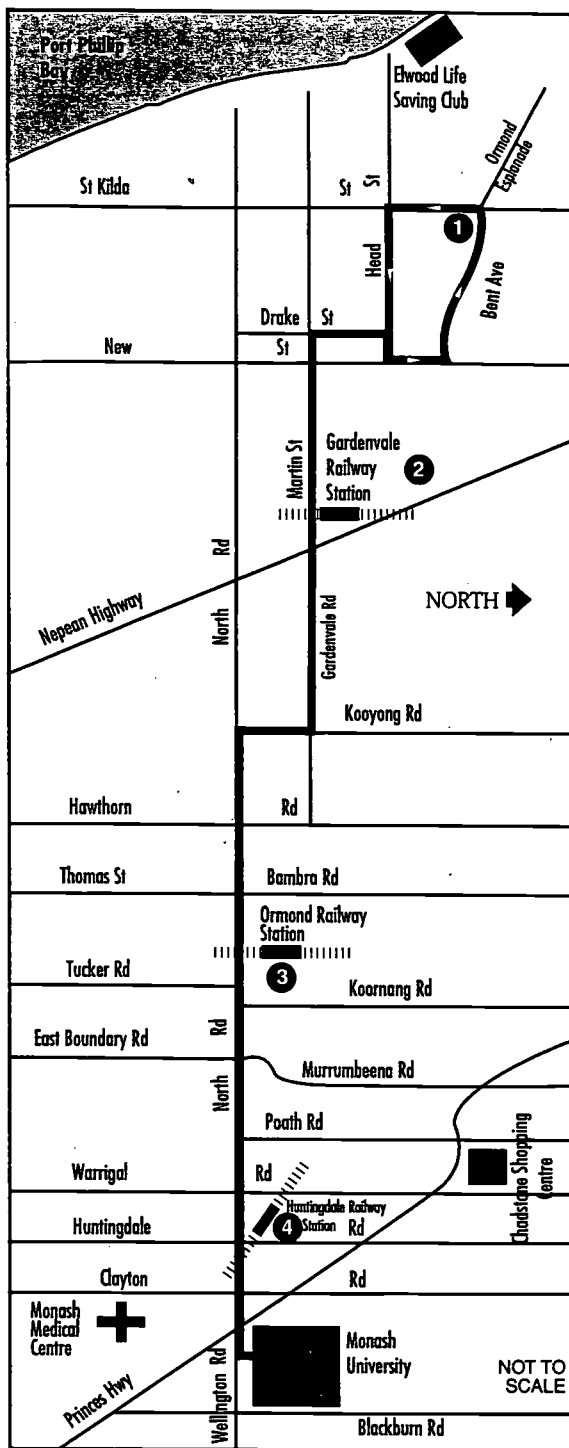
Eastern Suburbs Omnibus Services Proprietary Limited

- Route 605 - Gardenvale to Princes Bridge (City) T/T 27/01/02

Figure 1







Elwood – Monash Uni

via Gardenvale, Ormond and Huntingdale

B U S T I M E T A B L E



Eastrans

(A Kefford Corporation Company - Est. 1853)

Route 630

Effective April 2004

☎ 9563 2555

📞 www.kefford.com.au

Description of route

Route 630 Elwood to Monash University

Departs from the terminus in New Street corner of Bent Avenue and runs via Bent Avenue, St. Kilda Street, Head Street, Drake Street, Martin Street, Gardenvale Road, Kooyong Road, North Road, Wellington Road, and then through the South Gate at Monash University to the terminus outside the Humanities Building.

Route 630 Monash University to Elwood:

Departs from the terminus at Monash University (outside the Humanities Building) and runs via the reverse of the route described above to Head Street, then via New Street to the terminus in New Street, corner of Bent Avenue.

Customers please note

- Times marked "**A**" indicate bus trip does not operate during Monash University holidays.
- Trips marked "**T**" indicate buses terminate at this time point.
- Times marked "+" indicate that these buses do not operate over the Christmas holiday period.
The week leading up to, and 4 weeks after Christmas.
- Times marked "**W**" indicate that service is operated by a Wheelchair Accessible Low Floor Bus.
- On Labour Day and Melbourne Cup Day a Saturday timetable is operated as Monash University is open.
- Buses on Route 630 operate via Gardenvale, Ormond and Huntingdale Railway Stations and connect with trains to/from Sandringham, Frankston, Dandenong, Cranbourne, Pakenham and Melbourne.
- Times shown are subject to prevailing traffic and loading conditions.
- Times may be subject to alteration without notice.
- Train times shown are the designated bus/train connections. They are correct at the time of printing but maybe subject to alteration without notice.
- Met fares apply.

Time points

- ① **Elwood** – Corner of St. Kilda Street & Bent Avenue.
- ② **Gardenvale** – Gardenvale Railway Station, in Martin Street.
- ③ **Ormond** – Ormond Railway Station, in North Road.
- ④ **Huntingdale** – Huntingdale Railway Station, in North Road.
- ⑤ **Monash University** – Monash University, outside the Humanities Building.

Route 630 is a service operated by Eastrans

Ph: 9563 2555 or Internet: www.kefford.com.au.

For additional information on train, tram and bus timetables please contact: **The Met Information Centre on 131 638** (or on T.T.Y. facility – 9619 2727 for persons with a speech/hearing impairment).

Information on Bus Route 630 is also available via the Internet:

www.kefford.com.au or www.victrip.com.au

Monday to Friday

Elwood to Monash University via Gardenvale, Ormond and Huntingdale

Monash University to Elwood via Huntingdale, Ormond and Gardenvale

Elwood	Trains from Sandringham arrive Gardenvale	Gardenvale	Trains from Franks ton arrive Ormond	Ormond	Trains from Dandenong arrive Huntingdale	Trains from City arrive Huntingdale	Huntingdale	Monash University
①	②	③	④	⑤	⑥	⑦	⑧	⑨
AM SERVICE								
-	-	-	5.55	6.19	6.23	6.12	6.29	6.38
6.20W	6.16	6.26W	6.22	6.27	6.23	6.30	6.38	6.46
6.42	6.36	6.48	6.28	6.38W	6.39	6.50	6.53W	7.02W
6.56+	6.55	7.01+	6.38	6.50	6.54	6.50	7.05	7.15
7.08W	7.10	7.23+	6.56	7.00	7.12	7.05	7.17	7.28
7.18+	7.35	7.40	-	-	-	-	-	-
7.34	-	-	-	-	-	-	-	-
7.47W	7.45	7.53W	8.02	8.06W	8.11	8.04	8.10A	8.22
-	-	-	-	-	8.22	8.19	8.26W	8.35W
8.00	7.55	8.06	8.18	8.18	8.22	8.19	8.27A	8.34
8.13	8.15	8.19	8.18	8.31	8.34	8.34	8.35	8.44
8.26+	8.25	8.32+	8.33	8.44+	8.39	8.41	8.45A+	8.52+
8.40W	8.35	8.46W	8.48	8.57W	8.41	8.41	8.48	8.59
8.50+	8.45	8.56+	8.58	9.08+	8.52	8.58	9.04+	9.12+
9.00	8.54	9.06	9.11	9.17	9.07	9.09	9.11W	9.19W
9.20W	9.20	9.26W	9.23	9.37W	9.22	9.23	9.23A	9.30
9.40	9.33	9.46	9.53	9.57	9.37	9.47	9.51W	9.59W
10.00W	10.00	10.06W	10.08	10.17W	9.52	9.58	10.03A	10.10
10.20	10.13	10.26	10.23	10.37	10.07	10.11	10.11W	10.19
10.40W	10.43	10.46W	10.53	10.57W	10.13	10.13	10.23A	10.30
11.00	10.58	11.06	11.08	11.17	10.28	10.28	10.31W	10.39W
11.20W	11.13	11.26W	11.23	11.37W	10.37	10.43	10.43A	10.50
11.40	11.28	11.48	11.53	11.57	10.58	11.07	11.11W	11.19W
PM SERVICE								
12.00W	11.58	12.06W	12.08	12.17W	12.22	12.13	12.31W	12.39W
12.20	12.13	12.26	12.23	12.37	12.37	12.43	12.51	12.59
12.40W	12.43	12.46W	12.53	12.57	1.07	1.07	1.11W	1.19W
1.00	12.56	1.06	1.08	1.17	1.07	1.13	1.23A	1.30
1.20W	1.13	1.26W	1.23	1.37W	1.22	1.13	1.31	1.39
1.40	1.43	1.46	1.53	1.57	1.37	1.43	1.43A	1.50
2.00W	1.58	2.06W	2.08	2.17W	1.52	1.58	2.03A	2.10
2.20	2.13	2.26	2.23	2.37	2.07	1.58	2.11	2.19
2.40W	2.43	2.46W	2.53	2.57W	2.22	2.28	2.23A	2.30
3.00	2.58	3.06	3.08	3.18	2.37	2.43	2.43A	3.10
3.16+	3.13	3.22+	3.23	3.34+	2.52	2.58	2.51	2.59
3.28W	3.28	3.34W	3.38	3.47W	2.52	2.58	3.00	3.08
3.40	3.43	3.48	3.51	4.00	3.07	3.12	3.04	3.18
3.55+	3.58	4.01+	4.12	4.13+	3.22	3.28	3.15W	3.30W
4.06	4.06	4.12	4.25	4.25	3.37	3.43	3.35	3.48
4.20W	4.20	4.26W	4.22	4.38W	3.50	3.57	3.51+	4.00+
4.34	4.30	4.40	4.37	4.52	4.01	4.02	4.03W	4.12W
4.46+	4.40	4.52+	4.52	5.04+	4.14	4.16	4.16	4.24
5.00W	5.02	5.06W	5.04	5.18W	4.29+	4.36	4.29+	4.38+
5.13	5.12	5.19	5.18	5.31	4.41	4.41	4.41	4.49
5.26+	5.24	5.32+	5.30	5.43+	4.50	4.51	4.55W	5.04W
5.40	5.41	5.48	5.45	5.57	5.02	5.05	5.08	5.17
5.51W	5.50	5.57W	6.02	6.09W	5.14	5.14	5.21+	5.29+
6.05	6.02	6.10	6.17	6.20	5.22	5.31	5.36W	5.43W
6.20+	6.13	6.24+	6.17	6.33+	5.31	5.43	5.48	5.57
6.35	6.37	6.41	6.34	6.49	5.55	5.52	6.00+	6.08+
7.00+	6.57	7.06+	7.16+	7.16+	6.04	6.04	6.10	6.18
7.05W	6.57	7.10W	7.19	7.21W	6.16	6.19	6.22W	6.29W
7.30	7.33	7.35	7.48	7.44	6.37	6.39	6.42+	6.54+
8.10W	8.09	8.15W	8.18	8.24	6.49	6.51	6.58	7.04
8.40	8.28	8.45	8.48	8.54	-	-	-	-
9.15W	9.02	9.20W	9.18	9.29W	7.28	7.22	7.30W	7.35W
9.45	9.44	9.50	9.48	9.59	7.39	7.53	7.53	7.59
10.13W	10.02	10.18W	10.18	10.27W	8.28	8.14	8.33W	8.39W
-	-	-	-	-	8.58	8.34	9.03	9.09
-	-	-	-	-	9.28	9.34	9.38W	9.44W
-	-	-	-	-	9.58	10.04	10.08	10.14
-	-	-	-	-	-	-	-	-

Monash University	Huntingdale	Trains to City depart Huntingdale	Trains to Dandenong depart Huntingdale	Ormond	Trains to Frankston depart Ormond	Gardenvale	Trains to Sandringham depart Gardenvale	Elwood
⑤	④			③		②		①
AM SERVICE								
-	-	-	-	6.05	6.03	6.14	6.23	6.20
-	-	-	-	6.25	6.30	6.34	6.40	6.40
-	-	-	-	6.40+	6.50	6.49+	6.56	6.54+
6.38+	6.39	6.44+	6.54	6.52	7.04	7.00	7.16	7.05
			6.50	7.01+	7.04	7.10+	7.16	7.16+
6.47	6.55	7.12	7.05	7.13	7.27	7.23	7.27	7.30
7.02W	7.08W	7.18	7.20	7.25W	7.27	7.35W	7.37	7.46W
7.15	7.23	7.28	7.35	7.40	7.47	7.50	7.56	7.58
7.28	7.36	7.45	7.50	7.54	8.00	8.04	8.06	8.11
7.40+	7.48+	8.01	7.54	8.06+	8.14	8.16+	8.18	8.24+
7.54W	8.02W	8.11	8.04	8.19W	8.28	8.29W	8.39	8.37W
8.04+	8.12+	8.14	8.19	8.29+	8.38	8.40+	8.51	8.47+
8.20	8.28	8.34	8.34	8.43	8.50	8.53	8.53	8.59
8.34A	8.42T	8.52	8.50	-	-	-	-	-
8.35W	8.43W	8.52	8.50	9.01W	9.11	9.11W	9.16	9.17W
8.46	8.52	9.07	8.58	9.09	9.11	9.19	9.30	9.25
8.52A	9.00T	9.07	9.09	-	-	-	-	-
9.00	9.08	9.22	9.18	9.23	9.26	9.33	9.43	9.39
9.12A	9.20T	9.37	9.28	-	-	-	-	-
9.20W	9.28W	9.37	9.37	9.43W	9.56	9.53W	9.58	9.59W
9.30A	9.38T	9.52	9.47	-	-	-	-	-
9.40	9.48	9.52	9.50	10.03	10.11	10.13	10.28	10.19
9.50A	9.58T	10.07	10.13	10.23W	10.26	10.33W	10.43	10.39W
10.00W	10.08W	10.22	10.13	-	-	-	-	-
10.10A	10.18T	10.22	10.28	-	-	-	-	-
10.20	10.28	10.37	10.43	10.43	10.56	10.53	10.58	10.59
10.30A	10.38T	10.52	10.58	-	-	-	-	-
10.40W	10.48W	10.52	10.58	11.03W	11.11	11.13W	11.28	11.19W
10.50A	10.58T	11.07	11.13	11.23	11.26	11.33	11.43	11.39
11.00	11.08	11.22	11.13	-	-	-	-	-
11.10A	11.18T	11.22	11.28	-	-	-	-	-
11.20W	11.28W	11.37	11.43	11.43W	11.56	11.53W	11.58	11.59W
11.40	11.48	11.52	11.58	12.03	12.11	12.13	12.28	12.19
PM SERVICE								
12.00W	12.08W	12.07	12.13	12.23W	12.26	12.33W	12.43	12.39W
12.20	12.28	12.37	12.43	12.43	12.56	12.53	12.58	12.59
12.40W	12.48W	12.52	12.58	1.03W	1.11	1.13W	1.28	1.19W
1.00	1.08	1.22	1.13	1.23	1.26	1.33	1.43	1.39
1.20W	1.28W	1.37	1.43	1.43W	1.56	1.53W	1.58	1.59W
1.30A	1.38T	1.52	1.43	-	-	-	-	-
1.40	1.48	1.52	1.58	2.03	2.11	2.13	2.28	2.19
1.50A	1.58T	2.07	2.13	-	-	-	-	-
2.00W	2.08W	2.22	2.13	2.23W	2.26	2.33W	2.43	2.39W
2.10A	2.18T	2.22	2.28	-	-	-	-	-
2.20	2.28	2.37	2.43	2.43	2.56	2.53	2.58	3.00
2.30A	2.38T	2.52	2.43	-	-	-	-	-
2.40W	2.48W	2.52	2.58	3.06W	3.11	3.16W	3.28	3.25W
2.50A	2.58T	3.07	3.12	-	-	-	-	-
3.00	3.08	3.22	3.12	3.23	3.25	3.33	3.39	3.39
3.08+	3.16+	3.22	3.25	3.31+	3.37	3.42+	3.52	3.50+
3.18	3.31	3.37	3.43	3.48	3.51	3.58	4.02	4.06
3.30W	3.44W	3.50	3.51	4.01W	4.05	4.11W	4.24	4.19W
3.49	3.57	4.01	4.02	4.14	4.19	4.24	4.34	4.32
4.00A	4.07T	4.14	4.16	-	-	-	-	-
4.02+	4.10+	4.14	4.16	4.27+	4.30	4.37+	4.44	4.45+
4.15W	4.23W	4.27	4.27	4.40W	4.45	4.47W	4.54	4.52W
4.15A	4.25T	4.35	4.41	-	-	-	-	-
4.28	4.36	4.50	4.41	4.53	4.56	5.03	5.14	5.11
4.40A	4.50T	5.02	4.59	-	-	-	-	-
4.41+	4.49+	5.02	4.59	5.07+	5.09	5.17+	5.24	5.25+
4.50	4.58	5.02	5.05	5.18	5.21	5.25	5.34	5.31
5.00A	5.10T	5.14	5.14	-	-	-	-	-
5.05W	5.13W	5.22	5.25	5.31W	5.42	5.41W	5.44	5.46W
5.20	5.28	5.31	5.31	5.45	5.55	5.55	6.06	5.59
5.20A	5.30T	5.46	5.43	-	-	-	-	-
5.30+	5.38+	5.48	5.43	5.56+	6.11	6.06+	6.18	6.14+
5.40A	5.50T	5.55	5.58	-	-	-	-	-
5.46W	5.54W	6.04	5.58	6.10W	6.24	6.20W	6.28	6.25TW
6.00	6.08	6.24	6.19	6.19	6.24	6.29	6.40	6.34
6.20+	6.28+	6.37	6.39	6.43+	6.53	6.53+	7.06	6.59+
6.30W	6.38W	6.49	6.51	6.52W	7.04	6.59W	7.06	7.04W
7.00	7.08	7.11	7.22	7.18	7.24	7.25	7.36	7.29
7.10	7.18T	7.28	7.22	-	-	-	-	-
7.35W	7.43W	7.58	7.52	7.57W	8.14	8.04W	8.11	8.09W
8.05	8.13	8.28	8.34	8.27	8.44	8.34	8.48	8.39
8.40W	8.48W	8.58	9.04	9.02W	9.14	9.09W	9.28	9.14W
9.10	9.16	9.28	9.34	9.32	9.44	9.39	9.48	9.44
9.45	9.49	9.58	10.04	10.00	10.14	10.07	10.08	10.12
10.15W	10.19W	10.28	10.34	10.32TW	10.44	-	-	-

Saturday

Elwood to Monash University via Gardenvale, Ormond and Huntingdale

Elwood ①	Trains from Sand- ringham arrive Garden- vale	Garden- vale ②	Trains from Frank- ston arrive Ormond	Ormond ③	Trains from Dande- nong arrive Hunting- dale	Trains from City arrive Hunting- dale	Hunting- dale ④	Monash Uni- versity ⑤
AM SERVICE								
7.00W	7.04	7.06W	7.10	7.16W	7.16	7.24W	7.28W	7.35W
7.30W	7.34	7.36W	7.40	7.46W	7.50	7.54W	8.01W	8.08W
7.55W	7.59	8.01W	8.10	8.11W	8.10	8.14W	8.23W	8.30W
8.15W	8.19	8.21W	8.30	8.32W	8.30	8.34W	8.43W	8.50W
8.45W	8.49	8.50W	8.50	9.00W	8.50	8.54W	9.11W	9.18W
9.10W	9.14	9.16W	9.10	9.26W	9.20	9.34W	9.41W	9.48W
9.30W	9.34	9.41W	9.50	9.52W	9.50	9.54W	10.03W	10.10W
9.55W	9.59	10.04W	10.10	10.14W	10.10	10.14W	10.26W	10.32W
10.25W	10.29	10.31W	10.30	10.44W	10.50	10.54W	10.56W	11.03W
10.50W	10.54	10.56W	10.50	11.06W	11.10	11.14W	11.21W	11.28W
11.15W	11.19	11.21W	11.30	11.31W	11.30	11.34W	11.43W	11.50W
11.40W	11.44	11.45W	11.50	11.54W	11.50	11.54W	12.05W	12.12W
PM SERVICE								
12.05W	12.09	12.11W	12.10	12.24W	12.30	12.34W	12.38W	12.45W
12.30W	12.34	12.36W	12.30	12.46W	12.50	12.54W	1.02W	1.10W
12.55W	12.59	1.01W	1.10	1.12W	1.10	1.14W	1.23W	1.30W
1.20W	1.24	1.26W	1.30	1.36W	1.30	1.34W	1.56W	2.10W
1.50W	1.54	1.56W	1.50	2.07W	2.10	2.14W	2.22W	2.30W
2.10W	2.14	2.16W	2.10	2.27W	2.30	2.34W	2.42W	2.50W
2.50W	2.54	2.56W	2.50	3.07W	3.10	3.14W	3.22W	3.30W
3.30W	3.34	3.36W	3.30	3.47W	3.50	3.54W	4.02W	4.10W
4.10W	4.14	4.16W	4.10	4.27W	4.30	4.34W	4.42W	4.50W
4.50W	4.54	4.56W	4.50	5.07W	5.10	5.14W	5.22W	5.30W
5.30W	5.34	5.36W	5.30	5.47W	5.50	5.54W	6.02W	6.10W
6.10W	6.14	6.16W	6.10	6.27W	6.30	6.34W	6.42W	6.50W
6.50W	6.54	6.56W	6.50	7.07W	7.10	7.14W	7.22W	7.30W
7.30W	7.34	7.36W	7.30	7.47W	7.50	7.54W	8.06W	8.10W
8.10W	8.14	8.16W	8.10	8.27W	8.30	8.34W	8.42W	8.50W
8.45W	8.49	8.50W	8.48	9.00W	9.00	9.12W	9.12W	—

Monash University to Elwood via Huntingdale, Ormond and Gardenvale

Monash Uni- versity ⑤	Hunting- dale ④	Trains to City depart Hunting- dale	Trains to Dande- nong depart Hunting- dale	Ormond ③	Trains to Frank- ston depart Ormond	Garden- vale ②	Trains to Sand- ringham depart Garden- vale	Elwood ①
AM SERVICE								
6.50W	6.35W	7.10	7.14	6.45W	6.58	6.55W	6.58	7.00W
7.12W	7.20W	7.30	7.34	7.10W	7.18	7.20W	7.28	7.26W
7.35W	7.43W	7.50	7.54	7.34W	7.38	7.45W	7.48	7.51W
8.08W	8.16W	8.30	8.34	8.28W	8.30	8.38W	8.40	8.44W
8.30W	8.38W	8.50	8.54	8.50W	8.58	9.00W	9.08	9.06W
8.50W	8.58W	9.10	9.14	9.10W	9.18	9.20W	9.28	9.26W
9.18W	9.25W	9.30	9.34	9.37W	9.58	9.47W	10.08	9.53W
9.48W	9.56W	10.10	10.14	10.08W	10.18	10.18W	10.28	10.24W
10.10W	10.18W	10.30	10.34	10.30W	10.38	10.40W	10.48	10.46W
10.32W	10.40W	10.50	10.54	10.52W	10.58	11.03W	11.08	11.09W
11.03W	11.11W	11.30	11.34	11.03W	11.38	11.33W	11.48	11.36W
11.28W	11.36W	11.50	11.54	11.48W	11.58	11.58W	12.08	12.04W
11.50W	11.58W	12.10	12.14	12.10W	12.18	12.20W	12.28	12.26W
PM SERVICE								
12.12W	12.20W	12.30	12.34	12.32W	12.38	12.42W	12.48	12.48W
12.45W	12.53W	1.10	1.14	1.05W	1.18	1.14W	1.28	1.18W
1.10W	1.18W	1.30	1.34	1.30W	1.38	1.40W	1.48	1.46W
1.30W	1.38W	1.50	1.54	1.50W	1.58	2.00W	2.08	2.06W
2.10W	2.18W	2.30	2.34	2.30W	2.38	2.40W	2.48	2.46W
2.50W	2.58W	3.10	3.14	3.10W	3.18	3.20W	3.28	3.26W
3.30W	3.38W	3.50	3.54	3.50W	3.58	4.00W	4.08	4.06W
4.10W	4.18W	4.30	4.34	4.30W	4.38	4.40W	4.48	4.46W
4.50W	4.58W	5.10	5.14	5.10W	5.18	5.20W	5.28	5.26W
5.30W	5.38W	5.50	5.54	5.50W	5.58	6.00W	6.08	6.06W
6.10W	6.18W	6.30	6.34	6.30W	6.38	6.40W	6.48	6.48W
6.50W	6.58W	7.10	7.14	7.10W	7.18	7.20W	7.28	7.26W
7.30W	7.38W	7.48	8.04	7.50W	8.14	8.00W	8.08	8.06W
8.10W	8.16W	8.28	8.34	8.28W	8.44	8.38W	8.48	8.44W
8.50W	8.56W	8.58	—	9.10W	—	—	—	—

Sunday and Public Holidays *Except Labour Day & Cup Day (Saturday Timetable)

Elwood to Monash University via Gardenvale, Ormond and Huntingdale

Elwood ①	Trains from Sand- ringham arrive Garden- vale	Garden- vale ②	Trains from Frank- ston arrive Ormond	Ormond ③	Trains from Dande- nong arrive Hunting- dale	Trains from City arrive Hunting- dale	Hunting- dale ④	Monash Uni- versity ⑤
AM SERVICE								
8.20W	8.24	8.26W	8.26	8.36W	8.38	8.38W	8.53W	8.59W
9.00W	9.04	9.06W	9.06	9.16W	9.06	9.07W	9.33W	9.39W
9.40W	9.44	9.46W	9.46	9.56W	10.00	10.07W	10.13W	10.19W
10.20W	10.24	10.26W	10.26	10.36W	10.30	10.37W	10.53W	10.59W
11.00W	11.04	11.06W	11.10	11.16W	11.10	11.14W	11.33W	11.39W
11.40W	11.44	11.48W	11.50	11.56W	11.50	11.54W	12.13W	12.19W
PM SERVICE								
12.20W	12.24	12.26W	12.30	12.36W	12.30	12.34W	12.53W	12.59W
1.00W	1.04	1.06W	1.10	1.16W	1.10	1.14W	1.33W	1.39W
1.40W	1.44	1.46W	1.50	1.56W	1.50	1.54W	2.13W	2.19W
2.20W	2.24	2.26W	2.30	2.36W	2.30	2.34W	2.53W	2.59W
3.00W	3.04	3.06W	3.10	3.16W	3.10	3.14W	3.33W	3.39W
3.40W	3.44	3.48W	3.50	3.56W	3.50	3.54W	4.13W	4.19W
4.20W	4.24	4.26W	4.30	4.36W	4.30	4.34W	4.53W	4.59W
5.00W	5.04	5.06W	5.10	5.16W	5.10	5.14W	5.33W	5.39W
5.40W	5.44	5.46W	5.50	5.56W	5.50	5.54W	6.13W	6.19W
6.20W	6.24	6.26W	6.30	6.36W	6.30	6.34W	6.53W	6.59W
7.00W	7.04	7.06W	7.10	7.16W	7.10	7.14W	7.33W	7.39W
7.40W	7.44	7.46W	7.48	7.56W	7.58	8.04W	8.10W	8.19W

Monash University to Elwood via Huntingdale, Ormond and Gardenvale

Monash Uni- versity ⑤	Hunting- dale ④	Trains to City depart Hunting- dale	Trains to Dande- nong depart Hunting- dale	Ormond ③	Trains to Frank- ston depart Ormond	Garden- vale ②	Trains to Sand- ringham depart Garden- vale	Elwood ①
AM SERVICE								
8.19W	7.55W	8.36	8.38	8.08W	8.18	8.15W	8.15W	8.20W
8.59W	8.25W	8.36	8.38	8.40W	8.47	8.48W	8.48	8.53W
9.39W	9.05W	9.36	9.07	9.20W	9.47	9.28W	9.48	9.33W
10.19W	9.45W	10.00	10.07	10.00W	10.17	10.08W	10.28	10.13W
10.59W	10.25W	10.30	10.37	10.40W	10.47	10.48W	11.08	10.53W
11.39W	11.05W	11.10	11.07	11.20W	11.38	11.28W	11.48	11.33W
11.59W	11.45W	11.50	11.54	12.00W	12.18	12.08W	12.28	12.13W
PM SERVICE								
12.19W	12.25W	12.30	12.34	12.40W	12.58	12.48W	1.08	12.53W
12.59W	1.05W	1.10	1.14	1.20W	1.38	1.28W	1.48	1.33W
1.39W	1.45W	1.50	1.54	2.00W	2.18	2.08W	2.28	2.13W
2.19W	2.25W	2.30	2.34	2.40W	2.58	2.48W	3.08	2.53W
2.59W	3.05W	3.10	3.14	3.20W	3.38	3.28W	3.48	3.33W
3.39W	3.45W	3.50	3.54	4.00W	4.18	4.08W	4.28	4.13W
4.19W	4.25W	4.30	4.34	4.40W	4.58	4.48W	5.08	4.53W
4.59W	5.05W	5.10	5.14	5.20W	5.38	5.28W	5.48	5.33W
5.39W	5.45W	5.50	5.54	6.00W	6.18	6.08W	6.28	6.13W
6.19W	6.25W	6.30	6.34	6.40W	6.58	6.48W	7.08	6.53W
6.59W	7.05W	7.10	7.14	7.20W	7.44	7.28W	7.48	7.33W
7.39W	7.45W	7.58	8.04	8.00W	8.14	—	—	—
8.19W	8.25W	8.58	8.34	—	—	—	—	—

Route 900 Rowville to Caulfield:

Departs from the terminus in Stud Road outside the Stud Park Shopping Centre and runs via Stud Road, Wellington Road, into the Monash University Bus terminus. Then via Wellington Road, North Road, slip road into Huntingdale Road to Huntingdale Station. Then via Huntingdale Road, Burlington Street through Shopping Centre Subway to Oakleigh Station. Then via Slip Road to Warrigal Road, Princes Highway, Derby Road, Sir John Monash Drive to the terminus near Caulfield Station.

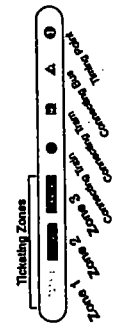
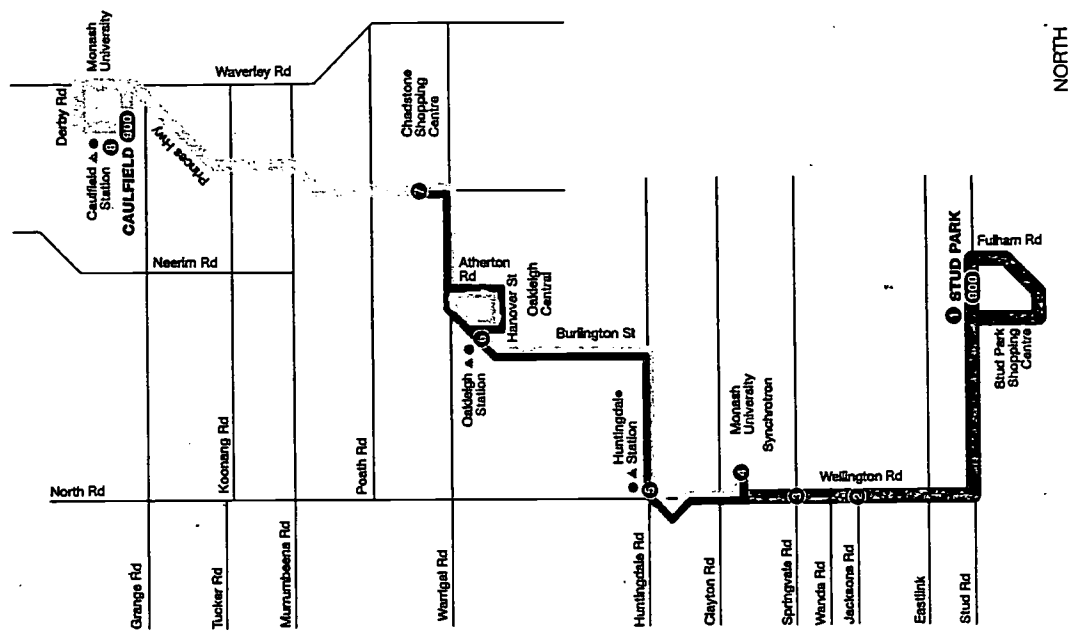
Route 900 Caulfield to Rowville:

Departs from the terminus in Sir John Monash Drive near Caulfield Station and runs via Sir John Monash Drive, Princes Highway, Warrigal Road, Atherton Road, Station Street, Chester and Portman Streets to Oakleigh Station. Then via Shopping Centre Subway and reversa of the above to Stud Road then via Stud Park Shopping Centre Service Road, Fulham Road, Stud Road to the terminus outside the Stud Park Shopping Centre.

General Information

Listed below are some hints that will make your journey easier, more comfortable and safer.

- Please HAIL THE BUS as it approaches your stop.
- Please tender the correct fare when possible.
- Holders of a current Australian Pensioner concession card are entitled to concession fares.
- Holders of all Health Care Cards are entitled to concession fares. Your driver can advise you as to whether your card is valid for concession.
- Victorian Seniors Card holders can purchase a Seniors Daily Metcard ticket.
- Student concession fares are available to students on production of a Public Transport Student Concession card.
- Children under the age of 4 travel free. Concession fare is available for children aged 4 to 14 (inclusive). Proof of age may be requested to obtain this concession.
- Metcards are valid on Trains, Trams and Buses.
- Lost property can be claimed by contacting the depot during office hours. No responsibility is taken for lost property.
- Times may be subject to alteration without notice.
- Train times shown are the designated bus/train connections.



For info, fares and bus information call
131 638 / (TTY) 0619 2727 6am-10pm
or visit metlinkmelbourne.com.au
Metcard Helpline (TTY) 1800 652 313
MAP NOT TO SCALE



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1. **Introduction**

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4.

Schedule 2 – Existing Fleet Payment for an Existing Bus

Annual fleet finance rate: 7.89000%

Monthly fleet finance rate: 0.63486%

Registration No.	Year of Manufacture	Vehicle Make	Vehicle Model	Start of Service	Capital Value at Contract Start (\$)	Total Monthly Annuity payment (\$)	Month of Last Payment
4860AO	1991	VOLVO	B10M	01/07/1991	0	-	N/A
4861AO	1992	VOLVO	B10M	01/07/1992	0	-	N/A
4862AO	1995	VOLVO	B10M	01/07/1995	16,721	1,442.46	Jun-2009
4863AO	1995	VOLVO	B10B	01/07/1995	17,829	1,537.97	Jun-2009
4864AO	1998	VOLVO	B10BLE	01/07/1998	84,067	2,024.44	Jun-2012
4351AO	2001	SCANIA	L94UB	01/07/2001	167,524	2,563.05	Jun-2015
4851AO	2002	VOLVO	B12BLE	01/07/2002	197,659	2,738.66	Jun-2015
3800AO	2003	VOLVO	B12BLE	01/07/2003	243,006	3,096.09	Jun-2015
5484AO	2004	SCANIA	L94UB	01/07/2004	275,407	3,265.42	Jun-2015
5892AO	2005	SCANIA	L94UB	01/07/2005	309,007	3,442.40	Jun-2015
4937AO	1991	VOLVO	B10M	01/07/1991	0	-	N/A
4939AO	1992	VOLVO	B10M	01/07/1992	0	-	N/A
4940AO	1993	VOLVO	B10M	01/07/1993	0	-	N/A
4941AO	1997	VOLVO	B10B	01/07/1997	53,783	1,665.32	Jun-2011
4942AO	1998	VOLVO	B10BLE	01/07/1998	84,067	2,024.44	Jun-2012
4943AO	1999	VOLVO	B10BLE	01/07/1999	117,314	2,342.45	Jun-2013
4944AO	2000	VOLVO	B10BLE	01/07/2000	143,592	2,475.24	Jun-2014
4353AO	2001	SCANIA	L94UB	01/07/2001	172,952	2,646.09	Jun-2015
3189AO	2002	VOLVO	B12BLE	01/07/2002	203,154	2,814.80	Jun-2015
3996AO	2003	VOLVO	B12BLE	01/07/2003	243,006	3,096.09	Jun-2015
5485AO	2004	SCANIA	L94UB	01/07/2004	275,407	3,265.42	Jun-2015
5496AO	2004	SCANIA	L94UB	01/07/2004	275,407	3,265.42	Jun-2015
5891AO	2005	SCANIA	L94UB	01/07/2005	309,007	3,442.40	Jun-2015
6104AO	2006	MERCEDES	0500LE	19/07/2006	352,353	3,701.40	Jun-2015

Registration No.	Year of Manufacture	Vehicle Make	Vehicle Model	Start of Service	Capital Value at Contract Start (\$)	Total Monthly Annuity payment (\$)	Month of Last Payment
6103AO	2006	MERCEDES	0500LE	19/07/2006	352,353	3,701.40	Jun-2015
6102AO	2006	MERCEDES	0500LE	19/07/2006	352,353	3,701.40	Jun-2015
6107AO	2006	MERCEDES	0500LE	08/08/2006	352,353	3,701.40	Jun-2015
6108AO	2006	MERCEDES	0500LE	08/08/2006	352,353	3,701.40	Jun-2015
6160AO	2006	MERCEDES	0500LE	03/10/2006	357,214	3,721.33	Jun-2015

Schedule 3 – Payments

1. Definitions

The following definitions apply in this schedule 3:

- (a) **Advertising Adjustment** has the meaning in clause 10.1 of this schedule 3.
- (b) **Annualised Service Units** means the applicable Service Units required on an annual basis to deliver the Local Services in accordance with this document.
- (c) **Bus Hours** means the published timetabled hours required for a Contract Bus to complete any Local Service, plus:
 - (i) any time for that Bus to travel the most direct practicable route between the finishing point of that service and the starting point of the next service or between the Depot and a starting or finishing point of that service (**dead running time**); and
 - (ii) non-driving idle time between the last stop of that service and the start of the next service except where that Contract Bus returns to the Depot (**layover time**).
- (d) **Bus Kilometres** means Vehicle Service Kilometres plus any associated distance travelled along the most direct practicable route between the finishing point of that service and the starting point of the next service or between the Depot and a starting or finishing point of that service (**dead running kilometres**).
- (e) **Contract Half Year** means either the six months ending on 31 December or 30 June during the Term.
- (f) **Contract Month** means each calendar month which commences or ends during the Term and:
 - (i) the **First Contract Month** is the period commencing on the Commencement Date and ending on the last day of the calendar month in which the Commencement Date occurs; and
 - (ii) the **Last Contract Month** is the period commencing on the first day of the calendar month in which this document expires or is terminated and ending on the date that this document expires or is terminated.
- (g) **Contract Year** means the 12 months ending on 31 December during the Term with the exception that the first Contract Year is the period commencing on the Commencement Date and ending on 31 December 2008.
- (h) **Equivalent Ordinary Hours** means the number of paid driver hours at applicable penalty and overtime hourly rates of pay (excluding on costs) converted to an equivalent number of hours at the single ordinary time rate of pay applicable at the time. For example, two hours paid at double time penalty rates is equal to four Equivalent Ordinary Hours.
- (i) **Existing Bus** means a Bus that is a Contract Bus as at the Commencement Date.
- (j) **Existing Fleet Payment** means the amount calculated under clause 8.2 of this schedule 3.
- (k) **Financial Year** means the 12 months ending 30 June during the Term.
- (l) **Fleet Payment** has the meaning in clause 8 of this schedule 3.
- (m) **Margin Payment** has the meaning in clause 7 of this schedule 3.

- (n) **Marginal Rate** means the per Service Unit costs shown in clauses 4.2 and 5.2 of this schedule 3.
- (o) **Missed Service** means any portion of Vehicle Service Kilometres and or Bus Hours in the Operator's Service Plan that have not been delivered, except as a result of any Urgent Service Change, Temporary Service Change or Force Majeure Event.
- (p) **New Fleet Fuel Adjustment** has the meaning in clause 10.6 of this schedule 3.
- (q) **New Fleet Payment** means that amount calculated under clause 8.3 of this schedule 3.
- (r) **Operating Payment** has the meaning in clause 3 of this schedule 3.
- (s) **Operational Incentive Amount** has the meaning in clause 10.3 of this schedule 3.
- (t) **Patronage Incentive Amount** has the meaning in clause 10.2 of this schedule 3.
- (u) **Permanent Service Change Adjustment** has the meaning in clause 4 of this schedule 3.
- (v) **Quarter** means a three month period ending on 31 March or 30 September.
- (w) **Service Units** means Equivalent Ordinary Hours, Bus Hours, Bus Kilometres, Vehicle Service Kilometres and Contract Buses.
- (x) **Temporary Service Change Adjustment** has the meaning in clause 5 of this schedule 3.
- (y) **Vehicle Service Kilometres** means the distance between the start and end of any Route forming part of a Local Service, excluding any distance for that Contract Bus to travel the most direct practicable route between the finishing point of that service and the starting point of the next service or between the Contract Depot and a starting or finishing point of that service (dead running kilometres).

2. Local Service Payment

- (a) For each Contract Month during the Term the Local Service Payment will be calculated in accordance with the following formula:

$$\text{LSP} = \text{OP} + \text{TSCA} + \text{FP} + \text{MP} + \text{NFFA}$$

Where:

- LSP is the Local Service Payment for the Contract Month;
- OP is the Operating Payment for the Contract Month as determined in accordance with clause 3 of this schedule 3;
- TSCA is the Temporary Service Change Adjustments for the Contract Month as determined in accordance with clause 5 of this schedule 3;
- FP is the Fleet Payment for the Contract Month as determined in accordance with clause 8 of this schedule 3;
- MP is the Margin Payment for the Contract Month as determined in accordance with clause 7 of this schedule 3; and
- NFFA is the New Fleet Fuel Adjustment for the Contract Month as determined in accordance with clause 10.6 of this schedule 3.

- (b) The Local Service Payment is subject to the following annual adjustments calculated for each Contract Year (**Payment Adjustments**):
 - (i) any Advertising Adjustment;

- (ii) any Patronage Incentive Amount; and
 - (iii) any Operational Incentive Amount.
- (c) The Operator may also apply to the Director for a Long Service Leave Adjustment at any time, as determined in accordance with clause 11 of this schedule 3. Once agreed between the parties, the Long Service Leave Adjustment will be paid as a one-off amount together with the next Local Service Payment.
- (d) The Director agrees to pay the Local Service Payment for each Contract Month to the Operator monthly in advance by instructing his bank on the first Business Day of that Contract Month to make the electronic transfer of the relevant funds to the Operator's account (specified to the Director prior to the date that the payment is due). The parties acknowledge that the Local Service Payment will be accessible by the Operator in readily available funds at the start of the second Business Day of the relevant Contract Month.
- (e) The parties agree to calculate the amount of any Payment Adjustments under clause 2(b) of this schedule 3 as soon as practicable to enable payment by the Director or the Operator within three months after the end of each Contract Year or, if the Term ends during a Contract Year, within three months after the end of the Term.

3. Operating Payment

3.1 Operating Payment

- (a) The Operating Payment for any Contract Month during the Term will be determined in accordance with the following formula:

$$OP = (L \times CLIM) + (W \times CWIM) + (P \times CPIM) + (S \times CSIM) + (F \times FIM) + (OC \times CIM)$$

where:

- OP is the Operating Payment for the Contract Month; and
- L is the Labour amount for the first full Contract Month in accordance with clause 3.2 of this schedule 3 plus the sum of Labour amounts included in any new Permanent Service Change Adjustment or Non Service Change for all previous and current Contract Months, as determined in accordance with clause 4.1 of this schedule 3;
- CLIM is the Compound Labour Index Multiplier as determined in accordance with clause 9.1(a) of this schedule 3;
- W is the Workcover amount for the first full Contract Month in accordance with clause 3.2 of this schedule 3 plus the sum of Workcover amounts included in any new Permanent Service Change Adjustment or Non Service Change for all previous and current Contract Months, as determined in accordance with clause 4.1 of this schedule 3;
- CWIM is the Compound Workcover Index Multiplier as determined in accordance with clause 9.2(a) of this schedule 3;
- P is the Payroll Tax amount for the first full Contract Month in accordance with clause 3.2 of this schedule 3 plus the sum of Payroll Tax amounts included in any new Permanent Service Change Adjustment or Non Service Change for all previous and current Contract Months, as determined in accordance with clause 4.1 of this schedule 3;

- CPIM** is the Compound Payroll Tax Index Multiplier as determined in accordance with clause 9.3(a) of this schedule 3;
- S** is the Superannuation amount for the first full Contract Month in accordance with clause 3.2 of this schedule 3 plus the sum of Superannuation amounts included in any new Permanent Service Change Adjustment or Non Service Change for all previous and current Contract Months, as determined in accordance with clause 4.1 of this schedule 3;
- CSIM** is the Compound Superannuation Index Multiplier as determined in accordance with clause 9.4(a) of this schedule 3;
- F** is the Fuel amount for the first full Contract Month in accordance with clause 3.2 of this schedule 3 plus the sum of Fuel amounts included in any new Permanent Service Change Adjustment or Non Service Change for all previous and current Contract Months, as determined in accordance with clause 4.1 of this schedule 3;
- FIM** is the Fuel Index Multiplier as determined in accordance with clause 9.5(a) of this schedule 3;
- OC** is the Other Cost amount for the first full Contract Month in accordance with clause 3.2 of this schedule 3 plus the sum of Other Cost amounts included in any new Permanent Service Change Adjustment or Non Service Change for all previous and current Contract Months, as determined in accordance with clause 4.1 of this schedule 3; and
- CIM** is the CPI Index Multiplier as determined in accordance with clause 9.6(a) of this schedule 3.

3.2 First Contract Month.

- (a) The amounts that make up the Operating Payment for the first full Contract Month are as follows:

Operating Payment amounts for the first full Contract Month	Amounts (\$)
Labour	
Workcover	
Payroll Tax	
Superannuation	
Fuel	
Other	
Total	

- (b) The cost components comprising the amounts detailed in clause 3.2(a) above for the Operating Payment for the first full Contract Month and the associated Annualised Service Units are as follows:

Cost Category	Cost Component (Monthly) / Annualised Service Units	\$
Bus Hour Cost	Wages	
	Workcover	
	Payroll Tax	
	Superannuation	
	Total	
	Annualised Service Units – Bus Hours	
	Annualised Service Units – Equivalent Ordinary Hours	
Bus Kilometre Cost	Wages	
	Workcover	
	Payroll Tax	
	Superannuation	
	Fuel	
	Other (all inclusive)	
	Total	
	Annualised Service Units – Bus Kilometres	
Bus Overhead Cost	Wages	
	Workcover	
	Payroll Tax	
	Superannuation	
	Other (all inclusive)	
	Total	
	Annualised Service Units – Contract Buses	

3.3 Non Service Change

If the Director agrees to amend the Local Service Payments for a Non Service Change required under clause 8.14 of this document, the incremental cost increase or decrease (in equivalent July 2008 dollars) will be separated into its cost components and included in the relevant cost amounts in clause 3.1 of this schedule 3.

3.4 Part Contract Month

If the Contract Month is less than a full calendar month, the Operating Payment will be pro rata adjusted by multiplying it by:

$$\frac{\text{CMD}}{\text{CAL}}$$

where:

CMD is the number of days in the Contract Month that this document is in place; and

CAL is the total number of days in the Contract Month.

4. Permanent Service Change Adjustments

4.1 Permanent Service Change Adjustment

- (a) The Permanent Service Change Adjustment (PSCA) for the first full Contract Month of any Service Adjustments (excluding Temporary Service Changes and Urgent Service Changes), New Services awarded to the Operator and changes to Flexible Services will be determined in accordance with the following formula:

$$\text{PSCA} = \sum(\Delta\text{EOH} \times \text{EOHMR}) + \sum(\Delta\text{BK} \times \text{BKMR}) + \sum(\Delta\text{BK} \times \text{BOMR}) + \sum(\Delta\text{CB} \times \text{BOMR}) + \Delta\text{OBO}$$

where:

ΔEOH is the change in Annualised Equivalent Ordinary Hours due to the applicable Service Adjustments, New Services and changes to Flexible Services, divided by 12;

EOHMR are the Equivalent Ordinary Hour Marginal Rates by Cost Item listed in clause 4.2 of this schedule 3;

$\sum$ is the sum of the product of each *variable* within the applicable formula for each corresponding Marginal Rate for the relevant Cost Items set out in clause 4.2 of this schedule 3;

ΔBK is the change in Annualised Service Units for Bus Kilometres due to the applicable Service Adjustments, New Services and changes to Flexible Services, divided by 12;

BKMR are the Bus Kilometre Marginal Rates by Cost Item listed in clause 4.2 of this schedule 3;

ΔCB is the change in Contract Buses due to the applicable Service Adjustments, New Services and changes to Flexible Services, divided by 12;

BOMR are the Bus Overhead Marginal Rates by Cost Item listed in clause 4.2 of this schedule 3; and

ΔOBO are the changes in annual Other Bus Overhead Costs (excluding capital costs, depreciation, amortisation and lease interest costs associated with Contract Buses, and those costs relating to the BOMR in clause 4.2 of this schedule 3), divided by 12, incurred as a direct result of the applicable Service Adjustments, New Services and changes to Flexible Services and which have been agreed between the Director and the Operator or otherwise approved by the Director (in his discretion). Other Bus Overhead Costs approved by the Director will be converted to July 2008 dollars and then subject to indexation in clause 3 of this schedule 3.

- (b) Any adjustment to the Fleet Payment or New Fleet Fuel Adjustment associated with any Service Adjustment, New Service and changes to Flexible Services will be calculated under clauses 8 and 10.6 of this schedule 3 and will not form part of the Permanent Service Change Adjustment.
- (c) The amount of any Permanent Service Change Adjustments for applicable Service Adjustments and New Services made during a particular Contract Month (other than on the first day) will be calculated as a one-off adjustment for that part Contract Month (from the date the relevant Service Adjustment or New Service commenced to the last day of the Contract Month) and added to or deducted from (as the case may require) the next Local

Service Payment due and payable after the amount has been calculated under clause 4 of this schedule 3.

(d) For the purposes of the calculations in clause 4.1(a) of this schedule 3:

- (i) a net addition of Equivalent Ordinary Hours (EOH), Bus Kilometres (BK) or Contract Buses (CB) will be treated as a positive amount and a net reduction in Equivalent Ordinary Hours (EOH), Bus Kilometres (BK) or Contract Buses (CB) will be treated as a negative amount; and
- (ii) a positive Permanent Service Change Adjustment will represent an increase in the Operating Payment and a negative Permanent Service Change Adjustment will represent a decrease in the Operating Payment.

4.2 Marginal Rates for Permanent Service Changes

The Marginal Rates (MR) for each Cost Item to be used in clause 4.1 of this schedule 3 are set out in the following table, together with the Operating Payment category in clause 3.1 of this schedule 3 corresponding to each Cost Item:

Annualised Service Units	Marginal Rate category	Cost Item	MR As at 1 July 2008	Operating Payment category
EOH	EOHMR	Wages Workcover Payroll Tax Superannuation		Labour Workcover Payroll Tax Superannuation
BK	BKMR	Wages Workcover Payroll Tax Superannuation Fuel Other (all inclusive)		Labour Workcover Payroll Tax Superannuation Fuel Other Costs
BK	BOMR	Communications and information technology, Printing/stationary (excluding tickets & timetables), Staff related expenses, staff training, recruitment, Utilities (property related) and Other (all inclusive).		Other Costs
CB	BOMR	Bus Cleaning Bus registration, accreditation and Third Party insurance. Bus comprehensive insurance		Other Costs Other Costs Other Costs

5. Temporary Service Change Adjustment

5.1 Temporary Service Change Adjustment

- (a) The Temporary Service Change Adjustment for any Contract Month will be determined in accordance with the following formula:

$$TSCA = \sum (ABH \times BHMR \times UCIM) + \sum (ABK \times BKMR \times UCIM)$$

where:

TSCA is the Temporary Service Change Adjustment;

$\sum$ is the sum of the product of each *variable* within the applicable formula for each corresponding Marginal Rate and Unit Cost Index Multiplier for the relevant Cost Items set out in clause 5.2 of this schedule 3;

ABH is the sum of Bus Hours attributed to any Urgent Service Changes, Temporary Service Changes and Missed Services which occurred during the Contract Month which commenced three months prior to the Contract Month including any retrospective adjustments;

BHMR are the Bus Hour Marginal Rates by Cost Item listed in clause 5.2 of this schedule 3;

UCIM is the Unit Cost Index Multiplier applicable to each Marginal Rate as listed in clause 5.2 of this schedule 3;

ABK is the sum of Bus Kilometres attributed to any Urgent Service Changes, Temporary Service Changes and Missed Services which occurred during the Contract Month which commenced three months prior to the Contract Month including any retrospective adjustments;

BKMR are the Bus Kilometre Marginal Rates listed by Cost Item in clause 5.2 of this schedule 3.

- (b) For the purposes of the calculations in clause 5.1(a) above:

- (i) a net addition of Bus Hours (ABH) or Bus Kilometres (ABK) will be treated as a positive amount and a net reduction in Bus Hours or Bus Kilometres will be treated as a negative amount; and
- (ii) a positive Temporary Service Change Adjustment will represent a payment due by the Director to the Operator and a negative Temporary Service Change Adjustment will represent a payment due by the Operator to the Director.

5.2 Marginal Rates for Temporary Service Changes

- (a) The Marginal Rates (MR) and Unit Cost Index Multiplier (UCIM) for each Cost Item to be used in clause 5 of this schedule 3 are set out in the following table:

Service Units	Marginal Rate Category	Cost Item	MR As at 1 July 2008	UCIM
Bus Hours	BHMR	Wages Workcover Payroll Tax Superannuation		CLIM CWIM CPIM CSIM
Bus Kilometres	BKMR	Wages Workcover Payroll Tax Superannuation Fuel Other (all inclusive)		CLIM CWIM CPIM CSIM FIM CIM

- (b) In the case of Missed Services the Marginal Rates listed in clause 5.2(a) above will be multiplied by 110%. The Marginal Rates for Missed Services are a civil penalty provision for the purposes of the PTCA.

6. Provision of information

- (a) The Operator agrees to provide the Director with sufficient operating and financial documentation in relation to Service Adjustments and New Services as soon as practicable to determine and substantiate any increase or decrease in the Service Units and Other Bus Overhead Costs used in clause 4 and clause 5 of this schedule 3 associated with that event.
- (b) The parties agree to act reasonably to agree the extent of the changes in Service Units and Other Bus Overhead Costs directly resulting from the event, which amounts (from the date of the event) will be used to calculate the Permanent and Temporary Service Change Adjustments under clause 4 and clause 5 of this schedule 3. Failing agreement the Director agrees, acting reasonably, to determine the amounts, subject to the Operator's right under clause 39.
- (c) The Permanent and Temporary Service Change Adjustments (calculated from the date of the Service Change) will not be paid until the Operator has complied with its obligation under clause 6 of this schedule 3 to provide all operating and financial documentation reasonably required by the Director to determine and substantiate the Permanent or Temporary Service Change Adjustment.
- (d) The Operator agrees to conduct the Bus Operations and calculate any Permanent or Temporary Service Change Adjustment having regard to the overall objective of maximising the efficient use of available resources to minimise costs and maximise revenues.

7. Margin Payment

- (a) The Margin Payment for any Contract Month during the Term will be determined in accordance with the following formula:

$$MP = OP \times MP\%$$

where:

OP is the Operating Payment for the Contract Month determined in accordance with clause 3 of this schedule 3; and

MP% is the Margin Percentage determined in accordance with clause 7(b) of this schedule 3.

- (b) The Margin Percentage for any Contract Month will be determined in accordance with the following formula:

$$MP\% = \frac{(POP \times PMP\%) + ((OP-POP) \times NMP\%)}{OP}$$

where:

MP% is the Margin Percentage for any Contract Month, which will be 12.3198% for the first Contract Month;

POP is the Operating Payment for the previous Contract Month determined in accordance with clause 3 of this schedule 3;

PMP% is the Margin Percentage applied for the previous Contract Month;

NMP% is the margin percentage applicable to Permanent Service Change Adjustments and Non Service Changes and will be equal to 9.9500%; and

OP is the Operating Payment for the Contract Month determined in accordance with clause 3 of this schedule 3.

8. Fleet Payment

8.1 Calculation

The Fleet Payment for each Contract Month will be the sum of the Existing Fleet Payment for each Existing Bus and the New Fleet Payment for each New Bus.

8.2 Existing Fleet Payment

- (a) The Existing Fleet Payment for an Existing Bus for each Contract Month is the amount set out in schedule 2 incorporating depreciation and interest.
The Existing Fleet Payment for an Existing Bus made during the Term will (for calculation purposes):

- (i) end no more than 14 years (168 months) after the first monthly payment was made by the Director in respect of that Existing Bus under the Previous Contract or any other previous service agreement; and
- (ii) cease if the Existing Bus ceases to be a Contract Bus for any reason.

8.3 New Fleet Payment

- (a) The New Fleet Payment (incorporating depreciation and interest) for a New Bus approved by the Director under clause 14.2 or for the purpose of complying with the Bus Replacement Program under clause 12.6 for a Contract Month will be calculated according to the following formula:

$$NFP = NFDP + NFIP$$

where:

- NFP** is the New Fleet Payment for a New Bus for a Contract Month;
- NFDP** is the New Fleet Depreciation Payment calculated as the New Vehicle Value (NVV) divided by 168. In the case of a used or second hand New Bus, the New Vehicle Value will be determined in accordance with clause 8.3(e) of this schedule 3 and divided by 168 less the age of the vehicle at the date of purchase by the Operator (expressed as a number of months);
- NVV** is the New Vehicle Value calculated under clause 8.3(d) or (e) of this schedule 3 for the Vehicle Category relevant to the New Bus, applicable at the time the New Bus first enters regular passenger service under this document; and
- NFIP** is the New Fleet Interest Payment determined in accordance with clause 8.3(c) below.

- (b) The New Fleet Payment for a New Bus made during the Term will commence from the first day that the New Bus is in regular passenger service under this document and will end on the earlier of (for calculation purposes):
- (i) 168 months after that date for new vehicles;
 - (ii) 168 months less the vehicle's age in months at the time of purchase, after that date for used or second hand vehicles; and
 - (iii) the date that the New Bus ceases to be a Contract Bus for any reason.

- (c) The New Fleet Interest Payment for each Contract Month will be calculated according to the following formula:

$$NFIP = (NVV - \sum NFDP) \times i$$

where:

NFIP is the New Fleet Interest Payment for a New Bus for a Contract Month;

NVV has the same meaning as in clause 8.3(a) of this schedule 3;

$\sum NFDP$ is the sum of New Fleet Depreciation Payments paid for the New Bus in previous Contract Months; and

R is the annual 10-year Bank Bill Swap Rate (expressed as a decimal) at the start of the Contract Month prior to the Contract Month in which the New Bus is in regular passenger service plus a margin of 0.017. The 10-year Bank Bill Swap Rate will be referenced to the daily rates published by nabCapital (www.nabmarkets.com).

i is the monthly interest rate used to calculate the New Fleet Interest Payment for a New Bus for a Contract Month calculated in accordance with the following formula:

$$i = (1 + R)^{(1/12)} - 1$$

- (d) The New Vehicle Value for any New Bus (other than a second hand or used bus) in any Contract Year will be determined in accordance with the following formula:

$$NVV_{CY} = (NVV_{CY-1} \times APP_{CY-1} / HDUL_{CY-1}) \times 1.02$$

where:

NVV_{CY} is the New Vehicle Value for any Contract Year for the relevant Vehicle Category. For the first Contract Year the New Vehicle Value for each Vehicle Category will be as follows;

Vehicle Category	NVV for the first Contract Year
Articulated Bus Euro 4 Spec (ARTIC)	\$714,800
Heavy Duty Ultra Low Floor Euro 4 Spec (HDUL)	\$433,986
Heavy Duty School Bus Euro 4 Spec (HDS)	\$411,000
Medium Duty Ultra Low Floor Euro 4 Spec (MDUL)	\$389,300

NVV_{CY-1} is the New Vehicle Value for the previous Contract Year for the relevant Vehicle Category;

$HDUL_{CY-1}$ is the New Vehicle Value for the previous Contract Year for the HDUL Vehicle Category; and

APP_{CY-1} is the average actual purchase price (including stamp duty but excluding GST) of all New Buses approved in the Melbourne metropolitan area during the previous Contract Year within the HDUL Vehicle Category.

- (e) The New Vehicle Value for any used or second hand New Bus in any Contract Year will be the purchase price for the vehicle (including stamp duty but excluding GST) as approved by the Director.
- (f) The New Vehicle Value is subject to review at the request of either the Director or the Operator where either party considers there to be a material variance or change in the market price for new vehicles of a comparable standard by reference to the Director's specifications. This review is subject to the parties' rights under clause 39.
- (g) The New Fleet Payment for a New Bus will not be paid by the Director until the Operator has:
 - (i) provided the Director with a copy of the applicable registration certificate;
 - (ii) provided the Director with a copy of the vehicle manufacturer's invoice and receipt of payment; and
 - (iii) introduced the New Bus into regular passenger service under this document.
- (h) The Existing Fleet Payment and New Fleet Payment are only payable during the Term and are:
 - (i) not subject to indexation; and
 - (ii) only payable for so long as the relevant Contract Bus remains as a Contract Bus.

8.4 Part Contract Month

- (a) The Fleet Payment under this clause 8 for any Contract Bus will be pro rata adjusted if the:
 - (i) first day that a New Bus is in regular passenger service under this document is not the first day of a Contract Month;
 - (ii) fourteenth anniversary of the Contract Bus commencing regular passenger service under this document is not the last day of the Contract Month;
 - (iii) Contract Bus ceases to be a Contract Bus for any reason on a day other than the last day of a Contract Month; or
 - (iv) end of the Term falls on a day other than the last day of a Contract Month;by multiplying the Fleet Payment by:

NBD

CAL

where:

NBD is the number of days in the Contract Month that the Contract Bus is in regular passenger service prior to its fourteen anniversary; and

CAL is the total number of days in the Contract Month.

- (b) If a Contract Bus is sold, destroyed, damaged (and not repaired or replaced) or no longer generally available for use as a Contract Bus (excluding temporary unavailability for repairs or other causes), the Fleet Payment will be reduced by the amount of the Existing Fleet Payment or New Fleet Payment for that Contract Bus as the case may be.

9. Cost Index Multipliers

9.1 Labour Index

- (a) The Compound Labour Index Multiplier (CLIM) will be calculated and applied from the commencement of each Contract Half Year (except for the first Contract Half Year) as:
 - (i) the Labour Index for the most recent three month period ended February or August at that time, divided by:
 - (ii) the Labour Index for the three months ended February 2008.
- (b) The Compound Labour Index Multiplier for the first Contract Half Year will be deemed to be 1.
- (c) For the purpose of this clause 9.1, the Labour Index is the Average Weekly Earnings index for Victoria (Full time adults Trend for Ordinary time earnings) ABS Publication No.6302.0.

9.2 Workcover Index

- (a) The Compound WorkCover Index Multiplier (CWIM) will be calculated and applied from the commencement of each Contract Half Year in accordance with the following formula:

$$\text{CWIM} = \text{WIM} \times \text{CLIM}$$

where:

CWIM is the Compound WorkCover Index Multiplier; and

WIM means:

- (i) the WorkCover Index applicable at the commencement of the previous Contract Half Year, divided by;
- (ii) the WorkCover Index as at 1 January 2008.

CLIM is the Compound Labour Index Multiplier as determined in accordance with clause 9.1 of this schedule 3.

- (b) The Compound WorkCover Index Multiplier for the first Contract Half Year will be deemed to be 1.
- (c) For the purpose of this clause 9.2, the WorkCover Index is the Victorian Industry Rate for Short Distance Bus Transport (G5133W) multiplied by 1 plus the rate of Buyout Option (expressed as a decimal) administered by the Victorian Workcover Authority.

9.3 Payroll Tax Index Multiplier

- (a) The Compound Payroll Tax Index Multiplier (CPIM) will be calculated and applied from the commencement of each Contract Half Year in accordance with the following formula:

$$\text{CPIM} = \text{PIM} \times \text{CLIM}$$

where:

CPIM is the Compound Payroll Tax Index Multiplier; and

PIM means:

- (i) the Payroll Tax Index applicable at the commencement of the Contract Half Year at that time, divided by:

- (ii) the Payroll Tax Index as at 1 July 2008.

CLIM is the Compound Labour Index Multiplier as determined in accordance with clause 9.1 of this schedule 3.

- (b) For the purpose of this clause 9.3, the Payroll Tax Index is the Victorian State Payroll tax rate as published by the Victorian State Government Revenue Office.

9.4 Superannuation Index Multiplier

- (a) The Compound Superannuation Index Multiplier (CSIM) will be calculated and applied from the commencement of each Contract Half Year in accordance with the following formula:

$$\text{CSIM} = \text{SIM} \times \text{CLIM}$$

where:

CSIM is the Compound Superannuation Index Multiplier; and

SIM means:

- (i) the Superannuation Index applicable at the commencement of the Contract Half Year at that time, divided by:
- (ii) the Superannuation Index as at 1 July 2008.

CLIM is the Compound Labour Index Multiplier as determined in accordance with clause 9.1 of this schedule 3.

- (b) For the purpose of this clause 9.4, the Superannuation Index is the Commonwealth Superannuation Guarantee Levy percentage as published by the Australian Taxation Office.

9.5 Fuel Index Multiplier

- (a) The Fuel Index Multiplier (FIM) will be calculated and applied from the commencement of each Contract Month as:

- (i) the Fuel Index for the calendar month two months prior, divided by:
- (ii) the Fuel Index for May 2008.

- (b) The following process is to be undertaken for the purpose of calculating the Fuel Index for any Contract Month:

The monthly average of the daily Caltex wholesale price to supply diesel as quoted [Insert source], less the rate per litre for the Fuel Tax Credit and any other Government rebate applicable at the time (in AU\$/litre excluding GST), for the Contract Month.

- (c) For the purposes of this clause 9.5, Fuel Tax Credit means the fuel credits received under the single system of fuel tax credits introduced under the *Fuel Tax Act 2006* (Cth) on and from 1 July 2006.

9.6 CPI Index

- (a) The CPI Index Multiplier (CIM) will be calculated and applied from the commencement of each Contract Half Year (except for the first Contract Half Year) as:

- (i) the CPI Index for the most recent March or September Quarter at that time, divided by:
- (ii) the CPI Index for the March Quarter 2008.

- (b) The CPI Index Multiplier for the first Contract Half Year will be deemed to be 1.
- (c) For the purpose of this clause 9.6, the CPI Index is the Melbourne Consumer Price Index ABS Publication No.6401.0.

9.7 Replacement Index

- (a) In this clause 9, a reference to an index includes a reference to any replacement index or renamed index performing substantially the same function as the named index and a reference to a Governmental Agency responsible for publishing an index includes a reference to any Governmental Agency or other body performing substantially the same function in relation to the index. In the absence of a replacement or renamed index performing substantially the same function as the named index the Director, acting in consultation with the Operator, will determine the appropriate index and advise the Operator.
- (b) The parties acknowledge that the timeliness or availability of any reference index may give rise to a payment correction.

10. Payment Adjustments

10.1 Advertising Adjustment

The Advertising Adjustment for any part or full Contract Year is the amount calculated (if any) under clause 24.3 of this document payable by the Operator to the Director within three months of the end of that Contract Year (or within three months of the end of the Term if the Term ends during a Contract Year) which may be set off by the Director against the next monthly Local Service Payment.

10.2 Patronage Incentive Amount

- (a) The Patronage Incentive Amount is calculated for any part or full Contract Year in accordance with the following formula:

$$PIA = \$0.50 \times (Vals^T - 1.02 \times Vals^{T-1} - PSKC)$$

where:

PIA is the Patronage Incentive Amount for any part or full Contract Year;

Vals^T is the sum of successful Ticket entry validations determined in accordance with schedule 4, Part A for that same part or full Contract Year;

Vals^{T-1} is the sum of successful Ticket entry validations determined in accordance with schedule 4, Part A for the previous Contract Year. In the case of the first part or full Contract Year the Ticket validations will be based on OneLink data reported for the relevant period prior to the Commencement Date; and

PSKC is the Patronage Service Kilometre Change impact calculated in accordance with clause 10.2(b) of this schedule 3.

- (b) The Patronage Service Kilometre Change is calculated for any part or full Contract Year in accordance with the following formula:

$$PSKC = Vals^{T-1} \times (((VSK^T / VSK^{T-1}) - 1) \times 0.3)$$

where:

Vals^{T-1} is defined in accordance with the above clause 10.2(a);

VSK^T is the Vehicle Service Kilometres for the Contract Year; and

VSK^{T-1} is the Vehicle Service Kilometres for the previous Contract Year.

- (c) If the Patronage Incentive Amount for any part or full Contract Year is positive, the Director agrees to pay the Patronage Incentive Amount to the Operator within three months of the end of that Contract Year (or within three months of the end of the Term if the Term ends during a Contract Year). If the Patronage Incentive Amount for any part or full Contract Year is negative, the Patronage Incentive Amount will be nil.

10.3 Operational Incentive Amount

The Operational Incentive Amount for any Contract Month (which may be positive or negative) will be calculated and paid in accordance with the Operational Performance Regime developed in accordance with schedule 4, Part B.

10.4 Ceiling on Incentive Amounts

The positive or negative sum of the Patronage Incentive Amount and Operational Incentive Amount for any Contract Year shall not exceed 2.0% of the sum of the Local Service Payments for the same Contract Year, excluding any Annual Adjustments.

10.5 Provision of information

The Operator agrees to provide the Director with sufficient documentation within one month of the end of a Contract Year (or within one month of the end of the Term if the Term ends during a Contract Year) to enable the Director to calculate and substantiate the amount of any Advertising Adjustment or Patronage Incentive Amount payable for that Contract Year.

10.6 New Fleet Fuel Adjustment

- (a) Subject to clause 10.6(b), each new Heavy Duty Ultra Low Floor (HDUL) air conditioned Contract Bus entering service through the Bus Replacement Program will attract the New Fleet Fuel Adjustment to recognise the increased fuel consumption costs associated with that New Bus, calculated according to the following formula:

$$\text{NFFA} = (\$4,500 \times \text{CIM})/12$$

where:

NFFA is the monthly New Fleet Fuel Adjustment; and

CIM is the CPI Index Multiplier as determined in accordance with clause 9.6(a) of this schedule 3.

- (b) The New Fleet Fuel Adjustment will not apply where the number of HDUL Contract Buses which attracted the 20% fuel loading in the Previous Contract plus the number of HDUL Contract Buses which attract the New Fleet Fuel Adjustment in this document multiplied by 70,000 kilometres exceeds the total annual Bus Kilometres.
- (c) The New Fleet Fuel Adjustment for any Contract Bus will be pro rata adjusted if the:
- (i) first day that a New Bus is in regular passenger service under this document is not the first day of a Contract Month;
 - (ii) Contract Bus ceases to be a Contract Bus for any reason on a day other than the last day of a Contract Month; or
 - (iii) end of the Term falls on a day other than the last day of a Contract Month;
- by multiplying the New Fleet Fuel Adjustment by:

NBD

CAL

where:

NBD is the number of days in the Contract Month that the Contract Bus is in regular passenger service prior to its fourteen anniversary; and

CAL is the total number of days in the Contract Month.

- (d) If a Contract Bus is sold, destroyed, damaged (and not repaired or replaced) or no longer generally available for use as a Contract Bus (excluding temporary unavailability for repairs or other causes), the New Fleet Fuel Adjustment (if any) for that Contract Bus will cease

11. Long Service Leave Adjustment

- (a) The Director agrees to pay the Operator a Long Service Leave Adjustment as defined in clause 11(b) of this schedule 3.
- (b) Long Service Leave Adjustment means the actual payments made to Staff since the Commencement Date or the last day of the period covered by the previous Long Service Leave Adjustment, whichever is the most recent date, in respect of long service leave (arising under statute or an industrial award or agreement) for post 13 April 1998 service including:
- (i) cash payments made in respect of wages or salaries to such Staff during their period of long service leave and related direct on costs (being superannuation, payroll tax, WorkCover), provided the Operator incurs additional cost for replacement staff during the period of absence;
 - (ii) cash payments made to such Staff for unused, vested long service leave entitlements on ceasing employment and related direct on costs; and
 - (iii) cash payments made in lieu of long service leave to the extent permitted by law and any relevant industrial award or agreement and related direct on costs.
- (c) The Operator agrees to provide the Director with sufficient documentation to enable the Director to calculate and substantiate the amount of any Long Service Leave Adjustment for that Contract Year.
- (d) The Director will pay the Operator the Long Service Leave Adjustment on the first day of the Contract Month after the Long Service Leave Adjustment has been substantiated by the Operator in accordance with clause 11(c) of this schedule 3 and agreed to by the Director.

12. Withholding Payment for Non-Reporting

If the Operator fails to meet its reporting obligations under clause 19.2 to the satisfaction of the Director, the Director may withhold the sum of five percent (5%) of the Local Service Payment for any Contract Month until the Operator satisfies the reporting obligations. Any payment that is withheld by the Director will be released to the Operator when the next Local Service Payment after the Operator meets the reporting obligations is due and payable.

Schedule 4 – Performance Monitoring Regime

(clause 20)

1. Part A - Patronage Incentive Regime (PIR)

1.1 General principles

- (a) The parties acknowledge that the underlying policy objectives of the PIR are to:
 - (i) measure the change in patronage of the Local Services from one year to the next; and
 - (ii) offer an incentive to the Operators to increase patronage by providing for a positive financial adjustment to the Local Service Payments under Schedule 3.
- (b) The PIR is operative from the first anniversary of the Commencement Date, or any later date agreed between the parties.

1.2 Patronage Indicator

The performance indicator applicable to the PIR (**PIR Indicator**) is successful Ticket entry validations.

1.3 Data

- (a) The Director agrees to measure the PIR Indicator using Ticket validation data reported by OneLink Transit Systems Pty Ltd or the provider of any other ticketing or information system implemented during the Term (including NTS).
- (b) If the Director reasonably believes that validation data is unreliable for any period (for example because of systemic breakdown) the Director may use typical representative data available to determine Ticket validations for that period, including manual survey data.

1.4 Patronage Incentive Amount

The calculation and payment of any Patronage Incentive Amount under the PIR will be made under, and in accordance with, Schedule 3.

2. Part B – Operational Performance Regime (OPR)

2.1 General principles

The parties acknowledge the following principles in relation to the OPR:

- (a) The underlying policy objectives of the OPR are to:
 - (i) measure the reliability and operational efficiency of the Local Services by means of a review of key operational indicators (**OPR Indicators**);
 - (ii) provide for an incentive regime which allows the Operator to earn a financial reward for exceeding the Performance Benchmarks relevant to the OPR Indicators or to be penalised financially for failing to meet them (**Operational Incentive Amount**); and
 - (iii) encourage improved service provision and quality by providing for a remedial process where performance problems are identified.
- (b) The effectiveness of the OPR depends on the availability of measurable and reliable data. Therefore, the OPR will begin on an interim basis (**Interim OPR**) and be phased in fully

as suitable information and data collection systems are developed, tested and implemented in consultation with the industry.

- (c) The collection and interpretation of data and the determination of appropriate OPR Indicators and Performance Benchmarks will be agreed through consultation with the industry before the OPR is activated. Failing agreement, determination of the OPR Indicators and Performance Benchmarks will be referred to the Expert for determination under clause 39.
- (d) The Director will determine the relevant bonuses, incentives, penalties and or deductions to apply as part of the OPR and when the OPR will commence and the extent of its operation.
- (e) A failure by an Operator to meet a relevant Performance Benchmark will not itself constitute a Non-Compliance Event or Termination Event but may, if remedial action required by the Director is not carried out, trigger the cure regime and ultimately lead to Termination of this document as explained in clause 5.2 of this Schedule.

2.2 Interim OPR

- (a) The Interim OPR will commence from the Commencement Date and remain operative until the OPR Trial Date, at which time the OPR Trial will be introduced under clause 2.3 of this Schedule. The following Performance Indicators and Performance Benchmarks apply to the Interim OPR:
 - (i) no Local Service provided by an Operator or an Associated Operator will leave any specified timing point on its Route (defined in the PSR) earlier than 59 seconds before the scheduled departure time published in a Timetable, measured against the time displayed by the operative ticketing system;
 - (ii) no more than 5% of all Local Services provided by the Operators and any Associated Operators on any day will arrive at their scheduled destination (defined in the PSR) more than 5 minutes and 59 seconds later than the scheduled arrival time published in a Timetable, measured against the time displayed by the operative ticketing system; and
 - (iii) the Operators and the Associated Operators will not cancel any more than 0.5% of all Local Services scheduled to operate on any day.
- (b) During the Interim OPR;
 - (i) no Operational Incentive Amount will be payable for exceeding or failing to meet the relevant Performance Benchmarks; and
 - (ii) financial adjustments for Missed Services (if any) will apply under Schedule 3.
- (c) The Nominated Operator agrees to provide the necessary information to the Director (in its Operational Reports) of each Operator's performance against the relevant Performance Indicators that apply under the Interim OPR.

2.3 OPR Trial

- (a) From the Commencement Date the Director and the Nominated Operator agree to consult actively with each other, the BAV, other stakeholders and interested persons that the Director considers should be involved, for the purposes of establishing the OPR which will be:
 - (i) introduced on a trial basis (**OPR Trial**) when an information and data collection system in relation to the Local Services that the Director considers is accurate, reliable and otherwise appropriate to be used in relation to the OPR is introduced

- (**OPR Trial Date**) and operate for 12 months (or any longer period considered appropriate by the Director) (**OPR Trial Period**); and
- (ii) phased in fully at the end of the OPR Trial Period (**OPR Commencement Date**).
- (b) The consultation process referred to in clause 2.3(a) above must address matters including the following which will form the basis of the scope of the OPR Trial and then the OPR:
- (i) formulation of the initial OPR Indicators;
 - (ii) the process for calibrating the Performance Benchmarks to apply to the OPR Indicators;
 - (iii) the date from which the measurement and assessment will begin;
 - (iv) exceptions to measurement and assessment of the OPR Indicators;
 - (v) the manner and timing of collection and reporting of data for the purposes of establishing and reviewing relevant Performance Benchmarks and for measuring and assessing the OPR Indicators against the relevant Performance Benchmarks;
 - (vi) proposals for determining the level of, and process for calculating, the Operational Incentives Amount that will apply;
 - (vii) the process (as set out in clause 5.1 of this Schedule) to manage Performance Problems;
 - (viii) information relating to the OPR and each Operator's performance that will be made available to the public by the Director; and
 - (ix) other elements of the OPR considered necessary by the Director.
- (c) At least two months prior to the OPR Trial Date, the Director agrees to notify the Nominated Operator of the scope of the OPR Trial. The Nominated Operator agrees to provide the Director with any comments it has in relation to the OPR Trial within 10 Business Days of receiving that notification from the Director. Within 10 Business Days of receiving the Nominated Operator's comments (if any) the Director agrees to determine whether or not any changes will be made to the OPR Trial and notify the Nominated Operator of his determination. The Director's determination is final, subject to the Nominated Operator's ability to refer any dispute regarding an applicable Performance Benchmark to the Expert under clause 39.
- (d) The OPR Trial will apply during the OPR Trial Period and:
- (i) no Operational Incentive Amount will be payable; and
 - (ii) financial adjustments for Missed Services (if any) will apply under Schedule 3.
- (e) During the OPR Trial Period the Director and the Nominated Operator agree to continue to consult with each other in relation to the matters set out in clause 2.3(b) of this Schedule for the purpose of finalising the scope of the OPR that will be introduced in full under clause 2.4 of this Schedule.

2.4 Full OPR

The OPR will commence fully (with any revisions made as a result of consultation under clause 2.3(e) of this Schedule) immediately following the conclusion of the OPR Trial Period (**OPR Commencement Date**).

2.5 Operational Incentive Amount

- (a) Any Operational Incentive Amount calculated under the OPR will be paid in accordance with Schedule 3, which the parties agree to amend prior to the OPR Commencement Date.
- (b) The Operators will only be eligible for the Operational Incentive Amount (and liable to make a payment if that amount is negative) on and from the OPR Commencement Date.

3. Part C – Qualitative Performance Regime (QPR)

3.1 General principles

The parties acknowledge that the objective of the QPR is to measure each Operator's performance against the customer satisfaction indicators that are within the control of each Operator.

3.2 QPR Indicators and Performance Benchmarks

- (a) During the first year of the Term the Director will collect data and consult with the Nominated Operator to determine appropriate key performance indicators (**QPR Indicators**) and Performance Benchmarks for those QPR Indicators. The QPR Indicators may relate to matters including driver behaviour, vehicle cleanliness, onboard vehicle information and complaints.
- (b) During the first year of the Term the Director will also determine whether any financial adjustments to the Local Service Payments will be made when the QPR becomes operative.

3.3 Commencement of QPR

The QPR will become operative from the first anniversary of the Commencement Date at which time clause 5.1 of this Schedule will apply in relation to the QPR.

4. Part D – Metlink Performance Regime (MPR)

4.1 General principles

The parties acknowledge that the objectives of the MPR are to:

- (a) encourage improvements in the provision by the Operators to Metlink of Transport Information relating to Service Adjustments and New Services to facilitate the role of Metlink in providing that Transport Information to users of the Local Services; and
- (b) measure each Operator's performance against its Metlink related obligations and the Metlink KPIs.

4.2 Performance against Metlink KPIs

- (a) The Metlink KPIs and the Performance Benchmarks applicable to them are as shown in the table in clause 4.4 of this Schedule.
- (b) Each Operator acknowledges and agrees that the provisions of clause 5.1 of this Schedule apply in relation to the MPR from the Commencement Date; and
- (c) Further detail of the Performance Benchmark requirements (including particulars of Transport Information categories and criteria of completeness, currency and accuracy of Transport Information) will be contained in the Metlink Operations Manual.

4.3 Incentives and deductions

The parties acknowledge and agree that the Director and the BAV may consult during the Term in relation to the introduction of a financial incentive and or deduction regime as part of the MPR. Any agreement reached between the Director and the BAV will be implemented by way of amendment to Schedule 3 and this Schedule as necessary.

4.4 Metlink KPIs

	Metlink KPI	Performance Benchmark
1(a)	In relation to New Services awarded to the Operators – the provision of complete, current and accurate Transport Information to Metlink in a timely manner (clause 17.2(a)).	Route description data to be provided by the Nominated Operator to Metlink 90 days in advance of the New Service commencement date. Timetable data to be provided by the Nominated Operator to Metlink 42 days in advance of the New Service commencement date.
1(b)	In relation to Service Adjustments – the provision of complete, current and accurate Transport Information to Metlink in a timely manner (clause 17.2(a)).	Where the Service Adjustment is an adjustment to a Route – Route description data to be provided by the Nominated Operator to Metlink 49 days in advance of the commencement date of the Service Adjustment. Where the Service Adjustment is an adjustment to a Timetable – Timetable data to be provided by the Nominated Operator to Metlink 28 days in advance of the commencement date of the Service Adjustment.
1(c)	In relation to Temporary Service Changes – the provision of complete, current and accurate Transport Information to Metlink in a timely manner (clause 17.2(a)).	Relevant Transport Information to be provided by the Nominated Operator to Metlink: (a) 28 days in advance of the commencement date of the Temporary Service Change; or (b) if the Temporary Service Change is requested less than 28 days from its proposed commencement date, then by the revised time that the parties agree in relation to that Temporary Service Change.
1(d)	In relation to Special Event Services – the provision of complete, current and accurate Transport Information to Metlink in a timely manner (clause 17.2(b)).	Transport Information to be provided by the Nominated Operator to Metlink 28 days in advance of the date of the relevant Special Event.

1(e)	In relation to Urgent Service Changes – the provision of complete, current and accurate Transport Information to Metlink in a timely manner (clause 17.2(a)).	Relevant Transport Information to be provided by the Nominated Operator to Metlink as soon as practicable.
1(f)	Where the Director has not approved the Service Adjustment Template, New Service Template or requested Special Event Services (as the case may be) by the date that would allow the Nominated Operator sufficient time to meet the relevant Performance Benchmark above (clause 8.5).	Relevant Transport Information to be provided by the Nominated Operator to Metlink by the revised time that the parties agree in relation to that Service Adjustment, New Service or Special Event Services (as the case may be).
2	Timely reporting of damage to Bus Stops and Transport Information signage at Bus Stops (clause 17.4).	In relation to damage of a nature requiring urgent maintenance or repair (including offensive graffiti, dangerous situations or removed infrastructure), the Nominated Operator agrees to advise Metlink within 4 hours of receiving notification from a Driver or customer as the case may be. In relation to other damage the Nominated Operator agrees to advise Metlink within 24 hours of receiving notification from a Driver or customer as the case may be.
3	Maintenance of on board information and Metlink branding in compliance with the Metlink Master Style Guide (clause 17.2(f)), including: • current Fare information; • current concession information; • Metlink branding on Contract Buses; • information on Authorised Officers, including their powers under the <i>Transport Act 1983 (Vic)</i>; • information on the Metlink website and the Metlink call centre; and • any other information agreed with the Director.	The Operators agree to ensure that all required decals are current and displayed at all times. The Operators agree to rectify any non-compliance with this Metlink KPI notified to it by: (a) a customer in the form of a complaint; or (b) the Director as a result of a compliance check conducted by a mystery shopper engaged at the direction of the Director, within 7 days of receiving that notice.

5. Part E – Performance Problems and consequences

5.1 Proposed process for Performance Problems

Subject to the operative dates set out in this Schedule for the Interim OPR, the OPR Trial, the OPR, the QPR and the MPR, each Operator agrees to, and agrees to procure that each of its Associated Operators does, at their own cost:

- (a) use its reasonable endeavours to meet the respective Performance Benchmarks relating to each OPR Indicator, each QPR Indicator and each Metlink KPI; and
- (b) if it becomes aware that it has failed to meet an applicable Performance Benchmark in relation to the preceding month of service, or the Director otherwise becomes aware of the failure and notifies the Nominated Operator accordingly:
 - (i) investigate the underlying problem that led to the failure (**Performance Problem**);
 - (ii) notify the Director within two Business Days of having determined the Performance Problem;
 - (iii) immediately take whatever action the Director reasonably requires of the Operator to minimise the impact of the Performance Problem;
 - (iv) after implementing the measures requested by the Director, prepare a report identifying and addressing the Performance Problem and deliver it to the Director within five Business Days of receiving the Director's notification to take remedial action;
 - (v) take all other action to correct the Performance Problem and from then on ensure that the Performance Problem does not recur; and
 - (vi) otherwise manage the Performance Problem.

5.2 Consequences

A failure to meet a relevant Performance Benchmark will not in itself constitute a Non-Compliance Event, a Termination Event or otherwise be a breach of this document but:

- (a) will require the relevant Operator to take remedial action under clause 3.1 of this Schedule;
- (b) will, if that remedial action is not carried out, trigger a Non-Compliance Event requiring the cure process in clause 26 to be complied with;
- (c) will, if the underlying Performance Problem is not cured by the relevant Operator, give the Director the right to appoint a Step-in Party under clause 27 and or Terminate this document under clause 28;
- (d) may result in abatement of the Local Service Payments under clause 23.4;
- (e) may affect the amount of any Operational Incentive Amount; and
- (f) will, if the failure relates to Missed Services, result in an adjustment to the Local Service Payments under Schedule 3.

Schedule 5 – Warranties (clause 4)

Each of the following warranties is given by each Operator and the Parent Guarantor in relation to itself, its subsidiaries and each Associated Operator:

- (a) all of the information, representations and other matters of fact communicated in writing to the Director (or his representatives) by it and its directors, officers, employees, servants, agents or associates, relating to the provision of the Local Services under this document were (at the dates submitted to the Director or its representatives) and remain, in all material respects, true and not misleading;
- (b) it is a corporation duly incorporated and validly existing under the Laws of the State;
- (c) it has the power to enter into, and perform under, the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (d) it has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;
- (e) each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (f) the execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a Law or treaty or a judgment, ruling, order or decree of a Government Body binding on it; or
 - (ii) its constitution or other constituent documents;
- (g) except as disclosed to the Director no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it;
- (h) no resolution has been passed for its winding up;
- (i) no resolution has been passed for the appointment of an administrator to it;
- (j) there is no unsatisfied judgment against it;
- (k) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertaking or assets or income;
- (l) each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be party and the transactions contemplated by those documents; and
 - (ii) its business as now conducted or contemplated and that is material (including, under the Act),

has been obtained or effected. Each is in full force and effect. It has complied with each of them and has paid all applicable fees for each of them. To the extent this warranty

applies to Authorisations that are only required (and can only be obtained) from the Commencement Date, it is only given as at the Commencement Date;

- (m) all returns, notices and other documents required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (n) it has duly observed and complied in all respects with the provisions of all Laws and all orders, notices, awards and determinations made by any Government Body in any way relating to or binding on it or any property owned or occupied by it;
- (o) all copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to the Director are true and complete copies. Where applicable, those documents are in full force and effect;
- (p) no breach of a Previous Contract has occurred and is continuing;
- (q) it complies with the privacy Laws, and any guidelines issued by the Commissioner under the relevant privacy Law;
- (r) each of the Contract Buses complies with the requirements set out in clause 12.1; and
- (s) each of the Contract Depots complies with the requirements set out in clause 15.

Schedule 6 – Form of Performance Bond (clause 36.1)

[name of Financial Institution]

Name **Director of Public Transport**
under the *Transport Act 1983* (Vic)
on behalf of the Crown in right of the State of Victoria under the PTCA

Short form name Principal

Notice details Level 14, 121 Exhibition Street, Melbourne, Victoria, 3000

Names [#####]

Short form name Customers

Notice details [insert details]
Facsimile: [insert facsimile]
Attention:

[Financial Institution] asks the Principal to accept this bank guarantee (**Undertaking**) in connection with a Metropolitan Bus Services Contract – Local Services dated [] between the Principal and Customers (**Contract**).

Description of contract/ agreement Provision of regular passenger services.

In consideration of the Principal accepting this Undertaking and its terms, [Financial Institution] undertakes unconditionally to pay the Principal on written demand from time to time to any sum or sums to an aggregate amount not exceeding:

Amount AUD [] **Dollars and Cents ONLY.**

[Financial Institution] will pay the amount or any parts of it to the Principal on presentation of this original Undertaking (accompanied by a written demand) to the [Financial Institution] without reference to the Customers and even if a Customer has given [Financial Institution] notice not to pay the money, and without regard to the performance or non-performance of a Customer or Principal under the terms of the Contract.

By accepting this Undertaking, the Principal acknowledges and agrees that [Financial Institution] may rely entirely on any demand or notice as presented to it and has no responsibility or obligation to investigate the authenticity or correctness of the matters stated in a demand or notice, the signatures on the same, the positions of the signatories or the capacity or entitlement of the Principal to give and execute the demand or notice.

Any alterations to the terms of the Contract or any extensions of time or any other forbearance by the Principal or a Customer will not impair or discharge [Financial Institution] liability under the Undertaking.

This Undertaking remains in force until the first to occur of:-

- (f) The Principal notifies the [Financial Institution] in writing that the Undertaking is no longer required.
- (g) The original Undertaking is returned to the [Financial Institution].
- (h) [Financial Institution] has paid to the Principal the Amount or the balance outstanding of the Amount.
- (i) the expiry date set out in clause 36.1(e) of the Contract arises.

On [expiry] or when no longer required this original Undertaking must be returned for cancellation to the [Financial Institution].

Notwithstanding anything stated in this Undertaking, [Financial Institution] has the right to terminate it at any time by paying the Principal the Amount or the balance outstanding of the Amount, or any lesser amount that the Principal may require.

This Undertaking and the Principal's rights and benefits under it may only be assigned by the Principal with the prior written consent of the Financial Institution which shall not be unreasonably withheld. The Principal must provide the Financial Institution prior written notice of any assignment including the name, address and details of the proposed assignee.

This Undertaking will be governed by the laws of Victoria, Australia.

Dated at [] this [] day of [].

Executed by [] for and on behalf of [Financial Institution]

.....

Schedule 7 – Transfer Price (clauses 1.1 and 30)

1. Transfer Price

- (a) The Transfer Price payable by the Purchaser for the Assets is calculated as follows:

Transfer Price = Aggregate Bus Price + Aggregate Lease Adjustment Amount + Depot Price + Business Systems Price + Bus Operations IP Price + Other Assets Price – Transferring Staff Payment

where:

Aggregate Bus Price = the aggregate of the Bus Price for each Contract Bus to be transferred

Aggregate Lease Adjustment Amount = the aggregate of the Lease Adjustment Amount for each Lease of a Contract Bus to be novated

Bus Price = the purchase price of a Contract Bus as calculated under clause 2(a) of this Schedule 7

Depot Price = the purchase price for the Owned Depots calculated under clause 3 of this Schedule 7

Business Systems Price = the purchase price for the Business Systems calculated under clause 5 of this Schedule 7

Bus Operations IP Price = the purchase price for the Bus Operations IP calculated under clause 6 of this Schedule 7

Lease Adjustment Amount = the amount calculated under clause 2(b) of this Schedule 7 in relation to the novation of a Lease of a Contract Bus

Other Assets Price = the purchase price payable for all Assets other than those referred to above, calculated under clause 7 of this Schedule 7

Transferring Staff Payment = the amount referred to in clause 30.8(c)

- (b) If the Assets are transferred subject to encumbrances under an Allocation Statement, the Transfer Price calculated under clause 1(a) of this Schedule 7 will be reduced by an amount equal to the net present value of those encumbrances.

2. Bus Price

- (a) The purchase price for a Contract Bus to be transferred under clause 30 will be the market value of that Contract Bus calculated under clause 4(b) of this Schedule 7.
- (b) In relation to the novation of a Lease of a Contract Bus under clause 30, the parties agree that:
- (i) if the market value of that Contract Bus (calculated under clause 4(b) of this Schedule 7) is greater than the pay out amount or termination value under that Lease at the Transfer Date then the Purchaser must pay the amount of the excess to the relevant lessee Operator;
 - (ii) if the market value of that Contract Bus (calculated under clause 4(b) of this Schedule 7) is less than the pay out amount or termination value under that Lease at the Transfer Date then the relevant lessee Operator must pay to the Purchaser

(or the Purchaser may deduct by way of set off against the Aggregate Bus Price) the amount of the shortfall; and

- (iii) if the Lease of a Contract Bus is an operating lease then no fee will be payable for the novation of that Lease.

3. Depot Price

The purchase price for the Owned Depots to be transferred under clause 30 will be calculated in accordance with Schedule 3 of the Termination Depot Option Deeds or the End of Term Depot Option Deeds.

4. Market Value of Assets

- (a) Where the purchase price of an Asset is to be calculated at its market value, then the following provisions of this clause apply.
- (b) At least 14 days prior to the Transfer Date the Director and the Nominated Operator must jointly appoint a valuer to provide a market valuation of the relevant Asset to be transferred on the following basis:
 - (i) the valuer is to act as an expert and not as an arbitrator;
 - (ii) each relevant Operator or relevant Associated Operator is a willing but not anxious seller and the Purchaser is a willing but not anxious buyer;
 - (iii) there is a reasonable period within which to negotiate the value of the relevant Asset having regard to the condition of that Asset and the state of the market for that Asset;
 - (iv) the market valuation is to be on a GST exclusive basis; and
 - (v) the relevant asset is to be valued having regard to the operational requirements of the business with no value for goodwill.
- (c) If the Director and the Nominated Operator do not mutually agree on the appointment of a valuer in accordance with clause 4(b) of this Schedule 7, either party may request the President of the Institute of Chartered Accountants to appoint a valuer on behalf of the parties to provide a valuation in accordance with this clause.
- (d) The market value of each Asset will be the valuation obtained under clause 4(b) of this Schedule 7 in respect of that Asset.
- (e) A valuer appointed under this clause must have appropriate qualifications and experience to provide a fair and reasonable valuation.
- (f) The valuation provided by the valuer shall be final and binding on the parties except in the case of fraud or gross negligence.

5. Business Systems Price

- (a) The purchase price for the Business Systems to be transferred under clause 30 is calculated as follows:

Business Systems Price = The lesser of the Market Value of the Business Systems and the Replacement Cost of the Business Systems

where:

Market Value of the Business Systems = the market value of the Business Systems determined by a valuer appointed under, and on the same basis provided for in, clause 4(b) of this Schedule 7.

Replacement Cost = the listed price of the relevant Business System (or an equivalent) by the manufacturer or supplier from whom the Business System was acquired (or the manufacturer or supplier of the equivalent).

- (b) The work product and data component of the Business Systems shall have a nil value for the purpose of calculating the Business Systems Price under this clause.
- (c) The Business Systems Price calculated under clause 5(a) of this Schedule 7 will be capped at a maximum of 5% of the Local Service Payments for the 12 months preceding the Transfer Date.
- (d) The value of any Intellectual Property in the Business Systems will be incorporated in the calculation of the Bus Operations IP Price under clause 6 of this Schedule 7.

6. Bus Operations IP Price

Bus Operations IP will be deemed to have a nil value for the purpose of transfer under clause 30.

7. Other Assets Price

The purchase price for all Assets to be transferred under clause 30 (other than those Assets for which the purchase price is calculated under clause 1 to 6 of this Schedule 7) is the aggregate of the market value of each Asset calculated under clause 4 of this Schedule 7.

Schedule 8 – Bus Loading Standards (clauses 1.1 and 12.1)

2. Subject to clause 4 of this Schedule 8, the average loading (calculated under clause 2 of this Schedule) of a Contract Bus should not at any point on a Route (**Location**):
 - (i) on three days in succession; or
 - (ii) more than twice a week during two successive weeks,
exceed:
 - (iii) 70% of the Maximum Carrying Capacity for Contract Buses having a seating capacity for more than 30 passengers; or
 - (iv) 80% of the Maximum Carrying Capacity for Contract Buses having a seating capacity for 30 or less passengers.
2. The average loading at a Location will be calculated as the average of the loadings of Contract Buses passing that Location during an hour provided that at least two Contract Buses pass that Location. That hour need not be at the same time on each day on which the calculation is made.
3. A Local Service must not be designed or operated so that passengers are regularly unable to board that Local Service because the Contract Bus concerned would otherwise exceed a loading standard set out in clause 1 of this Schedule 8.
4. Provided that the Maximum Carrying Capacity of a Contract Bus is not exceeded, the standards referred to in clause 1 of this Schedule do not apply if:
 - (i) the intending passengers are school children and the relevant Operator or Director provides alternative arrangements which enable those school children to get to school on time and no earlier than 30 minutes before school commences; or
 - (ii) the intending passengers are school children and the relevant Operator or Director provides alternative arrangements which enable those school children to leave school within 30 minutes of school finishing.
5. Provided that the Maximum Carrying Capacity of a Contract Bus is not exceeded, the Director may agree to a modification or waiver of the standards referred to in either or both of clauses 1 and 3 of this Schedule for a period, and on conditions, considered appropriate by the Director where he forms the opinion that special circumstances exist and that no material detriment to the public will be caused by the granting of any modification or waiver.

Annexure A

ATS Agreement (clause 18.1)

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

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PUBLIC TRANSPORT CORPORATION

SUPPLEMENTAL TRANSPORT
SERVICES AGREEMENT

CORRS CHAMBERS WESTGARTH

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DX 336 MELBOURNE
Ref: Michael Trumble
PUB 3610-035
WTFROM/1104

X

THIS SUPPLEMENTAL AGREEMENT is made on this day of 1995

BETWEEN PUBLIC TRANSPORT CORPORATION
 of 589 Collins Street, Melbourne
 in the State of Victoria

("PTC")

AND

 of
 in the State of Victoria

("Private Bus Operator")

RECITALS

- A PTC and the Private Bus Operator entered into a Transport Services Agreement dated for the provision of public passenger transport services by the Private Bus Operator in return for payment by PTC.
- B PTC is proposing to introduce an automated fare collection system called the AFC System which will operate across the metropolitan transport network including the public passenger transport services provided by the Private Bus Operator under the Transport Services Agreement.
- C The AFC System will be supplied and operated by OneLink Transit on behalf of PTC.
- D PTC has advised the Private Bus Operator that the AFC System Components are to be owned by AFC Equipment Co Pty Ltd and used by OneLink Transit under an Operating Lease.
- E The Private Bus Operator has agreed to co-operate with the PTC and OneLink Transit in facilitating the installation, operation, management, replacement and maintenance of AFC System Components on Private Bus Operator Property.
- F It is contemplated that the Department of Transport will in future be responsible for the administration of the Transport Services Agreement and for co-ordinating all dealings with the Private Bus Operator.
- G This Agreement is supplemental to the Transport Services Agreement.

IT IS AGREED

1 INTERPRETATION

1.1 Definitions

In this document unless the context otherwise requires:

"AFC System" means the automated fare collection system, revenue management system, retail agent network and marketing programme to be supplied and operated by OneLink Transit for the train, tram and bus services in the Melbourne metropolitan area;

"AFC System Components" means parts of the AFC System comprising equipment, hardware or software and any materials or other things installed or to be installed on Private Bus Operator Property under the OLT/Private Bus Operator Agreement;

"Direction" means a direction in writing to the Private Bus Operator by PTC or OneLink Transit in accordance with this agreement and "Direct" and "Directed" have corresponding meanings;

"OneLink Transit" means OneLink Transit Systems Pty Ltd and any replacement operator of the AFC System for the time being nominated in writing by the PTC to the Private Bus Operator;

"OLT/Private Bus Operator Agreement" means the agreement to be entered into between OneLink Transit and the Private Bus Operator in the form or to the effect of the Deed of Access for Automated Fare Collection System annexed to this agreement;

"Private Bus Operator Acknowledgement" means the Acknowledgement referred to as the "Private Bus Operator Acknowledgement" attached to the OLT/Private Bus Operator Agreement or such other form approved in writing by the recipients named in the acknowledgement;

"Private Bus Operator Security Holders Acknowledgement" means the letter from the National Australia Bank Limited to Private Bus Operator Security Holders attached to the OLT/Private Bus Operator Agreement or such other form approved in writing by National Australia Bank Limited;

"Private Bus Operator Property" means all property and buses owned controlled or operated by the Private Bus Operator on which AFC System Components are installed or access is required for the purposes of operating and maintaining the AFC System;

"PTC" means the Public Transport Corporation and if responsibility for the administration of the Transport Services Agreement is transferred to the Department of Transport will be deemed to refer to the Department of Transport;

"Transport Services Agreement" means the Transport Services Agreement described in Recital A;

"Vandalism" means any failure of any AFC System Component any defacing (by paint, scratching of any item or substance, burning, glass breaking or the like) of AFC System Component by any person or any third party damage to any AFC System Component but does not include:

- any failure or fault in any AFC System Component related to mechanical or electronic breakdown of a component or part prior to the end of its specified working life that results from normal operation of the AFC System Component to specification;

- any failure, fault, defacing or damage caused by normal usage; or

- any failure, fault, defacing or damage caused by OneLink Transit or its employees, agents or contractors; or

- any damage which arises from the act, neglect or omission of the Private Bus Operator or its employees, agents or contractors (not including normal wear and tear) or which results from any AFC System Component being dealt with or operated outside specification or user requirements.

Words and phrases used in this Agreement and defined in the Transport Services Agreement will have the same meaning as under the Transport Services Agreement.

1.2 Headings

Headings shall be ignored when construing this document.

2 ACCEPTANCE OF AFC SYSTEM

2.1 The Private Bus Operator agrees to the installation, operation, maintenance replacement and use of AFC System Components on Private Bus Operator Property and further agrees that it will co-operate with PTC and OneLink Transit to facilitate the installation, operation, management, maintenance and use of AFC System Components on Private Bus Operator Property and will comply with the user requirements of the AFC System as reasonably Directed from time to time by PTC or OneLink Transit.

2.2 Without limiting the generality of clause 2.1, on introduction of the AFC System in whole or in part, the Private Bus Operator shall:

- (a) permit and facilitate the installation, operation, management maintenance, replacement and use by OneLink Transit of AFC System Components on the Private Bus Operator's Property;
- (b) collect all fares, honour all tickets as agent for PTC and operate AFC System Components installed on Private Bus Operator Property on behalf of OneLink Transit in accordance with OneLink Transit's requirements and the reasonable Directions of the PTC or as mutually agreed between the Private Bus Operator, the PTC and OneLink Transit;
- (c) operate AFC System Components installed on Private Bus Operator Property to an extent and in a manner consistent with the operation, management and maintenance of the AFC System generally in the public transport system;
- (d) operate AFC System Components installed on Private Bus Operator Property for the sale of all tickets provided under the Transport Services Agreement and permit access by OneLink Transit to all information derived from those components to facilitate the implementation of the AFC System;
- (e) facilitate the entry by OneLink Transit of the Private Bus Operator vehicle trip information onto the AFC database;
- (f) maintain and update vehicle trip information at the Private Bus Operator depot for incorporation into the AFC database; and
- (g) take all necessary action as reasonably required by PTC or OneLink Transit to ensure the proper and efficient operation, management, maintenance and use of the AFC System.

2.3 The obligation of the Private Bus Operator to comply with requirements of the AFC System as set out in clauses 2.1 and 2.2 will have regard to the ordinary commercial arrangements of the Private Bus Operator and the requirement of the Private Bus Operator to deliver transport services in accordance with the Transport Services Agreement. If compliance by the Private Bus Operator with an operator requirement of the AFC System interferes with the delivery of transport services by the Private Bus Operator this will not constitute a breach of the Transport Services Agreement.

- 2.4 Prior to the introduction of the AFC System, in whole or in part, the PTC or OneLink Transit will ensure that the Private Bus Operator is advised of the requirements of OneLink Transit and the PTC with regard to the operation of the AFC System.
- 2.5 PTC will ensure that OneLink Transit supplies the Private Bus Operator with a standard package of AFC System Components which are sufficient to enable the Private Bus Operator to use and operate the AFC System in accordance with the operator requirements of the AFC System and the Private Bus Operator's obligations under this Agreement.
- 2.6 Any additional hardware or software required by the Private Bus Operator in excess of that required for the AFC System or specific modifications to that equipment negotiated with OneLink Transit will be at the sole cost of the Private Bus Operator and must be negotiated direct with OneLink Transit. The installation and operation of any additional hardware or software must not delay the implementation of the AFC System or affect its ongoing operation.
- 2.7 PTC will ensure that OneLink Transit provides training to the Private Bus Operator and its employees in the use and operation of the AFC System to enable the Private Bus Operator to comply with its obligations under this Agreement.

3 OWNERSHIP OF AFC SYSTEM

- 3.1 The Private Bus Operator acknowledges that it has no proprietary interest in any of the hardware, software or intellectual property relating to the AFC System. AFC System Components installed on Private Bus Operator Property will not constitute fixtures on Private Bus Operator Property.
- 3.2 The Private Bus Operator acknowledges that OneLink Transit will be entitled to affix permanent labels to all AFC System Components installed on the Private Bus Operator Property identifying the legal owner of those components.
- 3.3 The right to advertise on tickets used in connection with the Transport Services Agreement and any revenue generated from that advertising belongs exclusively to PTC and the Private Bus Operator acknowledges that it has no proprietary or other interest in that advertising or any revenue generated.
- 3.4 All rights to sell any data produced by the AFC System and all revenue generated from that sale belongs exclusively to PTC and the Private Bus Operator acknowledges that it must not sell or dispose of any data produced by the AFC System other than in accordance with its ordinary commercial operations without the prior written consent of PTC.

4 LIABILITY FOR EQUIPMENT COMPRISING AFC SYSTEM

- 4.1 The Private Bus Operator must take all reasonable precautions to maintain and keep safe all AFC System Components installed on Private Bus Operator Property. Subject to clause 4.3 any damage caused to AFC System Components (excluding Vandalism) which arises from the act, neglect or omission of the Private Bus Operator or its employees, agents or contractors (not including normal wear and tear) or which results in any AFC System Component being dealt with or operated by the Private Bus Operator its employees agents or contractors outside specification or user requirements will be the sole responsibility of the Private Bus Operator.

- 4.2 All AFC System Components installed on Private Bus Operator Property must be installed, maintained and operated for the exclusive use of the AFC System and must not be used for any other purpose. This clause 4.2 will not operate to restrict the Private Bus Operator from using and accessing the AFC System to generate information relating to that Private Bus Operator's operations for its own internal purposes.
- 4.3 Notwithstanding clause 4.1, for the first six months following first operational use of AFC System Components on Private Bus Operator Property, any damage caused to AFC System Components which is caused by or arises from the act, neglect or omission by the Private Bus Operator or its employee, agent or contractor will be deemed to constitute Vandalism and not be the responsibility of the Private Bus Operator. At the expiration of that six month period the provisions of this clause 4.3 will cease to apply in respect to damage occurring after the expiration of that period.

5 AGREEMENT WITH ONELINK TRANSIT

- 5.1 To facilitate the installation, operation and maintenance of the AFC System on Private Bus Operator Property, the Private Bus Operator agrees that prior to the installation of any AFC System Components on Private Bus Operator Property, the Private Bus Operator will:
- (a) execute and deliver the OLT/Private Bus Operator Agreement in favour of OneLink Transit with such amendments as OneLink Transit has approved in writing;
 - (b) execute and deliver the Private Bus Operator Acknowledgement in accordance with the OLT/Private Bus Operator Agreement; and
 - (c)
 - (i) inform OneLink Transit of the identity of every person (other than the Private Bus Operator) who owns the Private Bus Operator Property or who claims or may claim a security interest in the Private Bus Operator Property; and
 - (ii) forward a letter in the form of the Private Bus Operator Security Holders Acknowledgement to every person (other than the Private Bus Operator) who owns the Private Bus Operator Property or claims or may claim a security interest in the Private Bus Operator Property notifying them that the AFC System Components are owned by AFC Equipment Co and subject to charges as indicated in the Private Bus Operator Security Holders Acknowledgement; and
 - (iii) obtain an acknowledgement of the letter referred to in clause 5.1(c)(ii) and return that acknowledgement in accordance with the requirements of the Private Bus Operator Security Holders Acknowledgement.
- 5.1.1 PTC acknowledges that it has no right to obtain from OneLink Transit the information provided by the Private Bus Operator to OneLink Transit under clause 1.5(b) of the OLT/Private Bus Operator Agreement and that it will not seek to do so.
- 5.2 The Private Bus Operator must negotiate in good faith with OneLink Transit to ensure that all necessary arrangements are agreed to allow OneLink Transit to properly and efficiently install and replace all necessary AFC System Components on Private Bus Operator Property to enable the operation of the AFC System on Private Bus Operator Property and for the ongoing operation and maintenance of the AFC System.

- 5.3 Without limiting the terms of any agreement reached between the Private Bus Operator and OneLink Transit, the Private Bus Operator must agree to the following matters with OneLink Transit:

- (a) the design and location of AFC System Components to be installed on Private Bus Operator Property;
- (b) an installation time table;
- (c) an installation and testing procedure for the installation of AFC System Components;
- (d) ongoing site access arrangements for OneLink Transit to enable OneLink Transit to properly and efficiently maintain, operate, replace and repair AFC System Components installed on the Private Bus Operator Property.

In the absence of agreement on such matters the Private Bus Operator must comply with the reasonable Directions of the PTC or OneLink Transit.

- 5.4 Any agreement between the Private Bus Operator and OneLink Transit and any Direction by OneLink Transit covering the matters in clause 5.3 must have regard to the commercial requirements of the Private Bus Operator and the obligations of the Private Bus Operator under the Transport Services Agreement.
- 5.5 The Private Bus Operator must make its property and buses available to OneLink Transit to enable installation, replacement and testing of AFC System Components installed on Private Bus Operator Property in accordance with the OLT/Private Bus Operator Agreement.

6 NO ADDITIONAL COSTS

Nothing in this agreement or the agreement between OneLink Transit and the Private Bus Operator imposes on the Private Bus Operator any obligation to pay any additional sum to the PTC or OneLink Transit by way of commission, charges or otherwise as a result of the installation, operation, maintenance, replacement or use of the AFC System.

7 ACCESS TO INFORMATION

- 7.1 The Private Bus Operator must provide OneLink Transit with all information and data generated by AFC System Components installed on Private Bus Operator Property.
- 7.2 PTC will be entitled to unrestricted access to the following information and data generated by the AFC System:
- (a) ticket information (including sales, validations and cancellations);
 - (b) vehicle location timings;
 - (c) ticket checking information from authorised officers; and
 - (d) equipment status (including alerts and operational status).
- 7.3 Nothing in this Agreement will be taken to limit the right of the PTC to audit the Private Bus Operator in accordance with its rights under the Transport Services Agreement.

- 7.4 PTC and the Private Bus Operator will establish a protocol governing access to the AFC System database which will limit access to the AFC System database to the Private Bus Operator and defined authorised persons at PTC. In the event of a dispute between PTC and the Private Bus Operator regarding access to the AFC System database that dispute will be referred to arbitration in accordance with the arbitration provisions contained in the Transport Services Agreement.

8 DIRECTIONS

The Private Bus Operator must comply with any reasonable Direction issued by PTC or OneLink Transit relating to the use and operation of the AFC System on Private Bus Operator Property or the integration of the AFC System between Private Bus Operator buses and the remainder of the public transport network. Compliance by the Private Bus Operator with a Direction issued by OneLink Transit will not constitute a breach or other event of default under the Transport Services Agreement.

9 SUPPLEMENTAL AGREEMENT

This agreement is supplemental to the Transport Services Agreement. In the event of an inconsistency between the provisions of this agreement and the Transport Services Agreement the provisions of this agreement will prevail.

10 FURTHER ASSURANCES

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to render this agreement binding on and legally enforceable against each party and to give full effect to the provisions of this agreement and the transactions contemplated by it. The parties shall provide assistance to the other party as may be reasonably required from time to time.

11 WAIVER

No waiver by a party of any default in the strict and literal performance of or compliance with any other provision, condition or requirement in this agreement shall be deemed to be a waiver of strict and literal performance and compliance with any other provision, condition or requirement in this agreement nor be a waiver of or in any manner release any other party from this strict compliance with any provision, condition or requirement in the future nor shall any delay or omission of the party to exercise any right in any manner impair the exercise of any such right accruing to it thereafter or of any other right.

12 DISCLOSURE AND CONDITION OF DEALING WITH PRIVATE BUS OPERATOR PROPERTY

- 12.1 The Private Bus Operator shall not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of or agree to do any of them in respect of, all or any part of its interest in all or any part of the Private Bus Operator Property without first disclosing to the proposed transferee or assignee the existence of this deed and procuring the transferee or assignee to acknowledge that it will be bound by or be subject to the terms and conditions of this Agreement.

12.2 Without derogating from its obligations under clause 12.1, the Private Bus Operator shall not without the prior written consent of PTC:

- (a) dispose of any Approved Vehicles other than in accordance with the Vehicle Replacement Program provided for in the Transport Services Agreement;
- (b) change the location of its vehicle depot from its location at the date of this Agreement;
- (c) assign this Agreement in whole or in part or any interest or benefit herein or sub-contract the Transport Services provided under the Transport Services Agreement in whole or in part.

12.3 The consent of PTC pursuant to clause 12.2 shall not be unreasonably withheld and shall be subject to such conditions as the PTC thinks fit (including, where consent is given to a change in the location of the Private Bus Operator's Depot, conditions as to the effect of the change on the Contract Payments payable pursuant to the Transport Services Agreement) and for the purpose of determining whether or not such consent will be given, the PTC may require the Private Bus Operator to produce to the PTC such documentation or other evidence as PTC deems sufficient including any agreements so to assign, sub-contract or sell and any company records, financial statements or auditors' or accountants' reports. All conditions imposed by PTC in the granting of consent shall be binding on the Private Bus Operator.

12.4 The Private Bus Operator agrees to perform and comply with its undertakings to PTC set out in clause 2.3 of the OLT/Private Operator Agreement.

EXECUTED by the parties

THE OFFICIAL SEAL of PUBLIC)
TRANSPORT CORPORATION was)
hereto affixed in the presence of:)

Authorised signatories

THE COMMON SEAL of)
)
is affixed in accordance with)
its articles of association in)
the presence of:)

Director

Name of Director (print)

Secretary

Name of Secretary (print)

- 9 -

SCHEDULE

OLT/Private Bus Operator Agreement

WPPROFMS-MINTDNCVAL1-10

ONELINK TRANSIT SYSTEMS PTY LTD

(A.C.N. 059 733 443)

("OneLink Transit")

and

(the "Private Bus Operator")

**DEED OF ACCESS FOR AUTOMATED FARE
COLLECTION SYSTEM**

Freehill Hollingdale & Page

Solicitors

101 Collins Street

MELBOURNE VIC 3000

Telephone: (03) 288 1234

Facsimile: (03) 288 1567

Reference: JMC:JT

THIS DEED OF ACCESS is made on 199 between:

1. ONELINK TRANSIT SYSTEMS PTY LTD (A.C.N. 059 733 443) of Level 14, 60 Market Street, Melbourne, 3000 ("OneLink Transit"); and
2. _____ of
(the "Private Bus Operator").

RECITALS:

- (A) PTC requires OneLink Transit as an independent contractor to provide an automated fare collection system in accordance with the requirements of the PTC for the train, tram and bus services in the Melbourne Metropolitan area (the "AFC System") to be installed operated and maintained in accordance with a service contract between the PTC and OneLink Transit (the "Service Contract").
- (B) The AFC System is to be installed operated maintained and used by OneLink Transit on all relevant train, tram and bus sites and vehicles including the Private Bus Operator's Sites and Vehicles.
- (C) PTC and the Private Bus Operator have agreed to enter into an agreement (the PTC/Private Bus Operator Agreement) whereby the Private Bus Operator has agreed to cooperate with OneLink Transit and do all things reasonably required by OneLink Transit for installation maintenance operation and use by OneLink Transit of those parts of the AFC System which will be located on the Private Bus Operator's Sites and Vehicles ("AFC System Components").
- (D) OneLink Transit and the Private Bus Operator hereby agree on the terms and conditions contained in this deed that the Private Bus Operator will cooperate with OneLink Transit and do all things reasonably required by OneLink Transit for installation maintenance operation and use of the AFC System on the Private Bus Operator's Sites and Vehicles by OneLink Transit.

IT IS AGREED

1. Private Bus Operator's access and site obligations

1.1 AFC System Components

The Private Bus Operator agrees that the AFC System Components will be installed on the Private Bus Operator's Sites and Vehicles in accordance with Part 2 of this deed.

1.2 Access

It is agreed that:

- (a) Subject to paragraph (d), the Private Bus Operator will provide to OneLink Transit and its employees agents and contractors such ongoing access to the Private Bus Operator's Sites and Vehicles as OneLink Transit may from time to time reasonably require in order that the AFC System Components can be installed replaced maintained repaired operated and used by OneLink Transit in accordance with the requirements agreed between OneLink Transit and the PTC;
- (b) The access required by OneLink and provided by the Private Bus Operator will include but not be limited to the requirements set out in Schedule 2;

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- (c) The Private Bus Operator acknowledges and agrees that if required by OneLink Transit, the Private Bus Operator will take Vehicles to the installation centre/location reasonably nominated by OneLink Transit for installation of the AFC System Components in accordance with Part 2; and
- (d) OneLink Transit will have regard to the ordinary commercial arrangements of the Private Bus Operator and OneLink Transit will act reasonably and in accordance with this deed, in:
 - (i) requiring and obtaining access;
 - (ii) nominating an installation centre location pursuant to paragraph (c);
 - (iii) supplying and installing AFC System Components or removing or maintaining the same; and
 - (iv) providing Operating Requirements and Care and Maintenance Requirements other than as set out in Schedule 3 and Schedule 4 at the date of this deed.

to minimise inconvenience or interference with the Private Bus Operator's commercial operations provided always that the Private Bus Operator will not object to and will comply with any requirements which are in accordance with the requirements set out in Schedules 2, 3 and 4 at the date of this deed.

1.3 Information/Access

The Private Bus Operator must provide to OneLink Transit and ensure that OneLink Transit can obtain for itself all information and data generated by the AFC System Components installed on the Private Bus Operator's Sites and Vehicles or related to the AFC System. OneLink Transit may only provide the following information and data to the PTC:

- (a) ticket information (including sales, validations and cancellations);
- (b) vehicle location timings;
- (c) ticket checking information from authorised officers; and
- (d) equipment status (including alerts and operational status).

1.4 Ownership of Equipment and AFC System

The Private Bus Operator acknowledges that OneLink Transit has advised it that the AFC System Components are used by OneLink Transit under lease and licence from a third party owner and licensor and the Private Bus Operator agrees that the AFC System Components do not constitute fixtures on the Private Bus Operator's Sites and Vehicles and the Private Bus Operator and any party claiming through the Private Bus Operator does not have and will not have any proprietary, security or other interest in the AFC System Components or any part of the AFC System.

1.5 Acknowledgments

The Private Bus Operator agrees that prior to installation of any AFC System Components on the Private Bus Operator's Sites and Vehicles, the Private Bus Operator will execute the PTC/Private Bus Operator's Agreement and will:

- (a) execute and deliver the Private Bus Operator Acknowledgment; and
- (b) (i) inform OneLink Transit of the identity of every person (other than the Private Bus Operator) who owns the Private Bus Operator's Sites and Vehicles or who claims

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or may claim a security interest in the Private Bus Operator's Sites and Vehicles:
and

- (ii) forward a letter in the form required by the Private Bus Operator Acknowledgment to every person (other than the Private Bus Operator) who owns the Private Bus Operator's Sites or Vehicles or claims or may claim a security interest in the Private Bus Operator's Sites or Vehicles notifying them that the AFC System Components are owned by AFC Equipment Co and subject to charges as indicated in the Private Bus Operator's Acknowledgment; and
- (iii) obtain an acknowledgment of the letter referred to in clause 1.5(b)(ii) and return that acknowledgment in accordance with the requirements of the Private Bus Operator's Acknowledgment.

2. Installation of AFC System Components

2.1 OneLink Transit to install

Subject to the Private Bus Operator performing its obligations under Part 1 of this Agreement and subject to clause 1.2(d) OneLink Transit will arrange for supply and installation of the AFC System Components on the Private Bus Operator's Sites and Vehicles as specified in Schedule 1.

2.2 Private Bus Operator to Install

The Private Bus Operator and OneLink Transit agree that if the Private Bus Operator cannot provide access in accordance with clause 1.2 for installation of the AFC System Components by OneLink Transit then subject to the Private Bus Operator performing its other obligations under Part 1 of this deed OneLink Transit may at its sole discretion deliver to the Private Bus Operator AFC System Components required to be installed in passenger vehicles together with directions and instructions ("Installation Requirements") for installation by the Private Bus Operator and the Private Bus Operator will at its cost install the AFC System Components in the Private Bus Operator's Vehicles as specified in Schedule 1 in accordance with the Installation Requirements and any other directions of OneLink Transit. The Private Bus Operator will allow OneLink Transit to verify that the AFC System Components have been installed in accordance with OneLink Transit's requirements and OneLink may perform any further installation works necessary to complete installation in accordance with the Service Contract.

2.3 Vehicle Replacements

The Private Bus Operator will:

- (a) give OneLink Transit and PTC not less than 28 days notice of proposed vehicle replacements or relocation of business premises of the Private Bus Operator (save to the extent that replacements or relocation occurs for events outside the control of the Private Bus Operator, in which case the Private Bus Operator will give reasonable notice having regard to those events); and
- (b) provide access to and otherwise comply with the terms of this deed with respect to existing vehicles or business premises and replacement vehicles or business premises

in order that, if required by OneLink Transit and PTC, the relevant AFC System Components can be removed from existing installations no longer required for the AFC System and subject to clause 1.2(d) installed maintained repaired operated and used by OneLink Transit in the replacement vehicles or business premises.

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3. Continuing operation and maintenance obligations

3.1 Operation Maintenance and Use of AFC System Components

The parties agree that AFC System Components must be installed, maintained, managed and operated only for the use of the AFC System and must not be used by OneLink Transit for any other purpose without the prior written consent of PTC.

3.2 Authority for Operation Care and Safe Keeping

Upon installation of the AFC System Components on the Private Bus Operator's Sites and Vehicles OneLink Transit authorises the Private Bus Operator to operate on behalf of OneLink Transit the parts of the AFC System Components nominated by OneLink Transit, and the Private Bus Operator must:

- (a) operate those parts of the AFC System Components on behalf of OneLink Transit and ensure that the Private Bus Operator and its employees agents and contractors comply with the Operating Requirements; and
- (b) take all reasonable precautions to maintain, care for and keep safe all the AFC System Components in accordance with the reasonable directions and requirements of OneLink Transit including but not limited to the requirements set out in the Care and Maintenance Requirements.

3.3 Security and Operation of AFC System

The Private Bus Operator undertakes that neither it nor any of its employees, agents or contractors will use the AFC System Components other than in accordance with the authority granted under clause 3.2 and agrees that it will do all things reasonably required by OneLink Transit to ensure that the AFC System Components and the AFC System continue to be secure and operational and the Private Bus Operator will not do or allow any employee agent or contractor to do anything which may jeopardise the security or operation of the AFC System Components or the AFC System.

3.4 Private Bus Operator Training

The Private Bus Operator will ensure that the Private Bus Operator and those of its employees agents and contractors which are reasonably required by OneLink Transit to attend training will attend and complete such training programs and training requirements as may be reasonably required OneLink Transit in accordance with the Service Contract.

3.5 Damage to AFC System Components

- (a) Subject to clause 3.5(b) any damage caused to the AFC System Components (excluding Vandalism) which arises from the act, neglect or omission of the Private Bus Operator or its employees agents or contractors (not including normal wear and tear) or which results from any AFC System Component being dealt with or operated by the Private Bus Operator or its employees, agents or contractors outside specification or user requirements, will be the sole responsibility of the Private Bus Operator.
- (b) Notwithstanding clause 3.5(a), for the first six (6) months following first operational use of any AFC System Components on Private Bus Operator Property, any damage caused to AFC System Components which is caused by or arises from the act, neglect or omission by a Private Bus Operator employee, agent or contractor will be deemed to constitute Vandalism and not be the responsibility of the Private Bus Operator. At the expiration of that six (6) month period the provisions of this clause 3.5(b) will cease to apply in respect of damage occurring after the end of that period.

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3.6 Ticket Requirements

The Private Bus Operator must:

- (a) ensure that not less than 30 days supply is maintained for all paper and magnetic tickets required for the AFC System Components installed on the Private Bus Operator's Sites and Vehicles; and
- (b) give OneLink Transit not less than 10 days notice of paper and magnetic ticket supplies required ("Ticket Orders")

and OneLink Transit will forward by mail to the Private Bus Operator the necessary paper and magnetic ticket supplies within 5 days of receipt of Ticket Orders.

3.7 Private Bus Operator's Continuing Responsibility

The Private Bus Operator will remain responsible to the PTC for all cash collections and remittance in accordance with the PTC/Private Bus Operator Agreement. For the avoidance of any doubt OneLink Transit is not responsible to the Private Bus Operator or to the PTC for this continuing obligation of the Private Bus Operator.

4. Duration and disclosure

4.1 Duration and Termination

This deed will commence on the date of signing and subject to clause 4.2 will continue unless terminated by notice in writing from OneLink Transit to the Private Bus Operator after:

- (a) a breach by the Private Bus Operator of any of its obligations under this deed which has not been remedied within a period notified in writing by OneLink Transit to the Private Bus Operator, being a reasonable period having regard to the nature of the breach but in any event not more than 30 days; or
- (b) the PTC/Private Operator's Agreement is terminated or otherwise the Private Bus Operator ceases to be a provider of transport services for the PTC; or
- (c) the Service Contract is terminated.

4.2 Surviving Rights of Access

Upon termination of this deed in accordance with clause 4.1 OneLink Transit and any party claiming through OneLink Transit or having any proprietary security or licence interest in the AFC System Components will have a right to enter the Private Bus Operator's Sites and Vehicles to remove the AFC System Components.

4.3 Disclosure and Condition of dealing with Sites or Vehicles

The Private Bus Operator will not sell, transfer, dispose of, assign, mortgage or otherwise deal with or part with possession of or agree to do any of them in respect of, all or any part of its interest in all or any part of the Private Bus Operator's Sites or Vehicles upon which the AFC System Components have been installed without first:

- (a) disclosing to any proposed transferee or assignee, the existence of this deed and procuring the transferee or assignee to enter into a deed with OneLink Transit in the form of this deed or as reasonably required by OneLink Transit; and
- (b) complying with clause 1.5(b) of this deed in respect of a person who claims or may claim a security interest as if that person was a person who claimed or may have claimed a security interest prior to installation of any AFC System Components on the Private Bus Operator's Sites or Vehicles.

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5. Definitions and Interpretation

5.1 Definitions

In this deed:

"AFC System" means the automated fare collection system for the train, tram and bus services which PTC operates and controls in the Melbourne Metropolitan area to be implemented by OneLink Transit in accordance with the requirements agreed between PTC and OneLink Transit and includes the AFC System Components;

"AFC System Components" means those parts of the AFC System including equipment hardware or software and any materials or other things installed or to be installed on the Private Bus Operator's Sites and Vehicles under this deed;

"Care and Maintenance Requirements" means the requirements and instructions set out in Schedule 4 and subject to clause 1.2(d) amended from time to time by OneLink Transit and notified to the Private Bus Operator;

"Operating Requirements" means the requirements and instructions set out in Schedule 3 and subject to clause 1.2(d) amended from time to time by OneLink Transit and notified to the Private Bus Operator;

"Private Bus Operator Acknowledgment" means the acknowledgment in the form attached hereto and marked "Private Bus Operator Acknowledgment" or such other form approved in writing by the recipients named in the acknowledgment;

"Private Bus Operator's Sites and Vehicles" means each and all of the actual places (including premises and vehicles) owned, controlled or operated by the Private Bus Operator where the AFC System Components are to be installed maintained and operated or where work is to be done in respect of such installation;

"PTC" means as defined in the PTC/Private Bus Operator Agreement;

"PTC/Private Bus Operator Agreement" means any agreement between PTC and the Private Bus Operator pursuant to which the Private Bus Operator provides transport services to PTC and includes the agreement entered into between PTC and the Private Bus Operator to facilitate installation maintenance and operation of the AFC System Components on the Private Bus Operator's Sites and Vehicles;

"Vandalism" means any failure of any AFC System Components any defacing (by paint, scratching of any item or substance, burning, glass breaking or the like) of AFC System Components by any person or any third party damage to any AFC System Components but does not include:

- any failure or fault in any AFC System Components related to mechanical or electronic breakdown of a component or part prior to the end of its specified working life that results from normal operation of the AFC System Components to specification;
- any failure, fault, defacing or damage caused by normal usage; or
- any failure, fault, defacing or damage caused by OneLink Transit or its employees agents or contractors; or
- any damage which arises from the act, neglect or omission of the Private Bus Operator or its employees agents or contractors (not including normal wear and tear) or which results from any AFC System Components being dealt with or operated outside specification or user requirements.

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5.2 Interpretation

In this deed:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) a reference to any thing includes a part of that thing;
- (e) a reference to a part, clause, party or schedule is a reference to a part and clause or, and a party, and schedule to this deed and a reference to this deed includes any schedule;
- (f) a reference to a party to any document includes that party's successors and permitted assigns;
- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it;
- (h) a covenant, or agreement on the part of two or more persons binds them jointly and severally; and
- (i) any provision of this deed which is capable of taking effect after termination will continue to have full force and effect.

EXECUTED by the parties as a deed:

THE COMMON SEAL
of ONELINK TRANSIT SYSTEMS PTY LTD
was hereunto affixed in accordance with
its Articles of Association in the presence of:

Secretary/Director

Director

Name (please print)

Name (please print)

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THE COMMON SEAL
of [The Private Bus Operator]
was hereunto affixed in accordance with
its Articles of Association in the presence of:

Director/Secretary

Director

Name (please print)

Name (please print)

OR

SIGNED SEALED AND DELIVERED
by [The Private Bus Operator]
in the presence of:

Witness

[The Private Bus Operator]

Name (please print)

FHPNELC394335019.3

SCHEDULE 1
AFC System Components

AFC System Components	Location
Ticketing Issuing Machines (TIM)	1 per Bus
On-Bus Validators (VAL/3)	1 per Bus
Depot Computer/Printer	[Number depends on size of depot]
Portable Memory Readers (PMR's)	[Number depends on size of depot]
Power Supply Unit	1 per PMR
Portable Memory Cards	Such number as OneLink Transit determines
Spare Ticket Issuing Machines (TIM)	Such number as OneLink Transit determines
Spare On-Bus Validators (VAL/3)	Such number as OneLink Transit determines

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SCHEDULE 2

Access Requirements

[PTC Acknowledges OneLink Transit must be provided with not less than 12 bus vehicles a day (seven days a week), being a combination of the PTC Bus Vehicles and other Private Bus Operator bus vehicles, for installation of AFC System Components.]

1. Access to depots for installation of AFC Components in Private Bus Operator depots will be between 0900 and 1700 hours during normal business days.
2. Delivery of vehicles to, and collection of vehicles from, the installation centre/locations for installation of AFC System Components in Private Bus Operator Vehicles shall be undertaken by the Private Bus Operator with prior reasonable notice which may be at any time between the hours of 9.00am and 3.00pm, 5 days a week Monday to Friday (or such other times as reasonably agreed with prior notice, including times between 7.00 am and 7.00 pm, 7 days a week).

Access to vehicles (excluding taking vehicles to installation centre/locations and collecting them upon completion) for installation of AFC System Components in Private Bus Operator Vehicles may be at any time (24 hours a day 7 days a week) during the period following delivery of the vehicle to the installation centre/location by the Private Bus Operator and prior to the collection of the vehicle from the installation centre/location by the Private Bus Operator.

Otherwise this Schedule to be agreed between
OneLink Transit and each
Private Bus Operator

Subject to clause 1.2(d) this Schedule may be amended from time to time by OneLink Transit giving reasonable notice to the Private Bus Operator.

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SCHEDULE 3

Operating Requirements/Instructions

The Private Bus Operator will:

1. operate all AFC System Components strictly in accordance with all manuals and training provided by OneLink Transit to the Private Bus Operator;
2. change paper rolls (tickets) and clear paper jams in accordance with operations outlined during training;
3. report all damage or abnormalities immediately to OneLink Transit;
4. if any AFC System Component installed on any bus vehicle is faulty, remove the AFC System Component from the bus vehicle or other relevant site and take the AFC System Component to an exchange depot nominated by OneLink Transit to exchange for a replacement and install the replacement in the bus vehicle or other relevant site.

The Private Bus Operator must advise OneLink Transit by facsimile, no later than 10.00 am of the day the AFC System Component is to be replaced in a notice form to be supplied by OneLink Transit (detailing the fault).

The Private Bus Operator will under all circumstances exchange unserviceable units for serviceable units at the exchange depot specified by OneLink Transit;

5. upon becoming aware immediately advise OneLink Transit of any fault in fixed components (such as vehicle wiring, depot computer, depot printer or software), by telephone or fax (OneLink Transit Service Desk);
6. upon becoming aware report any software problems immediately to the OneLink Transit Service Desk;
7. supply his or her own paper for local output report printing as required;
8. back up the computer at least once per week and store such data as required by OneLink Transit operating procedures and training/instruction given by OneLink Transit from time to time;
9. be responsible for electricity costs of running the AFC System Components which will be paid by the Private Bus Operator. (All AFC System Components will be wired/connected to existing power supplies of Private Bus Operator's Sites and Vehicles);
10. conduct routine cleaning and other preventative maintenance in accordance with instructions given by OneLink Transit from time to time;
11. ensure that the depot computer system remains powered at all times, unless instructed otherwise by an authorised OneLink Transit Representative;
12. provide access to authorised OneLink Transit Representatives for repair, replacement and maintenance of the depot computer system or its environment during the depot's normal hours of operation and provide OneLink Transit with the after hours contact details of three Private Bus Operator personnel to enable access to be made at other times;
13. provide a standard office environment for the installation/operation of the depot computer system in a location secure from unauthorised access. The location will have three standard power outlets and be suitable for telephone connection;
14. the equipment operating specification is:

FHPMELC7943330193

- (i) ambient temperature $+10^{\circ}\text{C}$ to $+37^{\circ}\text{C}$;
- (ii) relative humidity 20% to 80% non-condensing;
- (iii) mains input 115/230 Vac $\pm 15\%$ 50 or 60 Hz.

It is recommended the equipment be left on 24 hours a day during the cooler months to ensure the equipment remains above the minimum ambient temperature. The equipment should be turned off if the temperature exceeds 37°C ;

15. the Private Bus Operator will provide a suitable table to sit a Personal Computer, Computer Printer and Portable Memory.

FHPMELC304233019.3

SCHEDULE 4

Care and Maintenance of AFC System Components

1. The Private Bus Operator must keep all AFC System Components dry and clean and away from hazardous materials and use them only in accordance with operating requirements contained in Schedule 3 or notified to the Private Bus Operator by OneLink Transit or its Subordinates.
2. The Private Bus Operator must apply the Cleaning Card provided by OneLink Transit through validators once every month.
3. Other than during normal operational use, Portable Memory Cards and keys of all key locks must not be removed from Private Bus Operator's premises and must be kept safe and secure at all times.
4. Any faulty portable memory will be immediately advised by the Private Bus Operator (upon becoming aware of a fault) to OneLink Transit and security posted to OneLink Transit for testing. A replacement portable memory will be posted to the Private Operator within one day of receiving the faulty portable memory by OneLink Transit.
5. The Private Bus Operator must make available all equipment nominated by OneLink Transit for regular six monthly preventative maintenance. OneLink Transit will provide serviceable equipment for use in exchange for equipment being serviced during the period.
6. Keep in a secured area all nominated spare AFC System Components in a serviceable condition at all times.

FHPMELC94333019.3

Private Bus Operator Acknowledgment

FHPMELCP94333019.3

SCHEDULE []

Private Bus Operator Acknowledgement

TO: National Australia Bank Limited AND AFC Equipment Co Pty Ltd
2nd Floor Level 20
271 Collins Street 60 Market Street
Melbourne Vic 3000 ("NAB") Melbourne Vic 3000
 ("AFC Equipment Co")

Deed Of Access

- 1 The Private Bus Operator named below ("the Private Bus Operator") irrevocably acknowledges that:
 - (a) the AFC System Components are and will remain owned by AFC Equipment Co and leased to OneLink Transit;
 - (b) neither the Private Bus Operator nor any party claiming through it has or will have any interest in, or right to, the AFC System Components other than under clause 3.2 of the Deed of Access nor will the AFC System Components constitute fixtures on the Private Bus Operator's Sites or Vehicles; and
 - (c) AFC Equipment Co and OneLink Transit have charged their respective interests in the AFC System Components in favour of NAB under the NAB Charges and granted PTC certain options to acquire the AFC System Components.
- 2 The Private Bus Operator agrees that it will:
 - (a) allow AFC Equipment Co and NAB or their nominees such access to its Sites and Vehicles as AFC Equipment Co and NAB or their nominees may reasonably require in order to exercise any right or power which it has with respect to the AFC System Components; and
 - (b) accept the performance by NAB or its nominees of the obligations of OneLink Transit under the Deed of Access as performance by OneLink Transit; and
 - (c) if requested by NAB, enter into an agreement in substantially the form of the Deed of Access (subject to any necessary changes) with anyone to whom NAB has agreed to dispose of the AFC System Components;

provided that AFC Equipment Co and NAB in requiring and obtaining access under this deed, act reasonably having regard to the terms of the Deed of Access as at the date of this deed and in exercising any right of access take reasonable care not to cause physical damage to any Site or Vehicle or any persons thereon and must act reasonably so as to minimise interference with the Private Bus Operator's commercial operations.

T:NPC:444(4)

- 3 The Private Bus Operator further agrees that it will not dispose of or agree to dispose of the whole or any part of any of its Sites or Vehicles upon which AFC System Components have been installed without first disclosing to any proposed transferee or assignee the existence of this deed and procuring the transferee or assignee to enter into a deed with NAB and AFC Equipment Co in the form of this deed or as reasonably required by NAB and AFC Equipment Co.
- 4 The Private Bus Operator agrees that it will:
- (a) inform NAB of the identity of every person (other than the Private Bus Operator) who owns the Private Bus Operator's Sites and Vehicles or who has a security interest in the Private Bus Operator's Sites or Vehicles; and
 - (b) forward a letter (in the form annexed or such other form as agreed by AFC Equipment Co and NAB) to every person (other than the Private Bus Operator) who owns the Private Bus Operator's Sites or Vehicles or who has a security interest in the Private Bus Operator's Sites or Vehicles notifying them that the AFC System Components are owned by AFC Equipment Co and subject to the NAB Charges, and will obtain an acknowledgment of the letter from those persons and will return the acknowledgment to NAB with a copy to AFC Equipment Co.
- 5 The Private Bus Operator further acknowledges that:
- (a) so long as the rights are exercised in accordance with this deed, neither AFC Equipment Co or NAB will be liable to the Private Bus Operator for any loss or damage arising out of the exercise of their respective rights with respect to the AFC System Components; and
 - (b) the terms of this deed survive the termination of the Deed of Access.

In this deed:

- (a) "Deed of Access" means the deed entitled "Deed of Access for Automated Fare Collection System" made between OneLink Transit and the Private Bus Operator.
- (b) "NAB Charge" means the fixed and floating charges dated 29 April 1994 between NAB and AFC Equipment Co and OneLink Transit respectively over their respective interests in the AFC System Components;
- (c) a reference to PTC shall, if responsibility for the administration of this deed is transferred to the Department of Transport, be deemed to be a reference to the Department of Transport;
- (d) a reference to NAB includes a reference to an agent or receiver appointed by NAB under the NAB Charges; and
- (e) capitalised terms bear the same meanings as in the Deed of Access.

T: NPC: 44(4)

EXECUTED AS A DEED

THE COMMON SEAL of [PRIVATE)
BUS OPERATOR] is affixed in)
accordance with its articles of)
association in the presence of:)

.....
Signature of authorised person

.....
Signature of authorised person

.....
Office held

.....
Office held

.....
Name of authorised person (block
letters)

.....
Name of authorised person (block
letters)

T: NPC: 444(4)

[ON THE LETTERHEAD OF NATIONAL AUSTRALIA BANK LIMITED]

TO WHOM IT MAY CONCERN:

* (the "Private Bus Operator")

1. We refer to your interest in the property of the Private Bus Operator.

2. TAKE NOTICE THAT:

- (a) the Private Bus Operator has consented to the installation, operation, maintenance and use of certain equipment and software constituting part of the Automated Fare Collection System (the "AFC System Components") on the Private Bus Operator's sites and vehicles in accordance with an agreement between the Private Bus Operator and the Public Transport Corporation and an agreement between the Private Bus Operator and OneLink Transit Systems Pty Ltd ("OneLink Transit");
- (b) the AFC System Components are and will remain owned by AFC Equipment Co Pty Ltd ("AFC Equipment Co") and leased to OneLink Transit;
- (c) AFC Equipment Co and OneLink Transit have charged all their respective interests in the AFC System Components in favour of the Bank under fixed and floating equitable charges dated 29 April 1994 and granted PTC certain options to acquire the AFC System Components;
- (d) the AFC System Components are not and will not constitute fixtures on the Private Bus Operator's sites or vehicles and will not become the property of the Private Bus Operator or subject to your interest in the Private Bus Operator's property; and
- (e) the Private Bus Operator has agreed that it will allow the Bank or its nominees such access to the Private Bus Operator's sites and vehicles as the Bank or its nominees may reasonably require in order to exercise any right or power which the Bank has with respect to the AFC System Components provided that the Bank and its nominees, in requiring and obtaining access, act reasonably having regard to the terms of the agreement between the Private Bus Operator and OneLink Transit and in exercising any right of access take reasonable care not to cause physical damage to any site or vehicle or any person thereon.
- (f) the Bank expressly reserves all rights that it has or may have in respect of the AFC System Components including its rights of access to the AFC System Components and its powers to take possession of and sell them, howsoever arising.

3. Would you please acknowledge receipt of this letter by signing and returning to the Bank the attached copy.

Yours faithfully

Authorised Officer
National Australia Bank Limited

*Insert Name of the Private Bus Operator

T:NPC:489

11 05 94(A)

Annexure B

Termination Transfer Agreement (clause 30)

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Transfer Agreement

[Insert Operator] (**Operator**)

[Insert Operator] (**Operator**)

[*insert Associated Operator No.1*] (**Associated Operator**)

[*insert Associated Operator No.2*] (**Associated Operator**)

[*insert Purchaser*] (**Purchaser**)

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Transfer Agreement

Details	4
Agreed terms	6
1. Defined terms & interpretation	6
1.1 Defined terms	6
1.2 Interpretation	8
1.3 Associated Operators	9
2. Conditions	9
2.1 Conditions	9
2.2 Commitment to satisfy the Conditions	10
2.3 Consequences of non-fulfilment	10
3. Transfer of Assets	10
3.1 Sale and purchase of Owned Assets	10
3.2 Assignment or novation of Third Party Leases or Licences	10
3.3 Excluded Assets	10
4. Transfer Price	10
4.1 Amount	10
4.2 Payment	11
5. Due diligence	11
5.1 Purchaser's right of access	11
5.2 Purchaser to avoid disruption	11
6. Third Party Leases or Licences	11
6.1 Acknowledgement	11
6.2 Operator to procure assignment or novation	11
6.3 Purchase if assignment not likely	11
7. Completion	12
7.1 Time and place	12
7.2 Operator's obligations	12
7.3 Purchaser's obligations	12
7.4 Simultaneous actions at Completion	12
7.5 Completion obligations breached	13
8. Title and risk	13
8.1 Possession	13
8.2 Title	13
9. Use of Assets pending transfer	13
10. Indemnities in relation to Third Party Leases or Licences	13
10.1 Operator's indemnity	13
10.2 Purchaser's indemnity	14
11. Staff	14
11.1 Offers of employment	14
11.2 Termination of employment of Transferring Staff	14

11.3	Assumption of Staff Liabilities	14
12.	Warranties	15
12.1	Warranties	15
12.2	Reliance of Purchaser	15
12.3	Application of Warranties	15
12.4	Operator to disclose breach	15
12.5	Indemnity for Warranty Claims	15
12.6	Notice of Warranty Claims	15
12.7	Time limits for Claim Notices and Warranty Claims	16
13.	Capacity	16
14.	Goods and Services Tax	16
14.1	Interpretation	16
14.2	Consideration is GST exclusive	16
14.3	Gross up of consideration	16
14.4	Going concern	17
14.5	Reimbursement	17
15.	General	17
15.1	Alterations	17
15.2	Assignment	17
15.3	Costs	17
15.4	Survival	17
15.5	Counterparts	17
15.6	No merger	17
15.7	Inconsistency	17
15.8	Further action	17
15.9	Document subject to Transport Act and PTCA	18
15.10	Severability	18
15.11	Waiver	18
15.12	Relationship	18
15.13	Confidentiality	18
15.14	Announcements	18
15.15	Governing law and jurisdiction	18
15.16	Notices and other communications	18
	Schedule 1 - Transfer Price	20
	Schedule 2 - Warranties	23
	Schedule 3 – Contract Buses	24
	Schedule 4 – Non Transferable Assets	25
	Schedule 5 – Terms and conditions applicable to the sale of a Contract Depot	26
	Schedule 6 – Novation Deed	28
	Signing page	35

Details

Date

Parties

Name **[Insert Operator name and details]**
Short form name **Operator**
Notice details **[Insert]**
Facsimile: **[Insert]**
Attention: **[Company Secretary]**

Name **[Insert Operator name and details]**
Short form name **Operator**
Notice details **[Insert]**
Facsimile: **[Insert]**
Attention: **[Company Secretary]**

Name **[Associated Operator No.1]**
Short form name **Associated Operator**
Notice details **[insert address details of Associated Operator No.1]**
Facsimile **[insert]**
Attention **[insert]**

Name **[Associated Operator No.2]**
Short form name **Associated Operator**
Notice details **[insert address details of Associated Operator No.2]**
Facsimile **[insert]**
Attention **[insert]**

Name **[insert Purchaser] [insert Purchaser ACN]**
Short form name **Purchaser**
Notice details **[insert address details of Purchaser]**
Facsimile **[insert]**
Attention **[insert]**

Background

- A The Operators currently conducts the Bus Operations and will do so until the Termination Date under the terms and conditions of the Current Service Contract.
- B The Director has exercised his option under the Current Service Contract to nominate the Purchaser to acquire all of the Assets from the Operators and any applicable Associated Operators on the Transfer Date.

- C The Purchaser has been awarded the right to provide the Local Services by the Director from the Transfer Date and has agreed, as nominee of the Director, to acquire the Assets from the Operators.
- D This agreement records the terms and conditions of the transfer of the Assets.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement:

Allocation Statement has the same meaning as under the Current Service Contract.

Assets means:

- (a) the Contract Buses;
- (b) the Contract Depots;
- (c) the Business Systems;
- (d) the Bus Operations IP;
- (e) the Plant and Equipment; and
- (f) any other assets used by the Operators or an Associated Operator in conducting the Bus Operations,

whether Owned Assets or Third Party Assets used under Third Party Leases or Licences.

Bus has the same meaning as under the PTCA.

Business Day means a day on which trading banks are open for the transaction of general banking business in Melbourne, other than a Saturday, Sunday or public holiday.

Bus Lease means the lease of a Contract Bus by a third party to an Operator or an Associated Operator for use in conducting the Bus Operations.

Bus Operations means the business of providing the Local Services (including the holding, maintenance and operation of the Assets and related activities) conducted by the Operators up until the Transfer Date, and which will be conducted by the Purchaser on and from the Transfer Date.

Bus Operations IP means all the Intellectual Property (whether owned by the Operator or an Associated Operator or used under an IP Licence) used or required in connection with the Bus Operations, including all Intellectual Property in the Business Systems and the Management Information System, but excluding any Intellectual Property in, or relating to, any SmartBus equipment.

Business Systems means all information technology hardware, software and equipment (whether owned by an Operator or an Associated Operator or used under licence) used or required in connection with the Bus Operations, including all applications software, network and other operational software, management systems (including the Management Information System), methodology, databases, work product, back-up and historic data files relating to, among other things, rostering, scheduling and timetabling and also including intranet, extranet and web-based applications and desktop computers.

Claim includes any claim, proceedings, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at Law or otherwise).

Completion means completion of the sale, purchase, assignment and or novation of the Owned Assets and the Third Party Leases and Licences (as the case may be) contemplated by this agreement on the Transfer Date.

Conditions means the conditions precedent set out in clause 2.1.

Contract Buses means the Buses used (with the approval of the Director) by the Operators or an Associated Operator in providing the Local Services which are listed in Schedule 3.

Contract Depots means the Depots used (with the approval of the Director) and owned by an Operator or an Associated Operator in conducting the Bus Operations or to house the Contract Buses.

Current Service Contract means the service contract between the Director, the Operators and the Parent Guarantor dated [#] under which the Bus Operations will be conducted by the Operators up until the Transfer Date.

Depot means the land, buildings and improvement comprising a Bus depot.

Director means the Director of Public Transport under the *Transport Act 1983* (Vic) acting on behalf of the Crown in the right of the State of Victoria under the PTCA and includes any person who at any time holds, occupies, acts in or is entitled to perform the duties and functions of the office of the Director under a delegation.

Encumbrance means any mortgage, lien, charge, pledge, claim or other encumbrance or third party interest.

Equipment Lease means the lease or licence of a Business System or item of Plant and Equipment by a third party to an Operator or an Associated Operator for use in conducting the Bus Operations.

Government Body means any court or tribunal with relevant jurisdiction, any local, state or national government or governmental, administrative, fiscal, or judicial body, department, commission, authority, tribunal, agency, entity, council, ministry, official or public or statutory person

Intellectual Property means any intellectual or industrial property, whether protected by statute, at common law or in equity and whether registered or unregistered, including any patent, rights in respect of inventions, copyright, design, trade secret, circuit layout design, right to have information kept confidential, technical information, process, technique, know how, trade mark or trade name, business name, branding, get up and logo.

IP Licence means the licence of Bus Operations IP by a third party to an Operator or an Associated Operator under which there is a right to use the Bus Operations IP.

Liabilities means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

Local Services means *regular passenger services* of a local nature provided or to be provided by the Operators under the Current Service Contract, or the same or substantial similar services to be provided by the Purchaser under the Successor Service Contract, as the case may be.

Management Information System means the management information system established and maintained by the Operator under the PTCA Regulations.

Non Transferable Assets means those Third Party Leases or Licences which are acknowledged by the parties (acting reasonably) as not being readily assignable and which, as at the Commencement Date under the Current Service Contract, are listed in Schedule 4.

Novation Deed means a deed in the form of that contained in Schedule 6 relating to the novation of the relevant Bus Lease.

Owned Assets means Assets that are owned beneficially by an Operator or an Associated Operator.

Owned Depot has the same meaning as in the Current Service Contract.

Plant and Equipment means all plant and equipment used by the Operator and each Associated Operator in conducting the Bus Operations.

PTCA means the *Public Transport Competition Act 1995 (Vic)*.

PTCA Regulations means the *Public Transport Competition Regulations 1999 (Vic)*.

Security Interest has the same meaning as in the Current Service Contract.

Staff means all persons whether officers, employees, agents or contractors of an Operator or an Associated Operator engaged in, or in connection with, the provision of the Local Services.

Staff Liabilities means the liabilities of the Operators and the Associated Operators in relation to the employment related entitlements and benefits of the Staff, whether arising under an award, a certified agreement or workplace agreement, under contract or under any law, but excluding any accrued long service leave liabilities for the Staff (which are funded by the Director on a cash basis under Schedule 3 of the Current Service Contract).

Successor Service Contract means the service contract awarded to the Purchaser under which the Bus Operations will be conducted by the Purchaser on and from the Transfer Date.

Termination Date has the meaning given in the Current Service Contract.

Third Party Assets means Assets that are not Owned Assets.

Third Party Lease or Licence means a Bus Lease, an IP Licence, an Equipment Lease and any other lease, licence or other right of use under which a Third Party Asset is used by an Operator or an Associated Operator in conducting the Bus Operations.

Transfer Date has the same meaning as in the Current Service Contract.

Transfer Price means the price payable for the transfer of the Owned Assets which is calculated under Schedule 1.

Warranties means the representations and warranties set out in Schedule 2.

Warranty Claim means a Claim by the Purchaser against an Operator arising as a result of a breach of Warranty.

1.2 Interpretation

In this agreement, unless the context otherwise requires, the following rules of construction will apply in the interpretation of this agreement:

- (a) words and expressions defined in the *Transport Act 1983 (Vic)* or in the PTCA and italicised in this document will, unless a contrary intention appears expressly or unless the same word or expression is defined in this agreement, have the same meaning where used in this agreement
- (b) the singular includes the plural and vice versa and a reference to any gender includes the other genders;
- (c) a reference to a clause, schedule or annexure is to a clause, schedule or annexure of or to this agreement;

- (d) a reference to a contract or document is to that contract or document as amended, novated, supplemented or replaced from time to time;
- (e) a reference to a person includes a corporation, firm, partnership, association, trust, joint venture, authority, Government Body or other legal entity and vice versa;
- (f) a reference to any legislation or legislative provision is to that legislation or provision as amended, modified, re-enacted, consolidated or replaced from time to time and includes any regulation or other instrument issued under that legislation or provision;
- (g) a reference to a party or person includes the successors and permitted assigns of that party or person;
- (h) if any amount is payable under this agreement on a day which is not a Business Day, that amount must be paid on the next day that is a Business Day;
- (i) headings and sub-headings are for convenience and do not affect interpretation;
- (j) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (k) the meaning of general words is not limited by specific examples introduced by *including*, or *for example*, or similar expressions;
- (l) a general obligation imposed on a party must not be read down or limited by reference to a more specific obligation, unless this agreement expressly provides otherwise;
- (m) where a party releases another party from Claims, it will be deemed to have released the other party from all Claims which it has, but for the execution of this agreement might have had, or may have in the future in respect of the relevant subject matter;
- (n) a reference to A dollars, \$A, the word dollar or \$ is to Australian currency; and
- (o) a rule of construction does not apply to the disadvantage of a party because that party was responsible directly or indirectly for the preparation of this agreement or any part of it.

1.3 Associated Operators

- (a) An obligation in this agreement imposed on an Associated Operator applies only in respect of the relevant Asset that is owned, leased or licensed by that Associated Operator.
- (b) The Operators and the Parent Guarantor guarantee the performance by each Associated Operator of its obligations under this agreement and agree to indemnify and keep indemnified the Purchaser against all Liabilities suffered or incurred by it as a result of any breach of any obligation by an Associated Operator.

2. Conditions

2.1 Conditions

The transfer of the Assets contemplated by this agreement, and Completion, is conditional on the following conditions precedent:

Condition	Party entitled to benefit
3. The Director having done everything that he was required to do to ensure commencement of the Successor Service Contract; and	Purchaser
4. There being no material breach of any of the Warranties.	Purchaser

unless otherwise waived by the Purchaser.

2.2 Commitment to satisfy the Conditions

The parties agree to use reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions on or before the Transfer Date.

2.3 Consequences of non-fulfilment

If the Conditions are not satisfied or waived (or, in relation to Condition 2, is only partly satisfied) by the Transfer Date, then the Purchaser may:

- (a) terminate this agreement by notice in writing to the Operators with immediate effect in which case:
 - (i) this agreement will be of no further effect; and
 - (ii) afterwards no party will have any other rights or obligations under it, except under clauses 12 and 15 which survive termination, and in respect of any obligations arising or rights accrued as a result of a breach of this agreement; or
- (b) notify the Operators that it wishes to Complete, subject to excluding from the sale or novation under clause 3 the relevant Owned Asset or Third Party Lease or Licence in relation to which an Operator has materially breached a Warranty.

3. Transfer of Assets

3.1 Sale and purchase of Owned Assets

The Operators and each Associated Operator if applicable as beneficial owner agree to sell the Owned Assets owned by it to the Purchaser, and the Purchaser agrees to buy the Owned Assets from them:

- (a) for the Transfer Price;
- (b) free from any Encumbrances in the nature of Security Interests (except if the transfer is effected under an Allocation Statement);
- (c) on the Transfer Date; and
- (d) in relation to a Contract Depot, on the terms and conditions set out in Schedule 5.

3.2 Assignment or novation of Third Party Leases or Licences

Subject to clause 3.3 and 6.3, the Operators and each Associated Operator as the lessee or licensee under a Third Party Lease or Licence if applicable agree to assign or novate as appropriate to the Purchaser, and the Purchaser accepts the rights under, benefits of, interests in, and assumes the burden of, those Third Party Leases or Licences on the Transfer Date.

3.3 Excluded Assets

- (a) The assignment or novation under clause 3.2 excludes the Non Transferable Assets.
- (b) The parties agree to update the list in Schedule 4 as and when Assets are recognised and agreed by them as being Non Transferable Assets.

4. Transfer Price

4.1 Amount

- (a) The total purchase price payable by the Purchaser for the Owned Assets is the Transfer Price.

- (b) No assignment or novation fee is payable by the Purchaser for the assignment or novation of any Third Party Lease or Licence, however an adjustment may be required (and is payable by the Operators or the Purchaser as the case may be) in relation to the novation of Bus Leases under clause 2(b) of Schedule 1. The Operators agree to pay all costs associated with procuring the consent of the lessor or licensor to the assignment or novation.

4.2 Payment

The Purchaser agrees to pay the Transfer Price to the Operators (or as the Operators otherwise directs) under clause 7.3 by bank cheque or telegraphic transfer to an account nominated by the Operator.

5. Due diligence

5.1 Purchaser's right of access

The Operators and each Associated Operator agree to allow the Purchaser full access to the Assets and the Staff at reasonable times to enable the Purchaser to conduct its due diligence in relation to the Assets.

5.2 Purchaser to avoid disruption

The Purchaser agrees to use its reasonable endeavours to ensure that any access under clause 5.1 is exercised and conducted in a manner that minimises interference with the Bus Operations.

6. Third Party Leases or Licences

6.1 Acknowledgement

The Operators and each Associated Operator acknowledge that all Third Party Leases or Licences (except those relating to Non Transferable Assets) are capable of assignment or novation as contemplated by this agreement.

6.2 Operators to procure assignment or novation

- (a) The Operators and each Associated Operator if applicable agree to procure and facilitate the assignment or novation of the Third Party Leases or Licences (except the Third Party Leases or Licences relating to Non Transferable Assets) on the Transfer Date including by executing (and arranging for execution by the lessors and licensors of the relevant Third Party Assets of) relevant assignment or novation deeds.
- (b) Further to clause 6.2(a), the Operators agree to arrange for the execution by all parties (other than the Purchaser) of a Novation Deed for each Bus Lease that will be novated under clause 3.2.

6.3 Purchase if assignment not likely

If the assignment or novation of a Third Party Lease or Licence (except a Third Party Lease or Licence relating to Non Transferable Assets) is considered by the Director to be unlikely to be effected by the Transfer Date then the Operators and each Associated Operator if applicable agree to, on receipt of written notice from the Director, exercise any right they have under that Third Party Lease or Licence to acquire that Third Party Asset and then transfer it to the Purchaser under clause 3.1.

7. Completion

7.1 Time and place

Completion will take place at [time] on the Transfer Date at [venue], or any other place or time agreed between the Operators, the Purchaser and the Director.

7.2 Operators' obligations

At Completion, the Operators and each Associated Operator (as relevant) agree to deliver to the Purchaser:

- (a) possession of all Assets (other than Third Party Leases or Licences relating to Non Transferable Assets) at the places where they are currently or customarily located or as directed by the Director;
- (b) duly executed transfer documentation for any Owned Assets that the Purchaser reasonably requires to vest the Owned Assets in the Purchaser, in registrable form where applicable;
- (c) all documents of title relating to the Owned Assets;
- (d) a Novation Deed for each Bus Lease novated under clause 3.2 duly executed by the lessor, the Operators or any relevant Associated Operator;
- (e) assignment and or novation deeds, forms and other documentation relating to any other Third Party Leases or Licences assigned or novated under clause 3.2, duly executed by the Operators, the owner of the relevant Third Party Asset and any relevant Associated Operator;
- (f) the continuity guide required to be maintained and made available by the Operators under the Current Service Contract;
- (g) subject to clause 3.1(b), duly executed discharges or releases of all Encumbrances in the nature of Security Interests over the Owned Assets and the Third Party Leases or Licences;
- (h) duly executed forms or consents reasonably required by the Purchaser to enable the utility services provided at the Contract Depots (including gas, water, electricity, sewerage and telephone, facsimile and other communication services (with the benefit of the same numbers)) to be transferred to the Purchaser with effect from the Transfer Date;
- (i) all keys and codes required to gain access to any of the Assets transferred, assigned or novated under this agreement; and
- (j) any other document or thing reasonably necessary to give full effect to this agreement as it relates to the Operator.

7.3 Purchaser's obligations

At Completion, the Purchaser agrees to:

- (a) deliver to the Operators duly executed counterparts of any document to be delivered by the Operators at Completion to which the Purchaser is party; and
- (b) pay the Operators the Transfer Price (and the adjustment amount required under clause 2(b) of Schedule 1 (if any) in accordance with clause 4).

7.4 Simultaneous actions at Completion

In respect of Completion:

- (a) the obligations of the parties under this agreement are interdependent;

- (b) all actions required to be performed are taken to have occurred simultaneously on the Transfer Date; and
- (c) subject to clause 7.5(c), completion of the sale, assignment or novation of an Owned Asset or Third Party Lease or Licence under clause 3.1 or 3.2 is dependent on the completion of each other sale, assignment or novation under those clauses.

7.5 Completion obligations breached

If, on the scheduled Transfer Date, a party has not complied in any material respect with any of its obligations under this clause 7, the other party may, at its discretion (provided that the consent of the Director has been obtained):

- (a) defer Completion to any subsequent Business Day agreed between the parties and the Director;
- (b) waive the requirement to fulfil those obligations, in whole or in part, and following that waiver, Complete;
- (c) Complete, subject to excluding from the sale or novation under clause 3 the relevant Owned Asset or Third Party Lease or Licence in relation to which the breach relates; or
- (d) terminate this agreement.

8. Title and risk

8.1 Possession

Possession of, and risk relating to, the Assets (other than Third Party Leases or Licences relating to Non Transferable Assets) passes to the Purchaser at Completion.

8.2 Title

Title to the Owned Assets passes to the Purchaser at Completion.

9. Use of Assets pending transfer

- (a) Subject to clause 9(b), if an Owned Asset or a Third Party Lease or Licence (other than a Third Party Lease or Licence relating to a Non Transferable Asset) is not transferred, assigned or novated to the Purchaser at Completion in accordance with clause 3.1 or 3.2, the Operators agree to, to the extent they lawfully can, and provided the consent of the Director is obtained, allow the Purchaser to use or occupy the relevant Asset as licensee or sub licensee (free of charge) from Completion until the transfer, assignment or novation is completed.
- (b) If the Purchaser uses or occupies the relevant Asset as licensee or sub licensee, in accordance with clause 9(a), the Purchaser must indemnify the Operators for all reasonable direct costs demonstrated and substantiated to the satisfaction of the Director incurred by the Operators in connection with the use or occupation including, but not limited to, ongoing lease or licence payments.
- (c) The Operators agree to fully cooperate with the Purchaser in any reasonable arrangement to confer the benefit, possession and use of the Asset on, or to, the Purchaser.

10. Indemnities in relation to Third Party Leases or Licences

10.1 Operators' indemnity

Subject to Completion occurring, the Operators indemnify the Purchaser from and against all Liabilities suffered, paid or incurred by the Purchaser resulting from any breach, non performance

or non observance of any obligation under a Third Party Lease or Licence and any Claim made by a counter party under that Third Party Lease or Licence arising from events, acts or omissions occurring or relating to the period before the Transfer Date.

10.2 Purchaser's indemnity

Subject to Completion occurring, the Purchaser indemnifies the Operators from and against all Liabilities suffered, paid or incurred by the Operators resulting from any breach, non performance or non observance of any obligation under a Third Party Lease or Licence and any Claim made by a counter party under that Third Party Lease or Licence arising from events, acts or omissions occurring or relating to the period after the Transfer Date.

11. Staff

11.1 Offers of employment

Not later than 10 Business Days prior to the Transfer Date the Purchaser agrees to make offers of employment to those members of Staff notified to it by the Operators as *Available Staff* under the Current Service Contract (**Available Staff**) which:

- (a) are on terms no less favourable considered as a whole to the Available Staff than their terms of employment with an Operator or an Associated Operator;
- (b) provide for the continuity of Staff Liabilities and entitlements in relation to long service leave;
- (c) meet the relevant criteria of offers of acceptable alternative employment set out in the enterprise or workplace agreement certified or lodged under the *Workplace Relations Act 1996* (Cth) applicable to the Staff; and
- (d) will take effect on the Transfer Date.

11.2 Termination of employment of Transferring Staff

At Completion, the Operators agree to release from their employment (with effect from the Transfer Date) all Available Staff who accept offers of employment from the Purchaser made in accordance with clause 11.1 (**Transferring Staff**).

11.3 Assumption of Staff Liabilities

- (a) The Purchaser agrees to assume, recognise, become solely responsible for, and indemnify the Operators in relation to, all Staff Liabilities in respect of the Transferring Staff as at the Transfer Date.
- (b) In consideration for the assumption by the Purchaser of the Staff Liabilities for the Transferring Staff, the Operators agree to pay to the Purchaser an amount (**Transferring Staff Payment**) calculated as follows:

$$\text{Transferring Staff Payment} = (1 - T) \times \text{SLTS}$$

where:

T = the corporate tax rate (expressed as a decimal figure), applicable on the Transfer Date;

SLTS = the aggregate of the Staff Liabilities for all Transferring Staff (less the Sick Leave Discount) calculated and valued by an independent actuary who:

- (i) is jointly appointed by the Director, the relevant Operator and the Purchaser;
- (ii) must apply relevant Australian accounting standards; and

- (iii) must apply any assumptions agreed to by the Director, the relevant Operator and the Purchaser, and

Sick Leave Discount = 80% of the Staff Liabilities that relate specifically to the sick leave entitlements of the Transferring Staff,

and which will be deducted as set out in Schedule 1.

- (c) In relation to Available Staff who do not accept an offer by the Purchaser under clause 11.1 (**Non-Transferring Staff**) the Operators remain liable for, and agree to indemnify the Director and Purchaser for, any Staff Liabilities for the Non Transferring Staff.

12. Warranties

12.1 Warranties

The Operators represent and warrant to the Purchaser that each of the Warranties is true and accurate and not misleading:

- (a) at the date of this agreement; and
- (b) as at Completion by reference to the facts and circumstances then existing.

12.2 Reliance of Purchaser

The Operators acknowledge that the Purchaser enters into this agreement in reliance on the Warranties.

12.3 Application of Warranties

Each of the Warranties:

- (a) remains in full force after Completion;
- (b) is separate and independent and not limited or restricted by any other Warranty or provision of this agreement; and
- (c) is not affected by any investigation made by or on behalf of the Purchaser or any information relating to the Bus Operations or Assets of which the Purchaser has knowledge, actual or constructive.

12.4 Operators to disclose breach

The Operators agree to disclose to the Purchaser in writing, promptly on their becoming aware of the same, full details of any fact, matter, event or circumstance which:

- (a) does or might constitute a breach of any of the Warranties when given on the execution of this agreement; or
- (b) will or might constitute a breach of any of the Warranties when deemed given again immediately prior to Completion.

12.5 Indemnity for Warranty Claims

Without limiting the other provisions of this clause 12, the Operators indemnify the Purchaser for all Liabilities that the Purchaser suffers or incurs by reason of any Warranty Claim.

12.6 Notice of Warranty Claims

The Purchaser agrees to give the Operators written notice (including details) of a Warranty Claim or anything the Purchaser becomes aware of that may result in a Warranty Claim (**Claim Notice**).

12.7 Time limits for Claim Notices and Warranty Claims

The Operators will not be liable for any Warranty Claim unless they receive a Claim Notice for the Warranty Claim within one year after the Transfer Date.

13. Capacity

Each party represents and warrants to each other party that:

- (a) it is validly existing under the laws of its place of incorporation or registration;
- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) its obligations under this agreement are valid and binding and enforceable against it in accordance with their terms;
- (e) to the extent that it enters into this agreement in a trustee capacity:
 - (i) its appointment as trustee of the relevant trust is valid and subsisting and it is not aware of any action to remove or replace it as trustee;
 - (ii) the trust deed for the relevant trust authorises its entry into this agreement; and
 - (iii) it has a right of recourse to the assets of the relevant trust sufficient to cover any Claim that may be made against it under this agreement; and
- (f) the execution, delivery and performance by it of this agreement (and any other agreement required to be entered into by it in connection with this agreement) will not violate in any respect a provision of:
 - (i) its constitution or other constituent documents;
 - (ii) any agreement or arrangement to which it is party or by which it is bound; or
 - (iii) a law or treaty or a judgement, ruling, order or decree of a Government Body binding on it.

14. Goods and Services Tax

14.1 Interpretation

Words or expressions used in this clause 40 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

14.2 Consideration is GST exclusive

Any consideration or amount to be paid or provided for a supply made under or in connection with this agreement, unless specifically described as **GST inclusive**, does not include GST payable on that supply.

14.3 Gross up of consideration

If a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is stated specifically as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) agrees to also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and

- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

14.4 Going concern

The Operators and the Purchaser agree that the sale of the Owned Assets and the assignment or novation of the Third Party Leases or Licences under this agreement constitutes the supply of a going concern for the purposes of the GST law only, and for no other purpose.

14.5 Reimbursement

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a Liability incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Liability relates.

15. General

15.1 Alterations

This agreement may be altered only in writing signed by each party.

15.2 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

15.3 Costs

- (a) Each party agrees to pay its own costs of negotiating, preparing and executing this agreement.
- (b) The Operators and any relevant Associated Operator will be responsible for any capital gains tax liability triggered by the transfer, assignment or novation of Assets under this agreement.
- (c) Any stamp duty levied on this agreement or any of the transactions contemplated by it is the responsibility of the Purchaser.

15.4 Survival

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

15.5 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one agreement.

15.6 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

15.7 Inconsistency

If there is any inconsistency between this agreement and the Current Service Contract, the Director will instruct the parties how that inconsistency is to be resolved.

15.8 Further action

Each party agrees to do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

15.9 Document subject to Transport Act and PTCA

Nothing in this agreement will affect or limit any powers or rights that the parties may have under the Transport Act or the PTCA, except where those powers or rights have been expressly waived by the party entitled to the benefit of the right or power.

15.10 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

15.11 Waiver

Unless otherwise provided in this agreement, a party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15.12 Relationship

Nothing in this agreement creates a relationship of employment, trust, agency or partnership between the parties.

15.13 Confidentiality

A party may only use information obtained from another party for the purposes of this agreement, and must keep that information and the existence and terms of this agreement and any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this agreement) or the party has independently created the information or if it is trivial or obvious;
- (b) disclosure is required by law or a Government Body; or
- (c) disclosure is made to:
 - (i) the Staff, to the extent that they need to have the information for the performance of their duties in respect of the Current Services Contract and this agreement;
 - (ii) a party's advisors in connection with this document, including its bankers, accountants, lawyers and insurance brokers; and
 - (iii) any other person who must know for the purposes of this agreement with the consent of the relevant party on the basis that the person keeps the information confidential.

15.14 Announcements

A public announcement in connection with this agreement or a transaction contemplated by it must be agreed by the parties before it is made, except if required by law or a Government Body, in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party.

15.15 Governing law and jurisdiction

This agreement is governed by the laws of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

15.16 Notices and other communications

- (a) A notice, demand, consent, approval or communication given under this agreement (Notice) must be:

- (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this agreement); and
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 15.16(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Schedule 1 - Transfer Price

1. Transfer Price

- (a) The Transfer Price payable by the Purchaser for the Assets is calculated as follows:

Transfer Price = Aggregate Bus Price + Aggregate Lease Adjustment Amount + Depot Price + Business Systems Price + Bus Operations IP Price + Other Assets Price – Transferring Staff Payment

where:

Aggregate Bus Price = the aggregate of the Bus Price for each Contract Bus to be transferred.

Aggregate Lease Adjustment Amount = the aggregate of the Lease Adjustment Amount for each Bus Lease to be novated.

Bus Price = the purchase price of a Contract Bus as calculated under clause 2(a) of this Schedule 1.

Depot Price = the purchase price for the Owned Depots calculated under clause 3 of this Schedule 1.

Business Systems Price = the purchase price for the Business Systems calculated under clause 5 of this Schedule 1.

Bus Operations IP Price = the purchase price for the Bus Operations IP calculated under clause 6 of this Schedule 1.

Lease Adjustment Amount = the amount calculated under clause 2(b) of this Schedule 1 in relation to the novation of a Bus Lease.

Other Assets Price = the purchase price payable for all Assets other than those referred to above, calculated under clause Schedule 77 of this Schedule 1.

Transferring Staff Payment = the amount referred to in clause 11.3(b).

- (b) If the Assets are transferred subject to encumbrances under an Allocation Statement, the Transfer Price calculated under clause 1(a) of this Schedule 1 will be reduced by an amount equal to the net present value of those encumbrances.

2. Bus Price

- (a) The purchase price for a Contract Bus to be transferred under this agreement will be the market value of that Contract Bus calculated under clause 4(b) of this Schedule 1.
- (b) In relation to the novation of a Bus Lease under this agreement, the parties agree that:
- (i) if the market value of the Contract Bus to which that Bus Lease applies (calculated under clause 4(b) of this Schedule 1) is greater than the pay out amount or termination value under that Bus Lease at the Transfer Date then the Purchaser must pay the amount of the excess to the Operators;
 - (ii) if the market value of the Contract Bus to which that Bus Lease applies (calculated under clause 4(b) of this Schedule 1) is less than the pay out amount or termination value under that Bus Lease at the Transfer Date then the Operators

must pay to the Purchaser (or the Purchaser may deduct by way of set off against the Aggregate Bus Price) the amount of the shortfall; and

- (iii) if the Bus Lease is an operating lease then no fee will be payable for the novation.

3. Depot Price

The purchase price for the Owned Depots to be transferred under this agreement will be calculated in accordance with Schedule 5.

4. Market Value of Assets

- (a) Where the purchase price of an Asset is to be calculated at its market value, then the following provisions of this clause apply.
- (b) At least 14 days prior to the Transfer Date in clause 30.2 of the MBSC the Director and the Operators must jointly appoint a valuer to provide a market valuation of the relevant Asset to be transferred on the following basis:
- (i) the valuer is to act as an expert and not as an arbitrator;
 - (ii) an Operator or Associated Operator is a willing but not anxious seller and the Purchaser is a willing but not anxious buyer;
 - (iii) there is a reasonable period within which to negotiate the value of the relevant Asset having regard to the condition of that Asset and the state of the market for that Asset;
 - (iv) the market valuation is to be on a GST exclusive basis; and
 - (v) the relevant asset is to be valued having regard to the operational requirements of the business with no value for goodwill.
- (c) If the Director and the Operators do not mutually agree on the appointment of a valuer in accordance with clause 4(b) of this Schedule 1, either party may request the President of the Institute of Chartered Accountants to appoint a valuer on behalf of the parties to provide a valuation in accordance with this clause.
- (d) The market value of each Asset will be the valuation obtained under clause 4(b) of this Schedule 1 in respect of that Asset.
- (e) A valuer appointed under this clause must have appropriate qualifications and experience to provide a fair and reasonable valuation.
- (f) The valuation provided by the valuer shall be final and binding on the parties except in the case of fraud or gross negligence.

5. Business Systems Price

- (a) The purchase price for the Business Systems to be transferred under this agreement is calculated as follows:

Business Systems Price = The lesser of the Market Value of the Business Systems and the Replacement Cost of the Business Systems

where:

Market Value of the Business Systems = the market value of the Business Systems determined by a valuer appointed under, and on the same basis provided for in, clause 4(b) of this Schedule 1.

Replacement Cost = the listed price of the relevant Business System (or an equivalent) by the manufacturer or supplier from whom the Business System was acquired (or the manufacturer or supplier of the equivalent).

- (b) The work product and data component of the Business Systems shall have a nil value for the purpose of calculating the Business Systems Price under this clause.
- (c) The Business Systems Price calculated under clause 5(a) of this Schedule 1 will be capped at a maximum of 5% of the Local Service Payments under the Current Service Contract for the 12 months preceding the Transfer Date.
- (d) The value of any Intellectual Property in the Business Systems will be incorporated in the calculation of the Bus Operations IP Price under clause 6 of this Schedule 1.

6. Bus Operations IP Price

Bus Operations IP will be deemed to have a nil value for the purpose of a transfer under this agreement.

7. Other Assets Price

The purchase price for all Assets to be transferred under clause under this agreement (other than those Assets for which the purchase price is calculated under clauses 1 to 6 of this Schedule 1) is the aggregate of the market value of each Asset calculated under clause 4 of this Schedule 1.

Schedule 2 - Warranties

1. The Operators or an Associated Operator (as the case may be) is the absolute legal and beneficial owner of each Owned Asset and has full capacity to transfer the unencumbered title in the Owned Assets as contemplated by this agreement.
2. Each Third Party Lease or Licence (except those in relation to Non Transferable Bus Operations IP and Non Transferable Business Systems) is capable of assignment or novation as contemplated by this agreement.
3. At Completion, there will be no Encumbrances over or affecting any Asset in the nature of Security Interests and neither the Operators nor any Associated Operator is party to any agreement to grant any Encumbrance over any Asset.
4. The Assets:
 - (a) comprise all of the assets used by the Operators in conducting the Bus Operations;
 - (b) are the only assets necessary for the conduct and operation of the Bus Operations;
 - (c) are fit for their intended purpose; and
 - (d) are in the state required under the Current Service Contract.

Schedule 3 – Contract Buses

[insert]

Schedule 4 – Non Transferable Assets

[Operator to advise if any]

Schedule 5 – Terms and conditions applicable to the sale of a Contract Depot

1. The Law Institute of Victoria copyright Contract of Sale of Real Estate (With GST gross up wordings Approved VLRPA, EEA 1980, S53A 2001) (**LIV Contract**) will be entered into in relation to the Contract Depots and the Particulars of Sale will be completed as follows:
 - (a) the purchaser will be the Purchaser;
 - (b) the vendor will be the Operator or Associated Operator who owns the Contract Depot;
 - (c) the land will be the Contract Depot;
 - (d) there will be no chattels sold under the LIV Contract;
 - (e) the Depot Price for the purpose of clause 3 of Schedule 1 will be the amount determined under special condition 2(b) below;
 - (f) the deposit will be \$1.00 which must be paid on the day of sale;
 - (g) settlement will take place on the Transfer Date, however this may be extended in order to enable the purchaser to effect due diligence under paragraph 2(c) below;
 - (h) the vendor will be obliged to deliver vacant possession of the property to the purchaser at settlement.
2. The LIV Contract will contain special conditions in the following terms:
 - (a) the purchaser must reimburse at settlement any GST for which the vendor is liable on the sale;
 - (b) the Depot Price will be determined as follows:
 - (i) the price will be the market value of the property on the day of sale as agreed by the vendor and the purchaser or, if they fail to agree within 14 days after the day of sale, determined by a valuer appointed by the President of the Australian Property Institute (Victorian Division) on the application of the purchaser;
 - (ii) the valuer must be a member of the Australian Property Institute (Victorian Division) having at least 15 years experience in valuing premises of a similar kind to the property;
 - (iii) the parties may each make written submissions to the valuer. The purchaser will have the right to make an additional written submission during or after the due diligence period referred to in paragraph 2(c) below. The valuer must not make a determination of the market value of the property until after:
 - (A) the purchaser makes this additional written submission; or
 - (B) the purchaser tells the valuer that the purchaser will not make the additional submission;
 - (iv) the valuer must be instructed to determine the market value on the basis that:
 - (A) the property may be used for any purpose permitted by the planning regulations and guidelines of the relevant Government Body applicable as at the date of valuation; and

- (B) the market value must reflect any actual or likely contamination of, or contamination liability attached or relating to, the property;
 - (v) the valuer must be instructed to make the determination not less than seven days before the date fixed for settlement; and
 - (vi) the valuer will act as an expert and the valuer's determination will bind the parties.
- (c) the purchaser will have the right of access to the property and records in relation to the property from the day of sale to carry out the usual purchaser's due diligence including, without limitation, as to the condition of the improvements on the property, the extent of any contamination of the property and, where the contamination has or may have migrated from the property, the extent of any contamination of surrounding properties.

Schedule 6 – Novation Deed

Details

Date

Parties

Name	[Lessor]
Short form name	Lessor
Notice details	[Insert]

Name	[Operator name]
Short form name	Operator
Notice details	[insert details] Facsimile: [insert details] Attention: [insert details]

Name	[Purchaser]
Short form name	Purchaser
Notice details	

Background

- A. The Operator has entered into the Bus Leases with the Lessor.
- B. The Operator, the Lessor and the Purchaser wish to novate the Bus Leases.

Agreed terms

1. Defined terms and interpretation

1.1 Definitions

In this Novation Deed unless the context otherwise requires:

Authorisation means:

- (a) any authorisation, approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them; and .
- (b) for anything which a Government Agency may prohibit or restrict with a specified period, the expiry of that period without intervention or other action by that Government Agency.

Bus Leases means the bus leases listed in the Schedule to this Novation Deed.

Business Day means any day other than a Saturday, Sunday or public holiday in Victoria.

Effective Date means the date specified as such in the Schedule to this Novation Deed.

Government Agency means:

- (a) a government or any governmental, semi-governmental or judicial entity or body, whether foreign or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board or other government, semi-government, judicial, administrative, monetary or fiscal authority, whether statutory or not.

Notice has the meaning given in clause 8.

Novation Deed means this document.

Recipient has the meaning given in clause 7.3.

Supplier has the meaning given in clause 7.3.

1.2 Interpretation

In this Novation Deed, unless the context otherwise requires, the following rules of construction will apply in the interpretation of this Novation Deed:

- (a) the singular includes the plural and vice versa and a reference to any gender includes the other genders;
- (b) a reference to a clause, schedule or annexure is to a clause, schedule or annexure of or to this Novation Deed;
- (c) a reference to a contract or document is to that contract or document as amended, novated, supplemented or replaced from time to time;
- (d) a reference to a person includes a corporation, firm, partnership, association, trust, joint venture, authority, Government Body or other legal entity and vice versa;
- (e) a reference to any legislation or legislative provision is to that legislation or provision as amended, modified, re-enacted, consolidated or replaced from time to time and includes any regulation or other instrument issued under that legislation or provision;

- (f) a reference to a party or person includes the successors and permitted assigns of that party or person;
- (g) if any amount is payable under this Novation Deed on a day which is not a Business Day, that amount must be paid on the next day that is a Business Day;
- (h) headings and sub-headings are for convenience and do not affect interpretation;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) the meaning of general words is not limited by specific examples introduced by *including*, or *for example*, or similar expressions;
- (k) a general obligation imposed on a party must not be read down or limited by reference to a more specific obligation, unless this Novation Deed expressly provides otherwise;
- (l) where a party releases another party from Claims, it will be deemed to have released the other party from all Claims which it has, but for the execution of this Novation Deed might have had, or may have in the future in respect of the relevant subject matter;
- (m) a reference to A dollars, \$A, the word dollar or \$ is to Australian currency; and
- (n) a rule of construction does not apply to the disadvantage of a party because that party was responsible directly or indirectly for the preparation of this Novation Deed or any part of it.

2. Novation and release

2.1 Novation from Effective Date

By way of novation and with effect from the Effective Date:

- (a) the Purchaser is substituted for the Operator under the Bus Leases as if named as an original party to the Bus Leases in place of the Operator;
- (b) the Purchaser assumes all of the obligations of the Operator under the Bus Leases arising on or after the Effective Date;
- (c) all of the rights and benefits of the Operator under the Bus Leases are conferred on the Purchaser; and
- (d) every reference in the Bus Leases to *the Lessee* is to be read as if it were a reference to the Purchaser.

2.2 Release by the Lessor

With effect from the Effective Date, the Lessor releases the Operator from all its obligations and liabilities under the Bus Leases arising on or after the Effective Date.

3. Amendments to Bus Leases

3.1 Amendments to Bus Leases

The Bus Leases are amended with effect from the Effective Date as set out in the Schedule to this Novation Deed.

3.2 Construction of Bus Leases

Subject to the provisions of this Novation Deed, this Novation Deed and the Bus Leases will be read and construed as one document.

4. Indemnities

4.1 Operator indemnity

The Operator unconditionally and irrevocably indemnifies the Purchaser against any liability, cost, damages, debt, expense, tax or loss incurred or payable by the Purchaser as a result of any suit, action, demand, cause of action or proceeding against the Purchaser under or in respect the Bus Leases which relates to any act or omission of the Operator at any time before the Effective Date.

4.2 Purchaser indemnity

The Purchaser unconditionally and irrevocably indemnifies the Operator against any liability, cost, damages, debt, expense, tax or loss incurred or payable by the Operator as a result of any suit, action, demand, cause of action or proceeding against the Operator under or in respect the Bus Leases which relates to any act or omission of the Purchaser at any time on or after the Effective Date.

5. Representations and warranties

5.1 Representations and warranties

Each of the parties represents and warrant to the other parties that:

- (a) it is properly incorporated under the laws of the place of its incorporation;
- (b) it has full power and authority to enter into and perform its obligations under this Novation Deed and it has taken all corporate and other action necessary to authorise the execution, delivery and performance of this Novation Deed;
- (c) it benefits by entering into this Novation Deed;
- (d) this Novation Deed has created valid and binding obligations enforceable against it in accordance with its terms;
- (e) the execution of this Novation Deed and the performance by it of its obligations or the exercise of its rights under this Novation Deed does not and will not:
 - (i) contravene its constitution;
 - (ii) contravene a law or Authorisation or require that any Authorisation be obtained;
 - (iii) contravene any agreement or obligation binding on it or applicable to its assets, revenues or business;
 - (iv) exceed any limits on its powers or the powers of its directors;
- (f) in entering this Novation Deed, it is not acting as a trustee of any trust; and
- (g) no application or order has been made for winding-up or liquidation of it, no action has been taken to seize or take possession of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as they fall due.

5.2 Repetition

The representations and warranties in this Novation Deed are made on the date of this Novation Deed and are repeated on the Effective Date.

5.3 Reliance

Each party acknowledges that the other parties have entered into this Novation Deed in reliance on the representations and warranties in clause 5.1.

6. Costs, expenses and duties

6.1 Costs and expenses

Subject to clause 6.2, the parties agree to bear their own expenses of agreeing and executing this Novation Deed.

6.2 Other duties

The Purchaser agrees to pay all registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, registration, performance, enforcement or attempted performance or otherwise in respect of this Novation Deed or any payment or receipt or other transaction contemplated by this Novation Deed.

7. Goods and Services Tax

7.1 Interpretation

Words or expressions used in this clause 7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

7.2 Consideration is GST exclusive

Any consideration or amount to be paid or provided for a supply made under or in connection with this Novation Deed, unless specifically described as GST inclusive, does not include GST payable on that supply.

7.3 Gross up of consideration

If a party (**Supplier**) makes a supply under or in connection with this Novation Deed on which GST is imposed (not being a supply the consideration for which is stated specifically as GST inclusive):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) agrees to also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

7.4 Reimbursement

If a payment to a party under this Novation Deed is a reimbursement or indemnification, calculated by reference to a Liability incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Liability relates.

8. Notices

- (a) A notice, demand, consent, approval or communication given under this Novation Deed (**Notice**) must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this Novation Deed);
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

- (b) A Notice given in accordance with clause 8(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

9. General provisions

9.1 Severability

A term or part of a term of this Novation Deed that is illegal or unenforceable may be severed from this Novation Deed and the remaining terms or parts of the terms of this Novation Deed continue in force.

9.2 Counterparts

This Novation Deed may be executed in counterparts. All executed counterparts constitute one Novation Deed.

9.3 Further action

Each party agrees to do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Novation Deed and any transaction contemplated by it.

9.4 Moratorium legislation

To the extent permitted by law, a provision of a law is excluded if it does or may, directly or indirectly:

- (a) lessen or vary in any other way the obligations of any party under this Novation Deed; or
- (b) delay, curtail or prevent or adversely affect in any other way the exercise by a party of any of its rights, remedies or powers under this Novation Deed.

9.5 Governing law and jurisdiction

This Novation Deed is governed by the laws of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Executed as a deed in Melbourne.

Execution

[Operator execution clause]

[Lessor execution clause]

[Purchaser execution clause]

Schedule

1. Terms and expressions defined in the Novation Deed have the same meaning when used in this Schedule.
2. For the purpose of the Novation Deed:
 - (a) the Bus Lease(s) are:
[##]; and
 - (b) the Effective Date is [insert date].
 - (c) the address, attention details and facsimile number for notices to the Purchaser are:
Address: [##]
Attention: [##]
Facsimile no: [##]

Signing page

EXECUTED as an agreement.

Executed by [Operator name] in accordance with its constitution in the presence of:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by [Operator name] in accordance with its constitution in the presence of:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by [*Associated Operator No.1*] in accordance with its constitution in the presence of:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by [*Associated Operator No.2*] in accordance with its constitution in the presence of:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by [*insert Purchaser*] in accordance with its constitution in the presence of:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Annexure C

End of Term Depot Option Deed/Termination Depot Option Deed

(clause 30)

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Option to buy real property

[insert address]

[Operator or Asset owner] (Grantor)

[The Director of Public Transport] (Grantee)

MinterEllison

L A W Y E R S

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TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Option to buy real property

[insert address]

Information Table	3
Agreed Terms	3
1. Defined terms	3
2. Grant of Option	3
3. Option Fee	4
3.1 Acknowledgement of Option Fee	4
3.2 Option Fee property of Grantor	4
4. How the option is exercised	4
5. Contract	4
6. Effect of exercising the option	4
7. Grantor to execute copy contract	4
8. Grantor's obligations until option ends	4
9. Nominee	5
9.1 How a nomination is made	5
9.2 Effect of nomination	5
10. Notices	5
Schedule 1 – Option exercise notice (clause 4)	7
Schedule 2 – Nomination notice (clause 9)	8
Schedule 3 – Contract terms (clause 5)	9
Signing Page	10

Information table

Date

Parties

Name	[Asset owner]
Short form name	Grantor
Notice details	[to be completed]
	Facsimile: [TBA]
	Attention: [TBA]

Name	The Director of Public Transport under the Transport Act 1983 (Vic) on behalf of the Crown in right of the State of Victoria under the PTCA
Short form name	Grantee
Notice details	Level 14, 121 Exhibition Street, Melbourne, Victoria, 30001
	Facsimile: 9655 8993
	Attention: Director

Agreed terms

1. Defined terms

In this document:

Contract means the contract of sale of the Property in the form required under clause 5.

Director means the Director of Public Transport on behalf of the Crown in right of the State.

Operator means [##], [##], [##] and [##].

Option Fee means \$1.00.

Option Period means the period beginning on the date that the Director has given notice to the Grantor terminating the Service Contract (**Termination Notice**) and ending at 5.00pm on the effective termination date set out in the Termination Notice.

Property means the property:

- (a) situated at and known as [insert address] being the whole of the land described in certificate of title volume [TBA] folio [TBA]; and
- (b) includes any property the freehold title in which is acquired as a Contract Depot under clause 16 of the Service Contract after the date of this deed and before the commencement of the Option Period,

unless disposed of as contemplated under clause 21 of the Service Contract before the option is exercised.

Service Contract means the contract between the Director, the Operators and the Parent Guarantor dated on or about the date of this deed relating to the provision by the Operators of regular passenger services.

Termination Transfer Agreement means the agreement of that name annexed to the Service Contract and which the Operators agree to deliver to the Grantee as a condition precedent to commencement of the Service Contract under which the assets of the Operators and any of their Associated Operators (including the Property) will be transferred if and when the Service Contract is terminated.

Vendor's Statement means the statement under section 32 of the Sale of Land Act 1962 (Vic).

2. Grant of option

The Grantor grants to the Grantee an option to buy the Property on the terms in the Contract and the Termination Transfer Agreement.

3. Option Fee

3.1 Acknowledgment of Option Fee

The Grantor acknowledges receipt of the Option Fee.

3.2 Option Fee property of Grantor

The Option Fee is the property of the Grantor, whether or not the option is exercised.

4. How the option is exercised

To exercise the option, the Grantee must have given a Transfer Notice under the Service Contract and agrees to deliver to the Grantor before the end of the Option Period:

- (d) an option exercise notice in the form in Schedule 1; and
- (e) two copies of the Contract executed by the Grantee with the day of sale completed as the day on which the Grantee exercises the option.

5. Contract

The Contract will be prepared by the Grantee and be on the terms set out in Schedule 3.

6. Effect of exercising the option

If the Grantee exercises the option as set out in clause 4, then from the date the Grantee does so, the Grantor is bound to sell and the Grantee is bound to buy the Property on the terms in the Contract and the Termination Transfer Agreement. The notice delivered by the Grantee under clause 4(d) and the copies of the Contract delivered by the Grantee under clause 4(e) constitute evidence of the contract arising on exercise of the option.

7. Grantor to execute copy contract

Although a binding contract exists between the Grantor and the Grantee on exercise of the option as set out in clause 4, as soon as practicable after the option is exercised, the Grantor agrees to execute the Contract the Grantee has delivered under clause 4 and have one executed copy delivered to the Grantee together with the Vendor's Statement.

8. Grantor's obligations until option ends

Until the end of the Option Period the Grantor:

- (a) agrees to take all reasonable steps to maintain the Property and all improvements on it in the condition they are in at the date of this deed except for fair wear and tear;
- (b) agrees to repair any damage to the Property and the improvements on it except for fair wear and tear;
- (c) agrees to maintain insurances for all improvements on the Property for their full replacement value; and
- (d) agrees not to:
 - (i) sell, agree to sell or grant an option to purchase over the Property;
 - (ii) grant any mortgage, charge, easement, lease, or any other interest in the Property;
 - (iii) grant any licence over the Property; or
 - (iv) otherwise encumber or deal with the Property in any way.

9. Nominee

9.1 How a nomination is made

If the Grantee has not exercised the option, the Grantee may nominate another person to exercise the option by delivering to the Grantor a nomination notice in the form in Schedule 2 completed and executed by the Grantee and the nominee.

9.2 Effect of a nomination

If the Grantee nominates a nominee under clause 9.1, then from the date the Grantee delivers the nomination notice listed in that clause:

- (a) the nominee may exercise the option and the Grantee may not; and
- (b) this deed is to be read as if 'Grantee' is replaced by the name of the nominee whenever it appears in clauses 4, 6, 7 and Schedule 3;

10. Notices

A notice, consent, approval, request or demand in connection with this deed:

- (a) must be in writing;
- (b) must be signed by the party giving it or that party's authorised officer, attorney, or solicitor;
- (c) may be addressed to the relevant party's solicitor named in the Contract.
- (d) must be left at or posted by prepaid post (airmail, if posted outside Australia) to the address of the addressee, or sent to the addressee's facsimile number, or delivered to the facilities of a document exchange of which the addressee is a member, set out in the Contract or the Information table or, if the addressee notifies another address, facsimile number or document exchange for receipt of documents, then at or to that address or facsimile number or document exchange;
- (e) is taken to be received:
 - (i) if hand delivered, on delivery;

- (ii) if posted in Australia, on the third business day after posting;
 - (iii) if posted outside Australia, on the seventh business day after posting;
 - (iv) if delivered to the facilities of a document exchange, on the second business day after delivery there; or
 - (v) if sent by facsimile, when the machine sending the facsimile generates a report showing that the total number of pages of the facsimile were successfully sent to the facsimile number of the addressee; and
- (f) unless a later date is specified in it, takes effect on the date it is taken to be received.

Schedule 1 – Option exercise notice (clause 4)

To [#]

[insert name of Director or nominee] exercises the option granted in the deed of option to buy real property between [#] and the Director dated [insert date] to buy the property at [insert address].

Date:

[insert execution clause]

Schedule 2 – Nomination notice (clause 9)

To: [#]

The Director nominates [insert name of nominee] to be its nominee to exercise the option to buy real property between [#] and the Director dated [insert date] to buy the property at [insert address].

The Nominee's address for service is: [insert]

Date:

[insert Director execution clause]

Schedule 3 – Contract terms (clause 5)

The Contract will be on the following terms:

1. The form will be the Law Institute of Victoria copyright Contract of Sale of Real Estate (With GST gross up wordings Approved VLRPA, EEA 1980, S53A 2001) and the Particulars of Sale will be completed as follows:
 - (a) the purchaser will be the Grantee and or nominee;
 - (b) the vendor will be the Grantor;
 - (c) the land will be the Property;
 - (d) there will be no chattels sold under the contract;
 - (e) the price will be the amount determined under the special condition of the contract described at paragraph 2(b) below;
 - (f) the deposit will be \$1.00 which must be paid on the day of sale;
 - (g) settlement will take place on the Transfer Date described in the Service Contract, however this may be extended in order to enable the purchaser to effect due diligence under paragraph 2(c) below; and
 - (h) the vendor will be obliged to deliver vacant possession of the property to the purchaser at settlement.
2. The Contract will contain special conditions in the following terms:
 - (a) the purchaser agrees to reimburse at settlement any GST for which the vendor is liable on the sale;
 - (b) the price will be determined as follows:
 - (i) the price will be the market value of the property on the day of sale as agreed by the vendor and the purchaser or, if they fail to agree within 14 days after the day of sale, determined by a valuer appointed by the President of the Australian Property Institute (Victorian Division) on the application of the purchaser;
 - (ii) the valuer must be a member of the Australian Property Institute (Victorian Division) having at least 15 years experience in valuing premises of a similar kind to the property;
 - (iii) the parties may each make written submissions to the valuer. The purchaser will have the right to make an additional written submission during or after the due diligence period referred to in paragraph 2(c) below. The valuer must not make a determination of the market value of the property until after:
 - (A) the purchaser makes this additional written submission; or
 - (B) the purchaser tells the valuer that the purchaser will not make the additional submission;
 - (iv) the valuer must be instructed to determine the market value on the basis that:

- (A) the property may be used for any purpose permitted by the planning regulations and guidelines of the relevant Government Body applicable as at the date of valuation; and
 - (B) the market value must reflect any actual or likely contamination of, or contamination liability attached or relating to, the property;
 - (v) the valuer must be instructed to make the determination not less than seven days before the date fixed for settlement; and
 - (vi) the valuer will act as an expert and the valuer's determination will bind the parties.
- (c) unless the purchaser has done so prior to exercising the option, the purchaser will have the right of access to the property and records in relation to the property from the day of sale to carry out the usual purchaser's due diligence including, without limitation, as to the condition of the improvements on the property, the extent of any contamination of the property and, where the contamination has or may have migrated from the property, the extent of any contamination of surrounding properties.

Signing page

EXECUTED as a deed

Dated [.....]

Signature



[Name and title] Delegate of the Director of Public
Transport

[insert execution clause for Grantor]

Annexure D

VIPP Statement

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Victorian Industry Participation Policy (VIPP) Statement

W. Sinclair & Sons Pty Ltd

Audience

The audience for this document is:

- ♦ Department of Infrastructure.

Reference material

Bibliography	Author	Source
Victorian Industry Participation Policy (VIPP): Guidelines for Bidders	Department of Innovation, Industry and Regional Development	of www.diiird.vic.gov.au/vipp

Acronyms	Description
ICN	Industry Capability Network
VIPP	Victorian Industry Participation Policy

Terms	Description
local	Covers Victoria, Australia or New Zealand, so as to be in accord with the Australia New Zealand Government Procurement Agreement entered into by Australian State and Federal Governments and New Zealand
local content or industry	Refers to goods and services sourced from or industry based in Victoria, Australia and New Zealand
regional Victoria	The area within the municipal districts of the councils—excluding Metropolitan Melbourne councils—established under the <i>Local Government Act 1989</i>
Bus Services Tender	Metropolitan Bus Services Contract.
value for money	Refers to the acquisition of the appropriate quantity and quality of goods or services at the best price or lowest cost. Wherever possible, whole-of-life costing of projects is assumed

Legend	Description
[Square-bracketed text]	<i>italic</i> Insert information required in this area
[Square-bracketed text]	bold Denotes instructions for completing a section

Contents

1	Company name	4
2	Value-added activity (local content)	4
3	Employment	7
4	Skills and technology transfer.....	8
4.1	Skills	8
4.2	Technologies.....	8
5	Statement of Compliance	9

1 Company name

W. Sinclair & Sons Pty Ltd

2 Value-added activity (local content)

The level of local value-added activity, expressed as a percentage of the total contract price, in the W. Sinclair & Sons Pty Ltd tender for the provision of Bus Passenger Transport Services is calculated to be 82 per cent of the contract expenditure incurred by W. Sinclair & Sons Pty Ltd.

The estimated breakdown by project component is shown at Table 1.

It is our policy to source local products and services where possible. If we are unable to locate suitable local suppliers, we will seek assistance from the Industry Capability Network (ICN).

Table 1. Estimated breakdown of value-added activity by project component

Victorian Industry Participation Policy (VIPP) Statement			
Local Items	Supplier	Local value-added activity %	Description
1. <i>Labour & Associated On Costs</i>	Own Labour source	100%	Locally sourced labour by self or through local recruitment agencies
2. <i>Accounting, consulting & legal fees</i>	Locally sourced through Pitcher Partners	100%	Locally sourced expertise
3. <i>Advertising & Marketing</i>	Locally sourced through The Age, Herald Sun, Newspaper Group	100%	Locally sourced expertise
4. <i>Insurance</i>	Locally sourced through MCA Insurance Brokers P/L	100%	Locally made and installed; commissioned on site by local labour
5. <i>Cleaning Services</i>	Locally sourced through Advance Chemicals P/L	100%	Locally made and installed; commissioned on site by local labour
6. <i>Timetable & Printing Needs</i>	Locally sourced through Keima Press P/L	100%	Locally made and Printed with local supplier
7. <i>Telephone Communication</i>	Locally Sourced through Telstra	100%	Locally made and installed; commissioned on site by local labour
8. <i>Registration Accreditation / Taxes</i>	Various Govt Related Organisations	100%	Various Victorian Government Bodies
9. <i>Security</i>	Locally Sourced Security firm through Advent Security Group	100%	Locally sourced on road security.
10. <i>Fire Services / Maintenance</i>	Locally Sourced through FES - Fire Equipment Services P/L	100%	Locally made and installed; commissioned on site by local labour

Victorian Industry Participation Policy (VIPP) Statement

Local Items	Supplier	Local value-added activity %	Description
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11. Utilities	Locally Sourced (Water, Power, Gas) through Origin Energy, TRU Energy and AGL	100%	Locally made and installed; commissioned on site by local labour
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Local with imported content items	Supplier	Local value-added activity %	Description
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12. Bus Bodies	Locally sourced by Volgren Industries P/L	70%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
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13. Uniforms	Local sourced by Company Co-Ordinates P/L	80%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
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14. Administrative related Items	Locally Sourced through Melbourne Office Supplies, Sharp.	85%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
----------------------------------	---	-----	--

15. Computer Support	Locally supported through Muirfield Computer Services	80%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
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16. Repairs & Parts	Locally sourced through numerous suppliers	50%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
---------------------	--	-----	--

Imported component items		Local value-added activity %	Description
17. Bus chassis	International product sourced through Mercedes, Volvo & Scania	5%	Bus chassis are imported from original European manufactures. No known local manufacture; assembled and tested locally; installed and commissioned on site by local labour.
18. Spare parts for Bus chassis	Locally sourced through CMV, Volvo, Scania, Mercedes, Multispartes	20%	All spare parts are purchased from local suppliers. Most would be imported and distributed by local suppliers.
19. Diesel, Oils, Lubricants	Locally sourced through Caltex Australia & Castrol	10%	Locally made and installed; commissioned on site by local labour
20. Mobile Phones	Locally Sourced through Telstra	20%	Most components sourced non-locally (no known local manufacture); assembled and tested locally; installed and commissioned on site by local labour
Total local value added		82%	

3 Employment

[Provide details of new employment opportunities that will be created in Australia and New Zealand as a result of the contract. Where possible, note the location of these opportunities within Australia and New Zealand.]

It is expected that new employment opportunities will arise in the future. With the Government implementing their 'Meeting Our Transport Challenges' (MOTC) program, it will mean that new opportunities for drivers, cleaners and maintenance staff will be created. All these positions will be filled with people from the local community.

4 Skills and technology transfer

[Identify opportunities for increasing the skills of Victorians and Australians and the potential to undertake innovation, research and development of technology.]

4.1 Skills

The company has a policy of employing apprentice diesel mechanics and this will continue into the future should our tender be successful.

New drivers will required and they will be trained to Certificate 3 level.

Buses have undergone massive technology advancements and diesel mechanics are now required to be computer literate and to be able to diagnose and maintain them. Ongoing skills training will be conducted by chassis and body manufacturers for these staff.

4.2 Technologies

Computer systems are now standard practise in any office environment. Opportunities are always being sort to improve the way we collect, store and use data.

The new MYKI ticketing system that is to be introduced will lead to more opportunities for operators to take advantage of the GPS system that this system will use. On time running is one aspect that can be gained.

CCTV digital security systems are used as a deterrent for would be assailants against our drivers. The company will be investigating combining the GPS functionality to enable live feed images.

5 Statement of Compliance

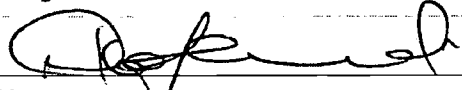
[Tenderers must state that in submitting a tender and a VIPP Statement they agree to take all reasonable steps to comply with VIPP principles.]

Should W. Sinclair & Sons Pty Ltd be the successful tenderer for this project, we will:

- ♦ take all reasonable steps to comply with VIPP principles
- ♦ agree to be monitored for compliance with VIPP commitments as part of overall performance management
- ♦ acknowledge that failure to comply with a VIPP Statement will be centrally recorded by the Victorian Government and may be taken into account when considering subsequent tenders for VIPP purposes
- ♦ agree to work with ICN (Victoria) to further improve the level of value-added activity on this project.

Signed on behalf of W. Sinclair & Sons Pty Ltd:

Name: *Douglas Kefford*

Signature: 

Title: Managing Director

Date

27/3/08

Annexure E

VIPP Implementation Plan

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

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"Promoting Australian Industry Capability"

INDUSTRY CAPABILITY NETWORK (VICTORIA) LIMITED

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Telephone: (03) 9866 6155 Fax: (03) 9866 6304
Email: aston.smith@icn.org.au
www.icnvic.org.au
ACN 007 058 120

Certification Ref: 2008/ICN00447

18 June 2008

Mr Douglas Kefford
W. Sinclair & Sons Pty Ltd
9 Slough Road
ALTONA VIC 3018

VIPP Certification

Metropolitan Bus Services Contract

Dear Douglas,

With regard to the Victorian Industry Participation Policy (VIPPP) requirements for the above mentioned tender, the Industry Capability Network – Victoria (ICN) has reviewed the VIPPP Statement and Plan presented by W. Sinclair & Sons Pty Ltd.

The information provided is certified by ICN as being a programme in which W. Sinclair & Sons Pty Ltd has sought to maximise involvement of local industry and has considered the impact on industry and employment in accordance with the VIPPP Guidelines.

This certification is based on the understanding that the company will endeavour to achieve the goals set out in its VIPPP Statement and Plan and acknowledges that:

- All reasonable steps to comply with the Victorian Industry Participation Policy principles will be undertaken,
- VIPPP Information can be included in a contract,
- Compliance with VIPPP commitments will be monitored as part of overall performance management, and
- Failure to comply with a VIPPP Statement developed by your company will be centrally recorded by the Victorian Government and may be taken into account when considering subsequent tenders for VIPPP purposes.

In the event that W. Sinclair & Sons Pty Ltd is successful with this tender an ICN consultant will contact you to assist in implementing and monitoring the industry initiatives indicated in the VIPPP Statement.

ICN certifies that the W. Sinclair & Sons Pty Ltd VIPPP Statement provides a genuine commitment to comply with the Victorian Government VIPPP requirements.

Regards,

A handwritten signature in black ink, appearing to read 'Aston Smith'.

Yours sincerely,
Aston Smith
VIPPP Manager
Industry Capability Network (Victoria) Limited

Victorian Industry Participation Policy (VIPP)

Implementation Plan

W. Sinclair & Sons Pty Ltd

Audience

The audience for this document is:

- ♦ tenderers for the Metropolitan Bus Contract Project (MBCP)

Reference material

Bibliography	Source
Victorian Industry Participation Policy (VIPP): Guidelines for Bidders	www.diird.vic.gov.au/vipp

Acronyms	Description
EOI	Expression of Interest
ICN	Industry Capability Network
VIPP	Victorian Industry Participation Policy

Terms	Description
Company name	W. Sinclair & Sons Pty Ltd
Full name of company	W. Sinclair & Sons Pty Ltd
Metropolitan Bus Contracts	Contracts for provision of Route Bus Services

Legend	Description
<i>[Square-bracketed italic text]</i>	Inserted information required in this area
[Square-bracketed bold text]	Denotes guidelines for completing a section

Contents

1	Introduction	4
2	Identifying local products and capabilities that meet contract requirements	4
2.1	Identifying suitable products	4
2.2	Interface with local industry	4
2.3	Methods of promoting.....	4
2.4	Liaising with international suppliers.....	4
2.5	Value-added activity (local content)	5
3	Assessing and comparing local products and capabilities with overseas equivalents	7
3.1	Benchmarks	7
3.2	Assessing and comparing local products with overseas equivalents ..	7
4	Selection of products and services.....	8
4.1	Procurement procedures	8
5	Monitoring and reporting on outcomes for local industry involvement	9

1 Introduction

This Implementation Plan briefly describes how W. Sinclair & Sons Pty Ltd intends to achieve the goals detailed in its VIPP Statement.

2 Identifying local products and capabilities that meet contract requirements

2.1 Identifying suitable products

The largest component of the contract value is labour which is local.

The remaining inputs are a mixture of those available locally and those that are currently imported as there is no local manufacturer. W. Sinclair & Sons Pty Ltd will work with our suppliers to minimise the need to source from overseas.

We will continue to identify the availability of Victorian products suitable to use in the provision of the services by

- attendance at Trade Shows, including the annual Victorian Bus Expo where a range of suppliers present their wares,
- consultation with the Industry Capability Network (ICN) (Victoria), Government organisations, the Bus Association of Victoria Inc. and other groups as appropriate, and
- perusal of trade journals.

2.2 Interface with local industry

Resources necessary to manage this contract will come from the company's Head Office in Altona, Victoria.

W. Sinclair & Sons Pty Ltd has operated in the Victorian Bus industry for over 70 years, and W. Sinclair & Sons Pty Ltd maintains its knowledge of potential suppliers as set out at 2.1 above. As the need arises, direct approaches are made to the suppliers who are known to provide good performance and value for money.

2.3 Methods of promoting

W. Sinclair & Sons Pty Ltd is a member of the Bus Association of Victoria Inc. which plays a major role in facilitating contact between suppliers and purchasers of goods and services in the bus industry. Where appropriate and available, Victorian industry participants will be promoted through this channel.

2.4 Liaising with international suppliers

The major inputs sourced from overseas suppliers are bus chassis and parts. W. Sinclair & Sons Pty Ltd purchases locally manufactured bus bodies fitted to these chassis and encourages co-operation between the overseas supplier and the local supplier.

2.5 Value-added activity (local content)

The level of local value-added activity, expressed as a percentage of the total contract price, in the W. Sinclair & Sons Pty Ltd tender for the provision of Metropolitan Bus Services Contracts is estimated to be 82 per cent.

The estimated breakdown by project component is shown at Table 1

Estimated breakdown of value-added activity by project component

Table 1:

Victorian Industry Participation Policy (VIPP) Statement			
Local Items	Supplier	Local value-added activity %	Description
1. <i>Labour & Associated On Costs</i>	Own source Labour	100%	Locally sourced labour by self or through local recruitment agencies
2. <i>Accounting, consulting & legal fees</i>	Locally sourced through Pitcher Partners	100%	Locally sourced expertise
3. <i>Advertising & Marketing</i>	Locally sourced through The Age, Herald Sun, Leader Newspaper Group	100%	Locally sourced expertise
4. <i>Insurance</i>	Locally sourced through MCA Insurance Brokers P/L	100%	Locally made and installed; commissioned on site by local labour
5. <i>Cleaning Services</i>	Locally sourced through Advance Chemicals P/L	100%	Locally made and installed; commissioned on site by local labour
6. <i>Timetable & Printing Needs</i>	Locally sourced through Keima Press P/L	100%	Locally made and Printed with local supplier
7. <i>Telephone Communication</i>	Locally Sourced through Telstra	100%	Locally made and installed; commissioned on site by local labour
8. <i>Registration Accreditation / Taxes</i>	Various Govt Related Organisations	100%	Various Victorian Government Bodies
9. <i>Security</i>	Locally Sourced Security firm through Advent Security Group	100%	Locally sourced on road security.

Victorian Industry Participation Policy (VIPP) Statement			
Local Items	Supplier	Local value-added activity %	Description
10. <i>Fire Services / Maintenance</i>	Locally Sourced through FES – Fire Equipment Services P/L	100%	Locally made and installed; commissioned on site by local labour
11. <i>Utilities</i>	Locally Sourced (Water, Power, Gas) through Origin Energy, TRU Energy and AGL	100%	Locally made and installed; commissioned on site by local labour

Local with imported content items	Supplier	Local value-added activity %	Description
12. <i>Bus Bodies</i>	Locally sourced by Volgren Industries P/L	70%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
13. <i>Uniforms</i>	Local sourced by Company Co-Ordinates P/L	80%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
14. <i>Administrative related Items</i>	Locally Sourced through Melbourne Office Supplies, Sharp.	85%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
15. <i>Computer Support</i>	Locally supported through Muirfield Computer Services	80%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour
16. <i>Repairs & Parts</i>	Locally sourced through numerous suppliers	50%	Some components sourced non-locally (no local manufacture); installed and commissioned on site by local labour

Imported component items		Local value-added activity %	Description
17. Bus chassis	International product sourced through Mercedes, Volvo & Scania	5%	Bus chassis are imported from original European manufactures. No known local manufacture; assembled and tested locally; installed and commissioned on site by local labour.
18. Spare parts for Bus chassis	Locally sourced through CMV, Volvo, Scania, Mercedes, Multispares	20%	All spare parts are purchased from local suppliers. Most would be imported and distributed by local suppliers.
19. Diesel, Oils, Lubricants	Locally sourced through Caltex Australia & Castrol	10%	Locally made and installed; commissioned on site by local labour
20. Mobile Phones	Locally Sourced through Telstra	20%	Most components sourced non-locally (no known local manufacture); assembled and tested locally; installed and commissioned on site by local labour
Total local value added		82%	

3 Assessing and comparing local products and capabilities with overseas equivalents

3.1 Benchmarks

W. Sinclair & Sons Pty Ltd has estimated the local content by input grouping (2.5 above). This estimate is based upon current practice and industry knowledge.

4 Assessing and comparing local products with overseas equivalents

Where overseas products are currently in use and local products become available, they will be compared for technical compliance, quality and value for money. Purchasing decisions will be made based on these factors.

5 Selection of products and services

The Implementation Plan below describes the procedures for the selection of products and services that provide the best-value solution based on the identification and assessment processes.

5.1 Procurement procedures

Our company philosophy is to support local business. Should local products become available where they can be substituted for imported goods they will be assessed by our Fleet Maintenance manager for their availability, suitability, warranty and whole of life cost. Selection will be based on best value for money.

If products are comparable and provide equal value for money, the local product will be chosen.

6 Monitoring and reporting on outcomes for local industry involvement

Monitoring and reporting on outcomes for Victorian industry involvement will be achieved in the following ways:

As previously mentioned Company management is keen to ensure locally made goods are purchased where possible. This philosophy stretches from Management to the on-ground mechanic.

Due to this philosophy we have an ongoing monitoring of local content in all goods purchased.

W. Sinclair & Sons Pty Ltd employs a purchasing officer who is responsible to ensure that local products are purchased where available.

This person will also be responsible to implement a monthly monitoring system to ensure that are targets are met. Reports will be generated and made available to management on a regular basis.

This VIPP Implementation Plan example was prepared with the assistance of:

VIPP Manager
Industry Capability Network (Victoria) Ltd
Level 11, 10 Queens Road
Melbourne VIC 3004

Phone: (03) 9864 6739
Email: vipp@icn.org.au

Table 1: VIPP Monitoring
Local Content

Description	Company	Location	Contracted Localisation %	Target Localisation %	Secured Localisation %	Localisation in Progress %	Status

Employment

Existing Jobs		New Jobs		Total Contracted Jobs		Total Achieved Jobs		Difference	
Contracted	Achieved	Contracted	Achieved						

Skills and technology Transfer Committed and Achieved

Contracted Description	Status	Completion %

Annexure F

Pro forma AO Direct Deed

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

AO Direct Deed

Metropolitan Bus Services Contract – Local Services

The Director of Public Transport (**Director**)

[Name of Associated Operator] (**Associated Operator**)

[Name of Operator] (**Operator**)

[Name of Operator] (**Operator**)

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

AO Direct Deed

Details	6
Agreed terms	7
1. Defined terms & interpretation	7
1.1 Defined terms	7
1.2 Interpretation	8
1.3 Determination, Statement and certificate conclusive	8
1.4 Delegation	8
1.5 Director's discretion	8
1.6 Consents and approvals	9
1.7 Transfer of functions	9
2. MBSC	9
3. Consent, acknowledgements and agreements	9
4. General undertakings	10
4.1 Undertakings of the Associated Operator	10
4.2 Undertakings of the Director	10
5. Termination or suspension of AO Subcontract	10
5.1 Termination or suspension for default	10
5.2 Cure rights	11
5.3 Application of clauses	11
6. Interim Operator	11
6.1 Appointment	11
6.2 Associated Operator to assist	11
7. Acquisition on Termination	12
7.1 Option	12
7.2 Conditions	12
7.3 Due diligence - AO Contract Depots	13
7.4 Allocation Statement	13
7.5 Audit of Bus condition	13
7.6 Leased Assets	13
7.7 Operator to facilitate	14
7.8 Transfer of Staff	14
7.9 Restrictions relating to Staff	15

7.10	Intellectual Property licences	15
7.11	Intellectual Property Indemnity	15
7.12	Associated Operator's End of Term Option	15
7.13	Going concern	16
7.14	Operator to facilitate	17
7.15	No frustration	17
8.	Dealing with Assets	17
8.1	Restriction in relation to AO Contract Buses and AO Contract Depots	17
8.2	Notification in relation to AO Contract Depots	17
8.3	Restrictions in relation to Leases	17
8.4	Restrictions on Nominated Contract Buses	18
8.5	Consequences of dealings with Assets	18
9.	Representations and warranties	18
9.1	Warranties correct	18
9.2	Notification of change	18
9.3	Reliance on representations and Warranties	18
9.4	No representations or warranties by the Director	18
10.	Director's Rights	18
10.1	Exercise Events	18
10.2	General powers	18
10.3	Specific powers	19
10.4	Director's specific Termination powers	20
10.5	Discharge or acquire Security Interest	20
10.6	Period for exercise	21
10.7	Co-operation in exercise of power of sale	21
10.8	Appointment of Attorney	21
10.9	Enforcement and other expenses	21
10.10	General indemnity	22
10.11	Equitable relief	22
10.12	Receipt by Director	23
10.13	Third parties need not enquire	23
10.14	Notice, demand or lapse of time required by Law	23
10.15	Director and Attorney not restricted	23
10.16	Director and Attorney not mortgagee in possession or liable	23
10.17	Director may set off	23

10.18	Reinstating avoided transaction	23
10.19	Authorised Representatives and communications	24
10.20	Performance	24
10.21	Not a charge	24
11.	Dispute resolution	24
11.1	Notice of dispute	24
11.2	Parties to meet	24
11.3	Referral to senior executives	25
11.4	Referral to Expert or Arbitrator	25
11.5	Issues for resolution by an Expert	25
11.6	Selection of Arbitrator or Expert	25
11.7	Procedure on arbitration	25
11.8	Procedure on resolution by Expert	25
11.9	Court proceedings and other relief	25
11.10	Exclusion	26
11.11	Performance not affected	26
12.	GST	26
12.1	Interpretation	26
12.2	Consideration is GST exclusive	26
12.3	Gross up of consideration	26
12.4	Reimbursement	26
13.	General	26
13.1	Alterations and termination	26
13.2	Independent	26
13.3	Assignment	27
13.4	Costs	27
13.5	Survival	27
13.6	Counterparts	27
13.7	Contra proferentem	27
13.8	No merger	27
13.9	Entire agreement	27
13.10	Trustee capacity	28
13.11	Further action	28
13.12	Document subject to Transport Act and PTCA	28
13.13	Severability	28

13.14	Waiver	28
13.15	Rights held on trust	28
13.16	Governing law and jurisdiction	28
13.17	Notices and other communications	28
	Schedule 1 – Warranties	30
	Signing page	32

Details

Date

Parties

Name	The Director of Public Transport under the <i>Transport Act 1983</i> (Vic) on behalf of the Crown in right of the State of Victoria under the PTCA
Short form name	Director
Notice details	Level 14, 121 Exhibition Street, Melbourne, Victoria 3000

Name	<i>[Name of Associated Operator]</i>
Short form name	Associated Operator
Notice details	<i>[insert]</i>

Name	<i>[Name of Operator]</i>
Short form name	Operator
Notice details	<i>[insert]</i>

Name	<i>[Name of Operator]</i>
Short form name	Operator
Notice details	<i>[insert]</i>

Background

- A The Director has agreed to allow the Operators to subcontract the provision of part of the Local Services to the Associated Operator.
- B The Associated Operator has agreed to grant the Director rights over its assets including on the termination of the MBSC.
- C This Deed sets out the parties' agreement as to how the Director may exercise his rights, and other relevant matters between the parties.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

In this Deed, unless the context requires another meaning:

AO Contract Bus means a Contract Bus owned or leased by the Associated Operator and used or to be used in the provision of any of the Local Services.

AO Contract Depot means a Contract Depot owned or leased by the Associated Operator and used or to be used in the provision of any of the Local Services, including the land, buildings and other improvements comprising the Depot.

AO End of Term Depot Option Deed has the meaning given in clause 7.12(b).

AO End of Term Option has the meaning given in clause 7.12(a).

AO Subcontract means any agreement between the Operator and the Associated Operator, under which the Associated Operator agrees to provide services or assets required for the Operators to fulfil their obligations under the MBSC.

Attorney means an attorney appointed by the Director under clause 10.8.

Arbitrator has the meaning given in clause 11.4.

Deed means this AO direct deed, including its schedules and annexures.

Default means:

- (a) any breach by any Operator of any of its obligations under the AO Subcontract or any event of default, termination event or similar event (whatever called) under the AO Subcontract; or
- (b) any other event or circumstance which, alone or with the giving of notice or passage of time or both, would entitle the Associated Operator to avoid, terminate, discharge or rescind the AO Subcontract or treat it as repudiated or to suspend the Associated Operator's performance of obligations under it.

Default Notice has the meaning given in clause 5.1(a).

Dispute Notice has the meaning given in clause 11.1.

Enforcing Party means the Director or any agent, attorney or nominee appointed or acting under this Deed, or the MBSC.

Exercise Event means the giving of:

- (a) a Termination Notice under clause 28.3 of the MBSC; or
- (b) a Step-in Notice under clause 27.1 of the MBSC.

Expert has the meaning given in clause 11.4.

MBSC means the Metropolitan Bus Services Contract dated [#] between the Operators, the Director and the Parent Guarantor.

Potential Default means any event or circumstance that, in the reasonable opinion of the relevant party, indicates a material risk of Default.

Power means any right, power, authority, discretion or remedy under a document or applicable law.

Purchaser has the meaning given to it in clause 7.1(a).

Reporting Body means:

- (a) a Government Body; and
- (b) a self-regulatory organisation established under statute or a stock exchange.

Termination Date means:

- (a) the effective date of termination of the MBSC or the scheduled expiry date of the MBSC, whichever is applicable; or
- (b) if the Operator and the Director extend the MBSC under clause 5.3 of the MBSC or renew the MBSC under clause 5.2 of the MBSC, the date of termination or scheduled expiry of the MBSC as extended or renewed whichever is applicable.

Termination Transfer Agreement Date has the meaning given to it in clause 7.2.

Transaction Document has the meaning given in the MBSC but also includes:

- (a) this Deed; and
- (b) any other document or Deed that the Director and the Associated Operator agree is to be a Transaction Document for the purposes of this Deed.

1.2 Interpretation

- (a) A term defined in the MBSC, and not defined in this Deed, has the same meaning when used in this Deed.
- (b) The provisions of clause 1.2 and clause 1.3 of the MBSC are incorporated into, and apply to, this Deed as if set out in full and all references to:
 - (i) *this document*, except in clause 1.3(c), were references to this Deed; and
 - (ii) *Operator* were references to Associated Operator.

1.3 Determination, Statement and certificate conclusive

Except where otherwise provided in this Deed any determination, statement or certificate by the Director or his Authorised Representative provided for in this Deed is conclusive and binds the parties in the absence of manifest error.

1.4 Delegation

The Director is permitted under section 9(7) of the Transport Act and section 35(2) of the PTCA to delegate his powers under this Deed to another person. If he does so, he agrees to give notice to the Nominated Operator and the Nominate Operator will be entitled to rely on that notice of delegation.

1.5 Director's discretion

The parties acknowledge and agree that in the interpretation of this Deed:

- (a) anything which the Director does, fails to do or purports to do under his executive powers or his functions and powers under any Law will not be deemed to be an act or omission by the Director under this Deed;

- (b) unless by Law, or in the exercise of his executive powers, the Director has a duty or is required to act or not act, the Director is not relieved from any Claim that any Operator may have against the Director for exercising or not exercising any of his functions or powers in a manner contrary to an express obligation of the Director under this Deed, the existence of any obligation and the existence and amount of any Claim to be assessed assuming clause 1.5(a) does not apply;
- (c) nothing in a Transaction Document will in any way:
 - (i) prevent the exercise of any statutory power or discretion by any Government Body;
 - (ii) require the Director to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of a Transaction Document if the Director regards that exercise as not in the public interest;
 - (iii) require the Director to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of a Transaction Document;
 - (iv) require the Crown in right of the State to legislate in the future in a manner that is only consistent with the objectives and expected outcomes of a Transaction Document; or
 - (v) require the Director to act in any other way that the Director regards as not in the public interest.

1.6 Consents and approvals

Unless expressly provided otherwise, if the doing of any act, matter or thing under this Deed is dependent on the consent or approval of the Director, the consent or approval may be given conditionally or unconditionally or withheld by the Director, in his absolute and unfettered discretion.

1.7 Transfer of functions

The Associated Operator acknowledges that the Director may be reconstituted, renamed or replaced and that some or all of the powers of the Director may be transferred to, or vested in, a Government Body. If that occurs, references in this Deed to the Director must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers.

2. MBSC

If the MBSC requires the Operators to procure that the Associated Operator do or refrain from doing any thing, the Associated Operator undertakes to the Director to do or refrain from doing that thing.

3. Consent, acknowledgements and agreements

The Associated Operator acknowledges and agrees that:

- (a) the exercise of any of the Director's Powers under the MBSC or this Deed will not of itself contravene or constitute a Default under the AO Subcontract or entitle the Associated Operator to exercise any Power (including termination) under it;
- (b) any Enforcing Party may, at any time after the Director has given the Associated Operator a copy of the Step-in Notice given to the Nominated Operator under the MBSC, exercise all or any of the Powers, and perform all or any of the obligations, of the Operators under

or in relation to the AO Subcontract as if it were an Operator to the exclusion of the Operators;

- (c) without limiting the liability of the Operators (who continue to be responsible for the performance of their obligations under the AO Subcontract), no Enforcing Party will be liable, or taken to have assumed liability, for any obligation of an Operator under the AO Subcontract by reason only of:
 - (i) the exercise of any of the Director's Powers under the MBSC or this Deed; or
 - (ii) the exercise of any of the Operators' Powers, or the performance of any of their obligations, under the AO Subcontract; and
- (d) without limiting clause 3(c), nothing in this Deed requires an Enforcing Party to adopt or accept the obligations of the Operators, in whole or in part, under the AO Subcontract.

4. General undertakings

4.1 Undertakings of the Associated Operator

Unless the Director otherwise agrees in writing, the Associated Operator must:

- (a) not materially amend or supplement, or consent to any material amendment or supplement of, the AO Subcontract;
- (b) not, except as permitted by clause 5:
 - (i) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of; or
 - (ii) suspend the performance of any of its obligations under, the AO Subcontract;
- (c) notify the Director of any Default as soon as it becomes aware of it;
- (d) use its reasonable endeavours to notify the Director of a Potential Default within a reasonable period of becoming aware of it; and
- (e) promptly provide a copy to the Director of any notice given or received by it terminating, or suspending the performance of any obligations under, the AO Subcontract.

4.2 Undertakings of the Director

Unless the Associated Operator otherwise agrees in writing, the Director must:

- (a) give the Associated Operator a copy of any notice given to the Nominated Operator extending or renewing the term of the MBSC, promptly after that notice is given to the Nominated Operator; and
- (b) give the Associated Operator a copy of any notice given to the Nominated Operator terminating the MBSC, promptly after that notice is given to the Nominated Operator.

5. Termination or suspension of AO Subcontract

5.1 Termination or suspension for default

- (a) Subject to clause 5.1(b), the Associated Operator may only terminate, or suspend the performance of its obligations under, the AO Subcontract as a result of a Default under the terms of the AO Subcontract and if:

- (i) the Associated Operator has given notice to the Director and the Nominated Operator specifying the Default (**Default Notice**); and
- (ii) either:
 - (A) if the Default is capable of remedy, the Default has not been remedied within 30 days of receipt of the Default Notice by the Director and the Nominated Operator or any longer period allowed for remedy of the Default under the AO Subcontract; or
 - (B) if the Default is not capable of remedy, all of the obligations of the Operators under the AO Subcontract (excluding any obligation the subject of an existing Default and accrued obligation) do not commence and continue to be performed within 30 days of receipt of the Default Notice by the Director and the Nominated Operator or any longer period allowed under the AO Subcontract.
- (b) The Associated Operator must not terminate, or suspend the performance of its obligations under, the AO Subcontract as a result of a Default if:
 - (i) the Director has notified the Associated Operator that he is entitled to exercise his Step-In Rights under the MBSC; and
 - (ii) an Enforcing Party is performing all of the obligations of the Operators under the AO Subcontract (excluding any obligation the subject of an existing Default and accrued obligations).
- (c) Clause 5.1(a) and 5.1(b) do not prejudice the Associated Operator's rights against the Operator in respect of remedies other than termination of the AO Subcontract or suspension of the performance by the Associated Operator of its obligations under the AO Subcontract.

5.2 Cure rights

- (a) On becoming aware of any Default, an Enforcing Party may take steps to:
 - (i) remedy, or procure the remedy of, the Default; or
 - (ii) if the Default is not capable of remedy, commence and continue to perform the obligations of the Operator under the AO Subcontract.
- (b) The Associated Operator must promptly provide the Enforcing Party with any relevant information in its possession reasonably requested by an Enforcing Party for the purpose of exercising its Powers under this Deed (including details of any steps which the Associated Operator considers appropriate to be taken to remedy the Default or, if the Default is not capable of remedy, to commence and continue to perform all of the obligations of the Operator under the AO Subcontract).

5.3 Application of clauses

Clause 5.1 applies despite anything in the AO Subcontract or any other document and whether or not the Director has exercised any Power under the MBSC or this Deed.

6. Interim Operator

6.1 Appointment

The Director may appoint an entity to provide the Local Services or services substantially similar to the Local Services on a temporary or interim basis following termination of the MBSC under clause 28.3 of the MBSC on terms agreed between the Director and the Interim Operator.

6.2 Associated Operator to assist

Without limiting the Associated Operator's undertakings under clause 2 and clause 4, the Associated Operator acknowledges that Continuity of the Local Services is crucial to the Director and the users of the Local Services and agrees to comply with the provisions of clause 7 and 8 and otherwise to cooperate in all respects and do all things reasonably requested by the Director to facilitate the transfer of the Bus Operations (including, if applicable, the transfer of the Assets) from the Associated Operator to the Interim Operator following the giving of a Termination Notice.

7. Acquisition on Termination

7.1 Option

- (a) Without limiting the Associated Operator's undertakings under clause 2 and clause 4, and subject to clauses 7.6 and 7.10, the Associated Operator grants to the Director or his nominee (**Purchaser**) an option to acquire (by way of sale, assignment or novation as the case requires) any or all of the Assets used in the Bus Operations (to the extent that they are owned, leased or otherwise used by the Associated Operator), at the Transfer Price, to be exercised by providing the Associated Operator with a copy of the Transfer Notice given to the Nominated Operator under the MBSC.
- (b) If a copy of the Transfer Notice is given to the Associated Operator by the Director, the Associated Operator must not Dispose of any Assets the subject of that Transfer Notice after it has been given.

7.2 Conditions

Without limiting the Associated Operator's undertakings under clause 2 and clause 4, and subject to clauses 7.6 and 7.10, the Associated Operator agrees to sell, assign or novate the Assets owned, leased or otherwise used by it and which are the subject of a Transfer Notice to the Purchaser on the following terms and conditions:

- (a) the purchase price for those Assets will be the Transfer Price;
- (b) those Assets must be free from encumbrances in the nature of Security Interests (except if the transfer is effected under an Allocation Statement);
- (c) the Purchaser may conduct due diligence on those Assets;
- (d) in relation to the Owned Depots, in accordance with any Termination Depot Option Deed;
- (e) the Termination Transfer Agreement will be entered into between the Purchaser and the Associated Operator within 14 days of the date that the Associated Operator receives a copy of the Transfer Notice (**Termination Transfer Agreement Date**);
- (f) the Associated Operator for valuable consideration, to secure the performance of its obligation under clause 7.2(e) to enter into the Termination Transfer Agreement, irrevocably appoints the Director as its attorney to execute the Termination Transfer Agreement and all ancillary documents and to do all other things necessary to complete the transactions contemplated by the Termination Transfer Agreement, if the Associated Operator has not signed the Termination Transfer Agreement by the Termination Transfer Agreement Date. The Associated Operator agrees to ratify anything done by the Director acting under this power of attorney.

7.3 Due diligence - AO Contract Depots

The Associated Operator grants, and agrees to procure that any associate of the Associated Operator that owns an AO Contract Depot grants, to the Director, the Director's Associates and a Successor Operator, the right of access to that AO Contract Depot to carry out the usual purchaser's due diligence including, without limitation, as to the condition of improvements on the property, the extent of contamination of the property and, where the contamination has or may have migrated from the property, the extent of any contamination of the surrounding property.

7.4 Allocation Statement

- (a) The parties acknowledge and agree that:
 - (i) this clause 7 (other than clause 7.12) is a transfer provision for the purposes of Division 5 of Part 3 of the PTCA;
 - (ii) the Associated Operator is a person to whom the Allocation Statement mechanism under the PTCA applies;
 - (iii) the Assets may be transferred by Allocation Statement under the PTCA if the transfer process provided for in this clause 7 is not completed due to any action or inaction on the part of the Associated Operator; and
 - (iv) the Assets are *relevant property* for the purposes of Division 5 of Part 3 of the PTCA.
- (b) If the Termination Transfer Agreement has not been entered into by the Termination Transfer Agreement Date the Director may, as soon as practicable after the Termination Transfer Agreement Date, sign and give to the Minister an Allocation Statement allocating the Asset to the Purchaser with effect from the Termination Transfer Date at the Transfer Price.
- (c) Despite that the Termination Transfer Agreement may have been entered into, if the Director considers that the transfer of any Asset under that Termination Transfer Agreement may not occur on or before the Transfer Date, the Director may sign and give to the Minister an Allocation Statement allocating that Asset to the Purchaser with effect from the Transfer Date at the Transfer Price.
- (d) The Director agrees to take all reasonable steps to:
 - (i) procure the Minister's approval of an Allocation Statement given under clause 7.4(b) or (c); and
 - (ii) ensure that the Allocation Time fixed by the Minister for the purpose of that Allocation Statement is the Transfer Date and that the purchase price for the Assets is the Transfer Price.

7.5 Audit of Bus condition

Prior to the Transfer Date the Director and a valuer appointed under the MBSC may inspect any or all of the AO Contract Buses to be transferred under this clause for the purpose of ascertaining their condition and the extent of compliance with clause 11.1 of the MBSC.

7.6 Leased Assets

Without limiting the Associated Operator's undertakings under clause 2 and clause 4:

- (a) where an Asset is leased under a finance Lease the Associated Operator agrees, where requested by the Director, to use its reasonable endeavours to procure the assignment or novation of that Lease to the Purchaser by the Transfer Date and if that assignment or

novation is considered by the Director to be unlikely to be effected by the Transfer Date then the Associated Operator agrees to exercise any right it has to acquire ownership of that Asset and transfer it under this clause; and

- (b) where an Asset is leased under an operating Lease the Associated Operator agrees, where requested by the Director, to use its reasonable endeavours to procure the assignment or novation of its interest in that Lease to the Purchaser by the Transfer Date.

7.7 Operator to facilitate

Without limiting the Associated Operator's undertakings under clause 2 and clause 4:

- (a) the Associated Operator agrees to facilitate the transfer of the Assets under this clause 7, and will not do anything which is likely to frustrate that transfer; and
- (b) following the giving of a Transfer Notice, the Associated Operator agrees to allow the Purchaser reasonable access to the Assets and the Staff engaged by the Associated Operator to facilitate completion of the sale, assignment or novation of the Assets under this clause.

7.8 Transfer of Staff

Without limiting the Associated Operator's undertakings under clause 2 and clause 4:

- (a) to the extent it is required to do so under the AO Subcontract, the Associated Operator agrees to use its best endeavours to ensure that an appropriate number of employed Staff (having regard to the number, skills, qualifications and experience of Staff required by the Operators to operate the Bus Operations but excluding the Exempt Staff) (**Available Staff**) are available to be offered employment by the Purchaser following the Transfer Date;
- (b) the Director agrees to procure any Purchaser to make offers of employment to all of the Available Staff which:
 - (i) are on terms no less favourable considered as a whole to the Available Staff than their terms of employment with the Associated Operator;
 - (ii) provide for continuity of Staff Liabilities and long service leave entitlements;
 - (iii) meet the relevant criteria of offers of acceptable alternative employment set out in the enterprise or workplace agreement certified or lodged under the *Workplace Relations Act 1996* (Cth) applicable to the Staff; and
 - (iv) take effect from the end of the Term;
- (c) in relation to Available Staff who accept offers of employment from the Purchaser (**Transferring Staff**), the Associated Operator agrees to pay to the Purchaser an amount (**Transferring Staff Payment**) for assuming the Staff Liabilities of those Transferring Staff calculated as follows:

$$\text{Transferring Staff Payment} = (1 - T) \times \text{SLTS}$$

where:

T = the corporate tax rate (expressed as a decimal figure) applicable on the Transfer Date;

SLTS = the aggregate of the Staff Liabilities for all Transferring Staff (less the Sick Leave Discount) calculated and valued by an independent actuary who:

- (i) is jointly appointed by the Director, the relevant Operator and the Purchaser;
- (ii) must apply relevant Australian accounting standards; and
- (iii) must apply any assumptions agreed to by the Director, the Operators and the Purchaser,

Sick Leave Discount = 80% of the Staff Liabilities that relate specifically to the sick leave entitlements of the Transferring Staff,

and which will be deducted as set out in Schedule 7 item 1 of the MBSC; and

- (d) in relation to Available Staff who do not accept an offer by the Purchaser under clause 7.8(b) (**Non-Transferring Staff**) the Associated Operator remains liable for, and agrees to indemnify the Director and Purchaser for, any Staff Liabilities for the Non-Transferring Staff.

7.9 Restrictions relating to Staff

Unless required under any award, certified agreement or workplace agreement, under contract or any law, the Associated Operator agrees not to vary, or purport or promise to vary, the terms or conditions of employment of any member of Staff (other than the Exempt Staff) or to engage additional Staff after a Termination Notice is given.

7.10 Intellectual Property licences

Without limiting the Associated Operator's undertakings under clause 2 and clause 4, to the extent that:

- (a) any Bus Operations IP that is owned by the Associated Operator is not transferred under this clause 7, the Associated Operator agrees to grant to the Director or any Successor Operator, Interim Operator or Step-in Party appointed by the Director, an irrevocable, perpetual, non-exclusive, royalty free, transferable licence (with a right to sub-license) to use that Bus Operations IP for the purpose of permitting any Successor Operator, Interim Operator or Step-in Party to provide or promote the Local Services or equivalent services during any Step-in Period or following Termination and for no other purpose; and
- (b) the Associated Operator makes use of Intellectual Property in conducting the Bus Operations which is not owned by it or the Director, the Associated Operator agrees to use its best endeavours to ensure that it will be able to assign or novate that Intellectual Property under clause 7.1 or to grant the Director a licence to that Intellectual Property if required on the terms stated in clause 7.10(a).

7.11 Intellectual Property Indemnity

The Associated Operator agrees to indemnify and hold the Director and any Successor Operator, Interim Operator or Step-in Party harmless against all Losses arising out of or in connection with the Director's or any Successor Operator's, Interim Operator's or Step-in Party's use of the Intellectual Property in a manner contemplated by clause 7.10 infringing any third party's rights in the Intellectual Property.

7.12 Associated Operator's End of Term Option

- (a) Despite any other provision of this document at least 18 months before the End of Term the Associated Operator may grant to the Director or his nominee an option to acquire all of the Assets owned, leased or otherwise used by the Associated Operator in the Bus Operations on the same terms as if he had a termination option under clause 7.1 to 7.11 inclusive (**AO End of Term Option**).

- (b) The AO End of Term Option will be granted by the delivery to the Director of written notice and (if the option relates to the freehold in any AO Contract Depot) a counterpart of the Termination Depot Option Deed (in relation to any AO Contract Depot):
 - (i) varied by:
 - (A) replacing the definition of Option Period with the following:
Option Period means the period beginning on the date of delivery of this document to the Director as required by clause 30.12(b) of the Service Contract (and clause 7.12(b) of the AO Direct Deed entered into between the Grantee, the Operator and the Grantor) and ending at 5.00pm on the date on which the Term of the Service Contract expires.;
 - (B) amending clause 4 of the Termination Depot Option Deed to read as follows:
To exercise the option, the Grantee agrees to deliver to the Grantor before the end of the Option Period:
 - (a) *an option exercise notice in the form in Schedule 1; and*
 - (b) *two copies of the Contract executed by the Grantee with the day of sale completed as the day on which the Grantee exercises the option; and*
 - (ii) executed by the Associated Operator,
(AO End of Term Depot Option Deed).
- (c) Where the AO End of Term Option is exercised:
 - (i) the Director may, by giving at least two months written notice extend the Term on the same terms and conditions as the MBSC for six or 12 months;
 - (ii) the Director will prepare and deliver to the Associated Operator a transfer agreement in substantially the same form as the Termination Transfer Agreement for execution by the Associated Operator and the power of attorney granted by the Operator under clause 7.2(f) will apply to allow the Director to execute the transfer agreement if the Associated Operator has not provided the executed transfer agreement to the Director within five Business Days. For the purposes of this clause 7 and the AO End of Term Depot Option Deed the transfer agreement will be referred to as the Termination Transfer Agreement;
 - (iii) all references in clauses 7.1 to 7.11 and Schedule 7 of the MBSC to:
 - (A) the Transfer Date will be deemed to be references to the date that is 30 days after delivery of the counterpart of the AO End of Term Depot Option Deed under clause 7.12(b);
 - (B) the Termination Notice will deemed to be references to the counterpart of the AO End of Term Depot Option Deed delivered by the Associated Operator under clause 7.12(b); and
 - (C) the Transfer Notice will deemed to be references to the notice by which the Director exercises the option granted under clause 7.12(b).

7.13 Going concern

The Associated Operator agrees to maintain and manage the Assets in a way that a Successor Operator, Interim Operator or Step-in Party is able at any time to take over the Bus Operations as a going concern where the MBSC is Terminated under clause 28.3 of the MBSC.

7.14 Operator to facilitate

If the Bus Operations are to be transferred to an Interim Operator or a Successor Operator following Termination, the Associated Operator agrees to facilitate in all respects the transfer of the Bus Operations to the Interim Operator or Successor Operator as the case may be, including the assignment, transfer or novation of any relevant contract used in the Bus Operations.

7.15 No frustration

The Associated Operator agrees not to do anything which directly or indirectly avoids, or materially prejudices or frustrates the transfer of the Bus Operations as a going concern under clause 30 of the MBSC following Termination of the MBSC.

8. Dealing with Assets

8.1 Restriction in relation to AO Contract Buses and AO Contract Depots

Without limiting the Associated Operator's undertakings under clause 2 or clause 4, but subject to clauses 8.3 and 8.4, the Associated Operator agrees not to:

- (a) create or allow to exist any Security Interest over any AO Contract Bus, AO Contract Depot or Lease; or
- (b) Dispose of any AO Contract Bus or AO Contract Depot or other Asset (directly or indirectly), other than in accordance with the Bus Replacement Program or unless the Asset Disposed of is being replaced by an asset having a similar or better functionality or condition,

where the effect of that action would materially and adversely affect:

- (c) the Operator's ability to provide the Local Services; or
- (d) the Continuity of the Local Services; or
- (e) the Director's rights under a Transaction Document.

8.2 Notification in relation to AO Contract Depots

The Associated Operator agrees to provide reasonable prior notification to the Director of any proposed Disposal of an AO Contract Depot.

8.3 Restrictions in relation to Leases

The Associated Operator agrees not to, except with the prior written consent of the Director:

- (a) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of a Lease;
- (b) suspend the performance of any of its obligations under a Lease;
- (c) do or permit anything that would enable or give grounds to another party to do anything referred to in clauses 8.3(a) or (b) in relation to a Lease; or
- (d) materially amend or supplement any provision of a Lease, or waive or grant any indulgence in respect of any material provision of that Lease that would have an effect on the exercise of any power or the performance of any obligation under that Lease,

where the effect of that action would materially and adversely affect:

- (e) the Operator's ability to provide the Local Services; or
- (f) the Continuity of the Local Services; or
- (g) the Director's rights under a Transaction Document.

8.4 Restrictions on Nominated Contract Buses

Without limiting the Associated Operator's obligations under clause 2 and clause 4 and despite clause 8.3 the Associated Operator agrees not to (without the Director's prior written consent) Dispose of any Nominated Contract Bus (directly or indirectly), other than in accordance with the Bus Replacement Program.

8.5 Consequences of dealings with Assets

If the Director considers that any action of the Associated Operator breaches clauses 8.4 or under clause 8.1 or 8.3 is likely to result in one or more of the consequences in clauses 8.1(c), 8.1(d), 8.1(e) or clauses 8.3(e), 8.3(f), 8.3(g), then the Director may issue a Show Cause Notice under clause 28.2 of the MBSC.

9. Representations and warranties

9.1 Warranties correct

The Associated Operator represents and warrants to the Director that the warranties set out in Schedule 1 are at the date of this Deed, and will be at the Commencement Date, true, correct and not misleading, except as disclosed in writing to and accepted by the Director prior to the relevant date.

9.2 Notification of change

The Associated Operator agrees to notify the Director immediately on becoming aware that any of the warranties set out in Schedule 1 has become untrue or misleading.

9.3 Reliance on representations and Warranties

The Associated Operator acknowledges that the Director has entered, or will enter, into the Transaction Documents in reliance on the Warranties.

9.4 No representations or warranties by the Director

The Associated Operator acknowledges that, before entering into any Transaction Document, it made all enquiries that it wanted to make in relation to the subject matter of the Transaction Documents, and it did not rely on any representation or warranty by or on behalf of the Director. The Associated Operator waives all Claims in connection with any representation or warranty made by or on behalf of the Director.

10. Director's Rights

10.1 Exercise Events

This clause 10 does not limit the Associated Operator's undertakings in clause 2 or clause 4 and applies if an Exercise Event occurs and if the Director has given the Associated Operator a copy of the notice of the relevant Exercise Event.

10.2 General powers

The Director or a Step-in Party may, without demand or notice to anyone (unless notice is required as described in clause 10.14), do all things that a mortgagee in possession of the Assets can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee in possession of the Assets;
- (b) given to a receiver under the Corporations Act; and
- (c) specified in clause 10.3 and clause 10.4,

provided that, if the Director has given a Step-in Notice, neither the Director or the Step-in Party may do anything contemplated in or permitted by clause 10.4.

10.3 Specific powers

The Director or a Step-in Party may do everything they think necessary to do any or all of the following in connection with their Powers to ensure Continuity of the Local Services, whether in their or the Associated Operator's name or otherwise and whether or not they have possession of the Assets including:

- (a) **(recover, possess and control)** access, recover, manage, take or give up possession or control of any Assets;
- (b) **(receive income and profits)** receive the income and profits of the Assets;
- (c) **(carry on business)** carry on, promote, restructure or participate in the Associated Operator's business in relation to the Assets, and access the land or premises of that business;
- (d) **(insurance)** insure the Assets and settle and compromise insurance claims;
- (e) **(improve or invest)** maintain, invest, deposit, improve or alter the Assets to improve their value or saleability or to obtain income or returns from it (including to acquire or take on lease any asset as part of the Assets or build, rebuild, pull down or alter a structure or improvement on any Depot);
- (f) **(deposited documents)** complete and deal with any document deposited with the Director relating to Assets, including any transfer in blank;
- (g) **(assume obligations)** assume obligations of the Associated Operator or both;
- (h) **(accounts)** operate bank accounts forming part of the Assets and open and operate further bank accounts in the Associated Operator's name and to the Associated Operator's exclusion;
- (i) **(contracts, instruments and rights)** perform or observe the Associated Operator's obligations or enforce or exercise the Associated Operator's rights, powers, discretions or remedies (or refrain from doing so) under:
 - (i) a contract, instrument, arrangement forming part of the Assets (including voting and proxy rights);
 - (ii) a Transaction Document (including to cure an Exercise Event) or other document entered into by the Director in exercise of a Power,

and, only if the Director has given a Termination Notice, vary, terminate or rescind any of them or novate or otherwise transfer to any person the Associated Operator's obligations under any of them;
- (j) **(Liquidation)** initiate and participate in any Liquidation of any person (including voting at meetings and appointing proxies);
- (k) **(proceedings)** commence, prosecute, defend, discontinue, compromise, submit to arbitration and settle proceedings in connection with this document or the Assets, whether in or before a Government Body;

- (l) **(raise money)** obtain financial accommodation (including from the Director or Director's Associate) and give guarantees, in each case with or without granting a Security Interest over the Assets and regardless of priority ranking;
- (m) **(receipts)** give receipts for money and other property he receives;
- (n) **(employ and delegate)** employ and discharge staff, professional advisers, consultants, contractors, agents and auctioneers for the purposes of this document, and at the remuneration that the Director thinks fit, and to delegate to any person any of his Powers (including this right of delegation);
- (o) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and
- (p) **(incidental power)** do anything expedient or incidental to exercise any of his Powers, without limiting those Powers.

10.4 Director's specific Termination powers

In addition to the powers in clause 10.3, where the Director has given a Termination Notice, the Director may do any or all of the following in connection with his Powers, whether in his or the Associated Operator's name or otherwise and whether or not he has possession of the Assets:

- (a) **(sell, assign or exchange)** sell, assign or help sell all or any Assets to any person or exchange it for any other property or rights, on terms the Director thinks fit, with or without other property;
- (b) **(options, Lease, rights)** grant, acquire, renew, vary, accept the surrender of or terminate an option, Lease or other right over the Assets on the terms he thinks fit, and with or without any other property;
- (c) **(sell to Director)** without limiting any other provision of this document, sell any of the Assets to the Director or Successor Operator as contemplated in clause 7; and
- (d) **(hive off)** promote the formation of any company to acquire any Assets.

10.5 Discharge or acquire Security Interest

- (a) The Director may, provided he has given a Termination Notice, do any one or more of the following:
 - (i) purchase a debt or liability secured by a prior Security Interest over or in respect of any of the Assets;
 - (ii) pay the amount required to discharge or satisfy that debt or liability; and
 - (iii) take a transfer or assignment of that Security Interest and any guarantee, document or right ancillary or collateral to it (including any Security Interest over other property if the debt or liability repaid was secured over both Assets and other property).
- (b) If the Director exercises his rights in this clause 10.5:
 - (i) the Associated Operator is indebted to the Director for the same amount paid by the Director or the amount of the debt or liability acquired (whichever is higher) and that amount is immediately payable to the Director;
 - (ii) the Director may rely on a written notice from the holder of any Security Interest (**Chargee**), or on an ancillary or collateral document, as to the amount and property secured by that Security Interest;

- (iii) the Chargee need not enquire whether any amount is owing under a Transaction Document; and
- (iv) the Associated Operator irrevocably directs any Chargee to give the Director any information it requires in connection with the Security Interest.

10.6 Period for exercise

The Director acknowledges that it is intended that the powers under clauses 10.2 to 10.5 are to be exercised during:

- (a) any Step-in Period (except the powers in clause 11.4); and or
- (b) the period from the Termination Date to the date on which completion occurs under the Termination Transfer Agreement.

10.7 Co-operation in exercise of power of sale

- (a) If the Director wishes to exercise a right to sell any Assets, the Associated Operator agrees to do or cause to be done all things necessary to enable an expeditious sale and transfer to the purchaser for the value as estimated by the Director, in the manner and on terms the Director thinks fit.
- (b) To the extent that the Director sells any Asset pursuant to his Powers under this clause for a sale price that is less than the Transfer Price for that Asset, the Director agrees to compensate the Associated Operator for the amount of the shortfall.

10.8 Appointment of Attorney

- (a) The Associated Operator for valuable consideration, to secure the performance of the obligations of the Associated Operator under this document, irrevocably appoints the Director and each Authorised Representative of the Director separately as its attorney to do any or all of the following on the Associated Operator's behalf and in the Associated Operator's or the attorney's name after an Exercise Event occurs:
 - (i) anything which the Associated Operator is required to do under a Transaction Document or under Law in connection with a Transaction Document;
 - (ii) anything which the Attorney considers necessary or expedient to give effect to a Power or exercise of a Power, or to perfect any Transaction Document, including by signing any document for that purpose; and
 - (iii) anything which an attorney is expressly empowered to do under a Transaction Document on the Associated Operator's behalf.
- (b) The Associated Operator agrees to ratify anything done by its Attorney under this power of attorney. An Attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

10.9 Enforcement and other expenses

The Associated Operator agrees to pay or reimburse on demand by the Director all costs and expenses of the Director and an Attorney (and any of their respective officers, employees and agents) in connection with:

- (a) exercising, enforcing or protecting a Power in relation to Assets owned, leased or otherwise used by the Associated Operator or the Bus Operations conducted by the Associated Operator, or attempting to do so;
- (b) a Sale Default or the exercise or procuring performance or satisfaction of the Step-in Powers;

- (c) any Government Body enquiry concerning the Associated Operator;
- (d) maintaining, preserving or protecting the Assets owned, leased or otherwise used by the Associated Operator; and
- (e) obtaining professional advice from a person or consultant about any matter of concern to the Director or an Attorney in connection with rights against, or obligations of, the Associated Operator under a Transaction Document or the Assets owned, leased or otherwise used by the Associated Operator.

This includes any legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

10.10 General indemnity

- (a) The Associated Operator indemnifies the Director, his Authorised Representatives and any Attorney (and its respective officers, employees and agents) against, and agrees to pay to the Director on demand amounts equal to, any Loss arising as a result of or in connection with:
 - (i) an indemnity given by the Director to an administrator of the Associated Operator;
 - (ii) the Assets;
 - (iii) a Sale Default caused by, or arising as a result of the occurrence of an act or omission or event in respect of, the Associated Operator;
 - (iv) the Director acting or relying in good faith on any notice or communication from the Associated Operator; and
 - (v) the Director relying on information supplied by or on behalf of the Associated Operator which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis) and any professional consultant's fees in connection with the above.

- (b) The Director, his Authorised Representatives or an Attorney need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in a Transaction Document. Unless otherwise stated, each indemnity or reimbursement obligation is separate and independent of each other obligation of the party giving it, is absolute, irrevocable, unconditional and payable on demand and continues despite any settlement of account, termination of any Transaction Document.

10.11 Equitable relief

- (a) Without limiting any other provisions of this Deed, the Associated Operator acknowledges that damages will not be an adequate remedy for:
 - (i) any Sale Default;
 - (ii) any breach of clause 27 of the MBSC or any circumstance where a Step-in Party is prevented or frustrated from exercising the Step-in Powers; or
 - (iii) any breach of clause 7,
 (each a **Specific Breach**).
- (b) Each party to this document agrees that, without limiting any other right, remedy or action it has in connection with any actual or threatened Specific Breach by the other party, it is entitled to seek equitable relief (including specific performance or injunctive or

declaratory relief) to restrain any actual or threatened Specific Breach by the other party and the other party agrees not to oppose the granting of relief on the basis that the party seeking the relief has not or will not suffer any actual loss or damage.

10.12 Receipt by Director

A receipt given by the Director or an Attorney (or of their Authorised Representative) for any money payable to it, or any asset receivable by it, relieves the person paying that money or delivering the asset from all liability to enquire as to the dealing with, or application of, that money or asset.

10.13 Third parties need not enquire

A person dealing with the Director or an Attorney is protected from any impropriety or irregularity of that dealing, and need not enquire whether any of them has been properly appointed or has executed or registered an instrument or exercised a Power properly or with authority.

10.14 Notice, demand or lapse of time required by Law

If a notice, demand or lapse of time is required by Law before the Director can exercise a Power, then:

- (a) that notice, demand or lapse of time is dispensed with to the extent allowed by that Law; or
- (b) if not allowed to be dispensed with, but the period of notice, demand or lapse of time is allowed by that Law to be shortened or fixed, it is shortened and fixed to one day.

10.15 Director and Attorney not restricted

The Director or an Attorney need not:

- (a) exercise a Power, give a consent or make a decision under this document unless a Transaction Document expressly provides otherwise; or
- (b) resort to a Power before resorting to any other Power.

10.16 Director and Attorney not mortgagee in possession or liable

To the extent permitted by Law, the Director and any Attorney will:

- (a) not be, nor account or be liable as, mortgagee in possession due to exercise of a Power; or
- (b) not be liable to anyone for any Loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

10.17 Director may set off

The Director may, without any demand or notice, set off and apply indebtedness he owes to the Associated Operator against any money owing to him by the Associated Operator under any Transaction Document, whether or not the amount owed by the Director or the Associated Operator is immediately payable or is owed alone or with any other person. The Associated Operator irrevocably authorises the Director to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

10.18 Reinstating avoided transaction

The Associated Operator agrees that if a payment or other transaction relating to an Exercise Event is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an **Avoidance**), then even though the Director knew or should have known of the Avoidance:

- (a) each Power and the Associated Operator's liability under each Transaction Document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) the Associated Operator will immediately execute and do anything required by the Director to restore the Director to his position immediately before the Avoidance (including reinstating any Transaction Document).

This clause 10.18 survives any termination or full or partial discharge or release of any Transaction Document.

10.19 Authorised Representatives and communications

The Associated Operator irrevocably authorises the Director to rely on a certificate by any person purporting to be its director or company secretary as to the identity and signatures of its Authorised Representatives, and to rely on any notice or other document contemplated by any Transaction Document which bears the purported signature (whether given by facsimile or otherwise) of its Authorised Representative. The Associated Operator warrants that those persons have been authorised to give notices and communications under or in connection with the Transaction Documents.

10.20 Performance

For the purposes of this clause 10:

- (a) if a time is not specified for the performance by the Associated Operator of an obligation under this document, it must be performed promptly;
- (b) the Director may do anything which the Associated Operator fails to do as required by, or in accordance with, this document. This does not limit or exclude the Director's Powers in any way;
- (c) powers under the Transaction Documents are cumulative and do not limit or exclude Powers under Law; and
- (d) full or partial exercise of a Power does not prevent a further exercise of that or any other Power. No failure or delay in exercising a Power operates as a waiver or representation.

10.21 Not a charge

The parties agree that this clause 10:

- (a) is not a charge and does not create a Security Interest in favour of the Director;
- (b) does not give or grant the Director any proprietary interest by way of security or otherwise in the Associated Operator or the Assets; and
- (c) grants the Director contractual rights only, which rights may be exercised by the Director or the Attorney,

and any reference in clause 10 to the Director having or engaging similar rights to that of a mortgagee (or having the right to appoint a receiver or the like) are not intended to confer a right in the nature of a security on the Director.

11. Dispute resolution

11.1 Notice of dispute

If a dispute or difference arises under or in connection with this document, either party may give the other written notice expressing the nature of the dispute or differences (**Dispute Notice**).

11.2 Parties to meet

As soon as practicable after receipt by a party of a Dispute Notice the parties agree to ensure that senior and relevant representatives of both parties meet and attempt to resolve the issue.

11.3 Referral to senior executives

If the issue is not resolved within 10 Business Days of the receipt of the Dispute Notice, it must be immediately referred to the most senior executive officers of the parties who will personally or through their nominated delegates, (who must be senior to the persons who met under clause 11.2), meet as soon as practical and attempt to resolve the issue.

11.4 Referral to Expert or Arbitrator

If the issue is not resolved within 20 Business Days of the receipt of the Dispute Notice, either party may:

- (a) if the issue is of a technical nature or if this document requires, refer it for resolution to a person who is an independent expert in its subject matter (**Expert**); or
- (b) if the issue is not of a technical nature, refer it to an independent person (**Arbitrator**) for arbitration.

11.5 Issues for resolution by an Expert

An issue is of a technical nature if it is of a kind that, if it were litigated, could be resolved on expert evidence alone. If the parties are unable to agree whether or not an issue is of a technical nature, the opinion of the Director as to whether or not the issue should be referred to an Expert prevails.

11.6 Selection of Arbitrator or Expert

If the parties are unable to agree on who to appoint as an Arbitrator or an Expert the Director may make the appointment. In making the appointment, the Director agrees to select a person who is independent of the parties and who is suitably qualified.

11.7 Procedure on arbitration

Subject to any other provision of this document to the contrary, an arbitration is to be conducted in accordance with the *Commercial Arbitration Act 1984* (Victoria) and subject to that Act, with the expedited commercial arbitration rules of the Institute of Mediators & Arbitrators (Australia).

11.8 Procedure on resolution by Expert

- (a) The Expert appointed under clause 11.4 or 11.6 acts as an expert and not as an arbitrator.
- (b) Each party to a dispute which is referred to the Expert for determination must have a reasonable opportunity to make submissions to the Expert.
- (c) The costs of the Expert must be borne in equal shares by the parties.
- (d) The Expert's decision is final and binding on the parties to the dispute, except to the extent of fraud, gross negligence or a manifest error.

11.9 Court proceedings and other relief

- (a) A party may not start court proceedings in relation to any issue or dispute under this document unless it has complied with this clause.
- (b) This clause does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensatable in damages.

11.10 Exclusion

This clause does not apply to any dispute relating to or arising out of the exercise or non-exercise by the Director of any right or discretion conferred on the Director by the PTCA or otherwise by Law.

11.11 Performance not affected

Despite the parties having a dispute or difference, they agree to continue to perform their respective obligations under this document.

12. GST

12.1 Interpretation

Words or expressions used in this clause 12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

12.2 Consideration is GST exclusive

Any consideration or amount to be paid or provided for a supply made under or in connection with this document, unless specifically described as GST inclusive, does not include GST payable on that supply.

12.3 Gross up of consideration

If a party (**Supplier**) makes a supply under or in connection with this Deed on which GST is imposed (not being a supply the consideration for which is stated specifically as GST inclusive):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

12.4 Reimbursement

If a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a Loss incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Loss relates.

13. General

13.1 Alterations and termination

The Associated Operator agrees not to amend or terminate any Transaction Document without the Director's prior written consent.

13.2 Independent

- (a) The relationship of the Director and the Associated Operator is that of principal and sub-contractor of a contractor to the principal. Nothing constitutes the parties as partners of each other, nor as parties to a joint venture. Except as is expressly provided in this document, neither party is the agent of the other or has the power to bind the other.
- (b) The Associated Operator agrees not to hold itself out as the agent of the Director unless this Deed otherwise authorises it to do so.

13.3 Assignment

- (a) The Associated Operator may only assign a Transaction Document or a right under a Transaction Document with the prior written consent of the Director.
- (b) The Associated Operator agrees to obtain the Director's prior written consent to any Change in Control during the Term.
- (c) The consent of the Director under clauses 13.3(a) or 13.3(b) will not be unreasonably withheld where the assignment, transfer or change is to:
 - (i) a relative of the Associated Operator;
 - (ii) a relative of the person having effective control of the Associated Operator (where the Associated Operator is a body corporate); or
 - (iii) a body corporate under the effective control of a person referred to in subparagraph (i) or (ii),provided that:
 - (iv) in the case of a Change in Control situation, the Associated Operator retains its Accreditation; or
 - (v) in the case of an assignment or transfer, the assignee or transferee obtains Accreditation and enters into a new deed with the Director on the same terms and conditions as set out in this Deed and providing for any other matter that the Director considers reasonably to be relevant.

13.4 Costs

- (a) Each party must pay its own costs of negotiating, preparing and executing the Transaction Documents.
- (b) The Associated Operator will be responsible for any capital gains tax liability triggered by the transfer of the Assets under clause 7.

13.5 Survival

Any indemnity or any obligation of confidence under this Deed is independent and survives termination of this Deed. Any other term by its nature intended to survive termination of this Deed survives termination of this Deed.

13.6 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

13.7 Contra proferentem

The Transaction Documents are not to be interpreted against the interests of a party merely because that party proposed the relevant Transaction Document or some provision in it or because that party relies on a provision of the relevant Transaction Document to protect itself.

13.8 No merger

The rights and obligations of the parties under this Deed do not merge on completion of any transaction contemplated by this Deed.

13.9 Entire agreement

The Transaction Documents constitute the entire agreement between the parties in connection with their subject matter and supersede all previous agreements or understandings between the parties in connection with their subject matter.

13.10 Trustee capacity

- (a) The Associated Operator agrees to advise the Director at the time it enters into any Transaction Document whether it does so as the trustee of any trust.
- (b) If the Associated Operator does enter into a Transaction Document in a trustee capacity, it warrants that:
 - (i) its appointment as trustee of the relevant trust is valid and subsisting and it is not aware of any action to remove or replace it as trustee;
 - (ii) the trust deed for the relevant trust authorises its entry into the Transaction Documents; and
 - (iii) it has a right of recourse to the assets of the relevant trust sufficient to cover any Claim that may be made against it under the Transaction Documents.

13.11 Further action

Each party agrees to do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Deed and any transaction contemplated by it.

13.12 Document subject to Transport Act and PTCA

Nothing in this Deed will affect or limit any powers or rights that the parties may have under the Transport Act or the PTCA, except where those powers or rights have been expressly waived by the party entitled to the benefit of the right or power.

13.13 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the terms of this Deed continue in force.

13.14 Waiver

Unless otherwise provided in this Deed, a party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

13.15 Rights held on trust

The Associated Operator acknowledges and agrees that:

- (a) a waiver, release, acknowledgement or indemnity in favour of the Director's Associates is held on trust by the Director for the benefit of any of the Director's Associates; and
- (b) the consent of the Director's Associates referred to in clause 13.15(a) is not required for any alterations to this Deed.

13.16 Governing law and jurisdiction

This Deed is governed by the laws of the State and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State.

13.17 Notices and other communications

- (a) A notice, demand, consent, approval or communication given under this Deed (**Notice**) must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this Deed); and

- (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 13.17(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Schedule 1 - Warranties

Each of the following warranties is given by the Associated Operator in relation to itself and its subsidiaries:

- (a) all of the information, representations and other matters of fact communicated in writing to the Director (or its representatives) by the Associated Operator and its directors, officers, employees, servants, agents or Related Entities, relating to the subject matter of this Deed were (at the dates submitted to the Director or its representatives) and remain, in all material respects, true and not misleading;
- (b) it is a corporation duly incorporated and validly existing under the Laws of the State;
- (c) it has the power to enter into, and perform under, the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (d) it has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;
- (e) each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (f) the execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a Law or treaty or a judgment, ruling, order or decree of a Government Body binding on it; or
 - (ii) its constitution or other constituent documents;
- (g) except as disclosed to the Director no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it and in particular there is no outstanding workers' compensation claim;
- (h) no resolution has been passed for its winding up;
- (i) no resolution has been passed for the appointment of an administrator to it;
- (j) there is no unsatisfied judgment against it;
- (k) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertaking or assets or income;
- (l) each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be party and the transactions contemplated by those documents; and
 - (ii) its business as now conducted or contemplated and that is material (including, under the Act),

has been obtained or effected. Each is in full force and effect. It has complied with each of them and has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Commencement Date, it is only given as at the Commencement Date;

- (m) all returns, notices and other documents required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (n) it has duly observed and complied in all respects with the provisions of all Laws and all orders, notices, awards and determinations made by any Government Body in any way relating to or binding on it or any property owned or occupied by it;
- (o) all copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to the Director are true and complete copies. Where applicable, those documents are in full force and effect;
- (p) it complies with the privacy Laws, and any guidelines issued by the Commissioner under the relevant privacy Law;
- (q) each of the AO Contract Buses the subject of an AO Subcontract complies with the requirements set out in clause 12.1 of the MBSC; and
- (r) each of the AO Contract Depots the subject of an AO Subcontract complies with the requirements set out in clause 15 of the MBSC.

Signing page

EXECUTED as a Deed.

Dated

Signature

[Name and title] Delegate of the Director of Public Transport

Executed by [Associated Operator]

Signature of director

Name of director (print)

← _____
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Executed by [Operator]

Signature of director

Name of director (print)

← _____
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Executed by [Operator]

Signature of director

Name of director (print)

← _____
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Annexure G

Bus Replacement Program

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

W Sinclair & Sons Proprietary Limited

Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Total
No. of buses		1	1	1				2	1		6

Eastern Suburbs Omnibus Service Proprietary Limited

Year	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Total
No. of buses		1	1			2			1		5

- (a) The Operators agree to replace a Contract Bus under this Bus Replacement Program with a new Heavy Duty Ultra Low Floor bus of the current Euro specification at the time of the replacement.
- (b) If the Operators wish to replace a Contract Bus with a different type of new bus then:
- (i) the Nominated Operator agrees to apply in writing to the Director setting out the reasons why a Heavy Duty Ultra Low Floor bus is not appropriate and providing all relevant details of the proposed new bus (**Bus Replacement Application**);
 - (ii) the Nominated Operator can only proceed with the bus replacement if and when the Director has approved the Bus Replacement Application (which he may or may not do at his discretion); and
 - (iii) if the Director does not approve the Bus Replacement Application the Nominated Operator agrees to comply with paragraph (a) above.

Annexure H

Compliance Statement

Annexure to Metropolitan Bus Services Contract

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

[insert Nominated Operator name] (**Nominated Operator**)

Metropolitan Bus Service Contract dated [insert date] (Contract)

Compliance Statement (clause 19.2)

Solvency

The directors of the Nominated Operator considered the financial position of each Operator (including receiving a copy of a Solvency Statement from each Operator) and resolved that, as at the date of this resolution, there are reasonable grounds to believe that each Operator will be able to pay its debts as and when they become due and payable.

Performance under Transaction Documents

The directors of the Nominated Operator considered the Operators' performance under the Transaction Documents and resolved that:

- (a) each Operator has complied with its obligations in relation to the Financial Records under clauses 19.1 and 19.5 of the Contract;
- (b) each Operator has complied with its obligations in relation to the Continuity Information and the Continuity Guide under clauses 31.3 and 31.4 of the Contract;
- (c) each Operator has complied with its obligations in relation to insurance under clause 33 of the Contract;
- (d) each Operator has managed the Bus Operations to ensure the Continuity of the Local Services; and
- (e) they have no reason to believe that any Operator will be unable to perform any of its obligations under the Transaction Documents.

Dated []

.....
(insert name) Director

.....
(insert name) Director

Note: Defined words and expressions used in this statement have the meaning given to them in the Contract.

Annexure I

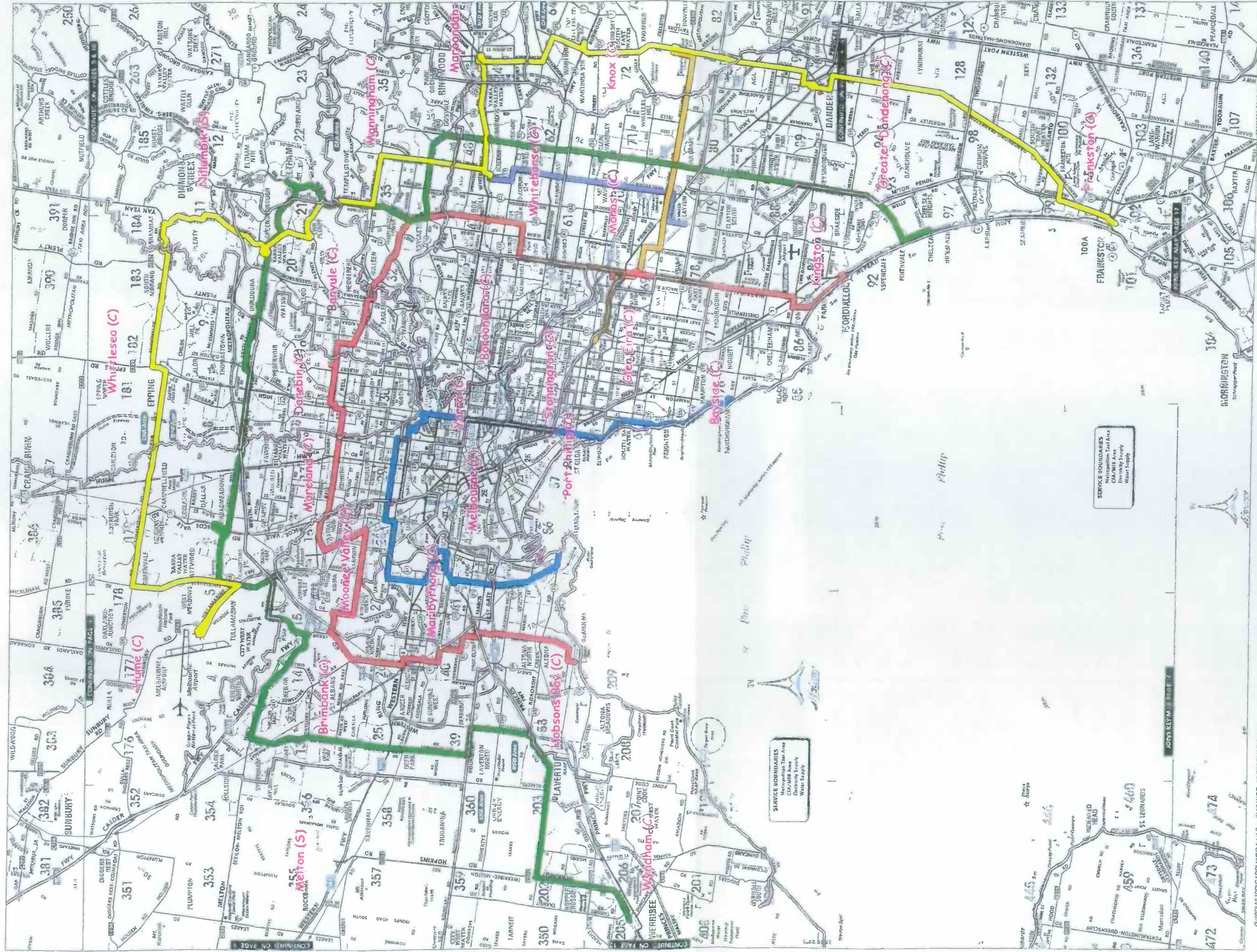
Map of Orbital SmartBus Services

Annexure to Metropolitan Bus Services Contract

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CLIPDAI IPDCA0380Orbita Bus 2015.WOR 27 FEBRUARY 2005

Annexure J

Operator Authorisation Certificate

Annexure to Metropolitan Bus Services Contract

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RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

[insert Nominated Operator name] (Nominated Operator)

Metropolitan Bus Service Contract (Contract)

Operator Authorisation Certificate (clause 3.1(a))

Accreditation

The directors of the Nominated Operator have considered the accreditation requirements under the *Public Transport Competition Act 1995 (Victoria)* (PTCA) and the *Transport Act 1983 (Victoria)* (Transport Act) and certify that, as at the Commencement Date in the Contract:

1. each Operator holds, and is complying with the conditions of, Accreditation number [#] under Part 2 of the PTCA to operate *road transport passenger services*, which includes the Local Services (as defined in the Contract). Details of each Operator's Accreditation number are as follows:

[to be inserted]
2. all Drivers hold Accreditation under Part VI, Division 6 of the Transport Act to drive a *commercial passenger vehicle*, which includes a Contract Bus (as defined in the Contract), and the relevant Operator has records of the currency of each Driver's Accreditation; and
3. to the best of our knowledge there is no current action or inquiry by the Director or the Safety Director (as the case may be) against any Operator, any Associated Operator or any Driver in relation to their respective Accreditations.

Authorisations

The directors certify that there are no other Authorisations (as defined in the Contract) necessary for any Operator to perform its obligations under the Transaction Documents.

Verification

The Director may request that the Nominated Operator provide him with a schedule listing all Drivers and their Accreditation details and or allow him to inspect copies of any records kept by any Operator regarding the Drivers' Accreditation. The Nominated Operator agrees to comply with the Director's request promptly.

Dated []

.....
(insert name) Director

.....
(insert name) Director



Execution version

Transfer Agreement

W Sinclair & Sons Proprietary Limited

Eastern Suburbs Omnibus Services Proprietary Limited

(each an Operator and together the Operators)

Kefford Properties Pty Ltd (as trustee for the Kefford
Property Trust) **(Associated Operator)**

[insert Purchaser] (Purchaser)

MinterEllison

L A W Y E E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Transfer Agreement

Details	4
Agreed terms	5
1. Defined terms & interpretation	5
1.1 Defined terms	5
1.2 Interpretation	7
1.3 Associated Operators	8
2. Conditions	9
2.1 Conditions	9
2.2 Commitment to satisfy the Conditions	9
2.3 Consequences of non-fulfilment	9
3. Transfer of Assets	9
3.1 Sale and purchase of Owned Assets	9
3.2 Assignment or novation of Third Party Leases or Licences	10
3.3 Excluded Assets	10
4. Transfer Price	10
4.1 Amount	10
4.2 Payment	10
5. Due diligence	10
5.1 Purchaser's right of access	10
5.2 Purchaser to avoid disruption	10
6. Third Party Leases or Licences	10
6.1 Acknowledgement	10
6.2 Operator to procure assignment or novation	11
6.3 Purchase if assignment not likely	11
7. Completion	11
7.1 Time and place	11
7.2 Operator's obligations	11
7.3 Purchaser's obligations	12
7.4 Simultaneous actions at Completion	12
7.5 Completion obligations breached	12
8. Title and risk	12
8.1 Possession	12
8.2 Title	12
9. Use of Assets pending transfer	13
10. Indemnities in relation to Third Party Leases or Licences	13
10.1 Operator's indemnity	13
10.2 Purchaser's indemnity	13
11. Staff	13
11.1 Offers of employment	13
11.2 Termination of employment of Transferring Staff	14

11.3	Assumption of Staff Liabilities	14
12.	Warranties	14
12.1	Warranties	14
12.2	Reliance of Purchaser	15
12.3	Application of Warranties	15
12.4	Operator to disclose breach	15
12.5	Indemnity for Warranty Claims	15
12.6	Notice of Warranty Claims	15
12.7	Time limits for Claim Notices and Warranty Claims	15
13.	Capacity	15
14.	Goods and Services Tax	16
14.1	Interpretation	16
14.2	Consideration is GST exclusive	16
14.3	Gross up of consideration	16
14.4	Going concern	16
14.5	Reimbursement	16
15.	General	17
15.1	Alterations	17
15.2	Assignment	17
15.3	Costs	17
15.4	Survival	17
15.5	Counterparts	17
15.6	No merger	17
15.7	Inconsistency	17
15.8	Further action	17
15.9	Document subject to Transport Act and PTCA	17
15.10	Severability	17
15.11	Waiver	17
15.12	Relationship	18
15.13	Confidentiality	18
15.14	Announcements	18
15.15	Governing law and jurisdiction	18
15.16	Notices and other communications	18
	Schedule 1 - Transfer Price	20
	Schedule 2 - Warranties	23
	Schedule 3 – Contract Buses	24
	Schedule 4 – Non Transferable Assets	25
	Schedule 5 – Terms and conditions applicable to the sale of a Contract Depot	26
	Schedule 6 – Novation Deed	28
	Signing page	36

Details

Date 23 JUN 2008

Parties

Name **W Sinclair & Sons Proprietary Limited ABN 67 004 482 142**
 Short form name **Operator**
 Notice details 9 Slough Road, Altona, Victoria 3018

Name **Eastern Suburbs Omnibus Services Proprietary Limited**
ABN 51 004 231 396
 Short form name **Operator**
 Notice details 9 Slough Road, Altona, Victoria 3018

Name **Kefford Properties Pty Ltd (as trustee for the Kefford Property Trust)**
ABN 64 005 222 015
 Short form name **Associated Operator**
 Notice details 14-16 Carrington Drive, Albion, Victoria 3020

Name **[insert Purchaser] [insert Purchaser ACN]**
 Short form name **Purchaser**
 Notice details **[insert address details of Purchaser]**
 Facsimile **[insert]**
 Attention **[insert]**

Background

- A The Operators currently conduct the Bus Operations and will do so until the Termination Date under the terms and conditions of the Current Service Contract.
- B The Director has exercised his option under the Current Service Contract to nominate the Purchaser to acquire all of the Assets from the Operators and the Associated Operators (as applicable) on the Transfer Date.
- C The Purchaser has been awarded the right to provide the Local Services by the Director from the Transfer Date and has agreed, as nominee of the Director, to acquire the Assets from the Operators and the Associated Operator (as applicable).
- D This agreement records the terms and conditions of the transfer of the Assets.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement:

Allocation Statement has the same meaning as under the Current Service Contract.

Assets means:

- (a) the Contract Buses;
- (b) the Contract Depots;
- (c) the Business Systems;
- (d) the Bus Operations IP;
- (e) the Plant and Equipment; and
- (f) any other assets used by the Operators or an Associated Operator in conducting the Bus Operations,

whether Owned Assets or Third Party Assets used under Third Party Leases or Licences.

Associated Operator means the Associated Operator and any other entities approved as Associated Operators under clause 7 of the Current Service Contract.

Bus has the same meaning as under the PTCA.

Business Day means a day on which trading banks are open for the transaction of general banking business in Melbourne, other than a Saturday, Sunday or public holiday.

Bus Lease means the lease of a Contract Bus by a third party to an Operator or an Associated Operator for use in conducting the Bus Operations.

Bus Operations means the business of providing the Local Services (including the holding, maintenance and operation of the Assets and related activities) conducted by the Operators up until the Transfer Date, and which will be conducted by the Purchaser on and from the Transfer Date.

Bus Operations IP means all the Intellectual Property (whether owned by an Operator or an Associated Operator or used under an IP Licence) used or required in connection with the Bus Operations, including all Intellectual Property in the Business Systems and the Management Information System, but excluding any Intellectual Property in, or relating to, any SmartBus equipment.

Business Systems means all information technology hardware, software and equipment (whether owned by an Operator or an Associated Operator or used under licence) used or required in connection with the Bus Operations, including all applications software, network and other operational software, management systems (including the Management Information System), methodology, databases, work product, back-up and historic data files relating to, among other things, rostering, scheduling and timetabling and also including intranet, extranet and web-based applications and desktop computers.

Claim includes any claim, proceedings, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at Law or otherwise).

Completion means completion of the sale, purchase, assignment and or novation of the Owned Assets and the Third Party Leases and Licences (as the case may be) contemplated by this agreement on the Transfer Date.

Conditions means the conditions precedent set out in clause 2.1.

Contract Buses means the Buses used (with the approval of the Director) by the Operators and or any Associated Operator in providing the Local Services which are listed in Schedule 3.

Contract Depots means the Depots used (with the approval of the Director) and owned by an Operator and or any Associated Operator in conducting the Bus Operations or to house the Contract Buses.

Current Service Contract means the service contract between the Director, the Operators and Douglas Kefford Pty Ltd dated [#] under which the Bus Operations will be conducted by the Operators up until the Transfer Date.

Depot means the land, buildings and improvement comprising a Bus depot.

Director means the Director of Public Transport under the *Transport Act 1983* (Vic) acting on behalf of the Crown in the right of the State of Victoria under the PTCA and includes any person who at any time holds, occupies, acts in or is entitled to perform the duties and functions of the office of the Director under a delegation.

Encumbrance means any mortgage, lien, charge, pledge, claim or other encumbrance or third party interest.

Equipment Lease means the lease or licence of a Business System or item of Plant and Equipment by a third party to an Operator or an Associated Operator for use in conducting the Bus Operations.

Government Body means any court or tribunal with relevant jurisdiction, any local, state or national government or governmental, administrative, fiscal, or judicial body, department, commission, authority, tribunal, agency, entity, council, ministry, official or public or statutory person

Intellectual Property means any intellectual or industrial property, whether protected by statute, at common law or in equity and whether registered or unregistered, including any patent, rights in respect of inventions, copyright, design, trade secret, circuit layout design, right to have information kept confidential, technical information, process, technique, know how, trade mark or trade name, business name, branding, get up and logo.

IP Licence means the licence of Bus Operations IP by a third party to an Operator or an Associated Operator under which there is a right to use the Bus Operations IP.

Liabilities means all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

Local Services means *regular passenger services* of a local nature provided or to be provided by the Operators under the Current Service Contract, or the same or substantial similar services to be provided by the Purchaser under the Successor Service Contract, as the case may be.

Management Information System means the management information system established and maintained by the Operators under the PTCA Regulations.

Nominated Operator means the Operator nominated as the Nominated Operator under the Current Service Contract.

Non Transferable Assets means those Third Party Leases or Licences which are acknowledged by the parties (acting reasonably) as not being readily assignable and which, as at the Commencement Date under the Current Service Contract, are listed in Schedule 4.

Novation Deed means a deed in the form of that contained in Schedule 6 relating to the novation of the relevant Bus Lease.

Owned Assets means Assets that are owned beneficially by the Operator and or any Associated Operator.

Owned Depot has the same meaning as in the Current Service Contract.

Plant and Equipment means all plant and equipment used by the Operators and or any Associated Operator in conducting the Bus Operations.

PTCA means the *Public Transport Competition Act 1995* (Vic).

PTCA Regulations means the *Public Transport Competition Regulations 1999* (Vic).

Security Interest has the same meaning as in the Current Service Contract.

Staff means all persons whether officers, employees, agents or contractors of the Operators or any Associated Operator engaged in, or in connection with, the provision of the Local Services.

Staff Liabilities means the liabilities of the Operators and any Associated Operator in relation to the employment related entitlements and benefits of the Staff, whether arising under an award, a certified agreement or workplace agreement, under contract or under any law, but excluding any accrued long service leave liabilities for the Staff (which are funded by the Director on a cash basis under Schedule 3 of the Current Service Contract).

Successor Service Contract means the service contract awarded to the Purchaser under which the Bus Operations will be conducted by the Purchaser on and from the Transfer Date.

Termination Date has the meaning given in the Current Service Contract.

Third Party Assets means Assets that are not Owned Assets.

Third Party Lease or Licence means a Bus Lease, an IP Licence, an Equipment Lease and any other lease, licence or other right of use under which a Third Party Asset is used by the Operators and or an Associated Operator in conducting the Bus Operations.

Transfer Date has the same meaning as in the Current Service Contract.

Transfer Price means the price payable for the transfer of the Owned Assets which is calculated under Schedule 1.

Warranties means the representations and warranties set out in Schedule 2.

Warranty Claim means a Claim by the Purchaser against an Operator or an Associated Operator (as applicable) arising as a result of a breach of Warranty.

1.2 Interpretation

In this agreement, unless the context otherwise requires, the following rules of construction will apply in the interpretation of this agreement:

- (a) words and expressions defined in the *Transport Act 1983* (Vic) or in the PTCA and italicised in this document will, unless a contrary intention appears expressly or unless the

same word or expression is defined in this agreement, have the same meaning where used in this agreement

- (b) the singular includes the plural and vice versa and a reference to any gender includes the other genders;
- (c) a reference to a clause, schedule or annexure is to a clause, schedule or annexure of or to this agreement;
- (d) a reference to a contract or document is to that contract or document as amended, novated, supplemented or replaced from time to time;
- (e) a reference to a person includes a corporation, firm, partnership, association, trust, joint venture, authority, Government Body or other legal entity and vice versa;
- (f) a reference to any legislation or legislative provision is to that legislation or provision as amended, modified, re-enacted, consolidated or replaced from time to time and includes any regulation or other instrument issued under that legislation or provision;
- (g) a reference to a party or person includes the successors and permitted assigns of that party or person;
- (h) if any amount is payable under this agreement on a day which is not a Business Day, that amount must be paid on the next day that is a Business Day;
- (i) headings and sub-headings are for convenience and do not affect interpretation;
- (j) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (k) the meaning of general words is not limited by specific examples introduced by *including*, or *for example*, or similar expressions;
- (l) a general obligation imposed on a party must not be read down or limited by reference to a more specific obligation, unless this agreement expressly provides otherwise;
- (m) where a party releases another party from Claims, it will be deemed to have released the other party from all Claims which it has, but for the execution of this agreement might have had, or may have in the future in respect of the relevant subject matter;
- (n) a reference to A dollars, \$A, the word dollar or \$ is to Australian currency; and
- (o) a rule of construction does not apply to the disadvantage of a party because that party was responsible directly or indirectly for the preparation of this agreement or any part of it.

1.3 Associated Operators

- (a) An obligation in this agreement imposed on an Associated Operator applies only in respect of the relevant Asset that is owned, leased or licensed by that Associated Operator.
- (b) Each Operator guarantees the performance by each Associated Operator of its obligations under this agreement and agrees to indemnify and keep indemnified the Purchaser against all Liabilities suffered or incurred by it as a result of any breach of any obligation by an Associated Operator.

2. Conditions

2.1 Conditions

The transfer of the Assets contemplated by this agreement, and Completion, is conditional on the following conditions precedent:

Condition	Party entitled to benefit
1. The Director having done everything that he was required to do to ensure commencement of the Successor Service Contract; and	Purchaser
2. There being no material breach of any of the Warranties.	Purchaser

unless otherwise waived by the Purchaser.

2.2 Commitment to satisfy the Conditions

The parties agrees to use reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions on or before the Transfer Date.

2.3 Consequences of non-fulfilment

If the Conditions are not satisfied or waived (or, in relation to Condition 2, is only partly satisfied) by the Transfer Date, then the Purchaser may:

- (a) terminate this agreement by notice in writing to the Nominated Operator with immediate effect in which case:
 - (i) this agreement will be of no further effect; and
 - (ii) afterwards no party will have any other rights or obligations under it, except under clauses 12 and 15 which survive termination, and in respect of any obligations arising or rights accrued as a result of a breach of this agreement; or
- (b) notify the Nominated Operator that it wishes to Complete, subject to excluding from the sale or novation under clause 3 the relevant Owned Asset or Third Party Lease or Licence in relation to which an Operator or Associated Operator has materially breached a Warranty.

3. Transfer of Assets

3.1 Sale and purchase of Owned Assets

Each Operator and each Associated Operator (as applicable) as beneficial owner agrees to sell the Owned Assets owned by it to the Purchaser, and the Purchaser agrees to buy the Owned Assets from them:

- (a) for the Transfer Price;
- (b) free from any Encumbrances in the nature of Security Interests (except if the transfer is effected under an Allocation Statement);
- (c) on the Transfer Date; and
- (d) in relation to a Contract Depot, on the terms and conditions set out in Schedule 5.

3.2 Assignment or novation of Third Party Leases or Licences

Subject to clause 3.3 and 6.3, each Operator and each Associated Operator (as applicable) as the lessee or licensee under a Third Party Lease or Licence if applicable agrees to assign or novate as appropriate to the Purchaser, and the Purchaser accepts the rights under, benefits of, interests in, and assumes the burden of, those Third Party Leases or Licences on the Transfer Date.

3.3 Excluded Assets

- (a) The assignment or novation under clause 3.2 excludes the Non Transferable Assets.
- (b) The parties agree to update the list in Schedule 4 as and when Assets are recognised and agreed by them as being Non Transferable Assets.

4. Transfer Price

4.1 Amount

- (a) The total purchase price payable by the Purchaser for the Owned Assets is the Transfer Price.
- (b) No assignment or novation fee is payable by the Purchaser for the assignment or novation of any Third Party Lease or Licence, however an adjustment may be required (and is payable by the Nominated Operator or the Purchaser as the case may be) in relation to the novation of Bus Leases under clause 2(b) of Schedule 1. The Nominated Operator agrees to pay all costs associated with procuring the consent of the lessor or licensor to the assignment or novation.

4.2 Payment

The Purchaser agrees to pay the Transfer Price to the Nominated Operator (or as the Nominated Operator otherwise directs) under clause 7.3 by bank cheque or telegraphic transfer to an account nominated by the Nominated Operator.

5. Due diligence

5.1 Purchaser's right of access

Each Operator and each Associated Operator (as applicable) agrees to allow the Purchaser full access to the Assets and the Staff at reasonable times to enable the Purchaser to conduct its due diligence in relation to the Assets.

5.2 Purchaser to avoid disruption

The Purchaser agrees to use its reasonable endeavours to ensure that any access under clause 5.1 is exercised and conducted in a manner that minimises interference with the Bus Operations.

6. Third Party Leases or Licences

6.1 Acknowledgement

The Operators and each Associated Operator (as applicable) acknowledges that all Third Party Leases or Licences (except those relating to Non Transferable Assets) are capable of assignment or novation as contemplated by this agreement.

6.2 Operators to procure assignment or novation

- (a) Each Operator and each Associated Operator (as applicable) agrees to procure and facilitate the assignment or novation of the Third Party Leases or Licences (except the Third Party Leases or Licences relating to Non Transferable Assets) on the Transfer Date including by executing (and arranging for execution by the lessors and licensors of the relevant Third Party Assets of) relevant assignment or novation deeds.
- (b) Further to clause 6.2(a), each Operator and each Associated Operator (as applicable) agrees to arrange for the execution by all parties (other than the Purchaser) of a Novation Deed for each Bus Lease that will be novated under clause 3.2.

6.3 Purchase if assignment not likely

If the assignment or novation of a Third Party Lease or Licence (except a Third Party Lease or Licence relating to Non Transferable Assets) is considered by the Director to be unlikely to be effected by the Transfer Date then each Operator and each Associated Operator (as applicable) agrees to, on receipt of written notice from the Director, exercise any right it has under that Third Party Lease or Licence to acquire that Third Party Asset and then transfer it to the Purchaser under clause 3.1.

7. Completion

7.1 Time and place

Completion will take place at [time] on the Transfer Date at [venue], or any other place or time agreed between the Nominated Operator, the Purchaser and the Director.

7.2 Operators' obligations

At Completion, each Operator and each Associated Operator (as applicable) agrees to deliver to the Purchaser:

- (a) possession of all Assets (other than Third Party Leases or Licences relating to Non Transferable Assets) at the places where they are currently or customarily located or as directed by the Director;
- (b) duly executed transfer documentation for any Owned Assets that the Purchaser reasonably requires to vest the Owned Assets in the Purchaser, in registrable form where applicable;
- (c) all documents of title relating to the Owned Assets;
- (d) a Novation Deed for each Bus Lease novated under clause 3.2 duly executed by the lessor, each Operator and each Associated Operator (as applicable);
- (e) assignment and or novation deeds, forms and other documentation relating to any other Third Party Leases or Licences assigned or novated under clause 3.2, duly executed by each Operator, the owner of the relevant Third Party Asset and each Associated Operator (as applicable);
- (f) the continuity guide required to be maintained and made available by the Operator under the Current Service Contract;
- (g) subject to clause 3.1(b), duly executed discharges or releases of all Encumbrances in the nature of Security Interests over the Owned Assets and the Third Party Leases or Licences;
- (h) duly executed forms or consents reasonably required by the Purchaser to enable the utility services provided at the Contract Depots (including gas, water, electricity, sewerage and

telephone, facsimile and other communication services (with the benefit of the same numbers)) to be transferred to the Purchaser with effect from the Transfer Date;

- (i) all keys and codes required to gain access to any of the Assets transferred, assigned or novated under this agreement; and
- (j) any other document or thing reasonably necessary to give full effect to this agreement as it relates to each Operator and or Associated Operator.

7.3 Purchaser's obligations

At Completion, the Purchaser agrees to:

- (a) deliver to the Nominated Operator duly executed counterparts of any document to be delivered by an Operator and or Associated Operator (as applicable) at Completion to which the Purchaser is party; and
- (b) pay the Nominated Operator the Transfer Price (and the adjustment amount required under clause 2(b) of Schedule 1 (if any) in accordance with clause 4).

7.4 Simultaneous actions at Completion

In respect of Completion:

- (a) the obligations of the parties under this agreement are interdependent;
- (b) all actions required to be performed are taken to have occurred simultaneously on the Transfer Date; and
- (c) subject to clause 7.5(c), completion of the sale, assignment or novation of an Owned Asset or Third Party Lease or Licence under clause 3.1 or 3.2 is dependent on the completion of each other sale, assignment or novation under those clauses.

7.5 Completion obligations breached

If, on the scheduled Transfer Date, a party has not complied in any material respect with any of its obligations under this clause 7, the other party may, at its discretion (provided that the consent of the Director has been obtained):

- (a) defer Completion to any subsequent Business Day agreed between the parties and the Director;
- (b) waive the requirement to fulfil those obligations, in whole or in part, and following that waiver, Complete;
- (c) Complete, subject to excluding from the sale or novation under clause 3 the relevant Owned Asset or Third Party Lease or Licence in relation to which the breach relates; or
- (d) terminate this agreement.

8. Title and risk

8.1 Possession

Possession of, and risk relating to, the Assets (other than Third Party Leases or Licences relating to Non Transferable Assets) passes to the Purchaser at Completion.

8.2 Title

Title to the Owned Assets passes to the Purchaser at Completion.

9. Use of Assets pending transfer

- (a) Subject to clause 9(b), if an Owned Asset or a Third Party Lease or Licence (other than a Third Party Lease or Licence relating to a Non Transferable Asset) is not transferred, assigned or novated to the Purchaser at Completion in accordance with clause 3.1 or 3.2, each Operator and each Associated Operator (as applicable) agrees to, to the extent it lawfully can, and provided the consent of the Director is obtained, allow the Purchaser to use or occupy the relevant Asset as licensee or sub licensee (free of charge) from Completion until the transfer, assignment or novation is completed.
- (b) If the Purchaser uses or occupies the relevant Asset as licensee or sub licensee, in accordance with clause 9(a), the Purchaser must indemnify each Operator and or each Associated Operator for all reasonable direct costs demonstrated and substantiated to the satisfaction of the Director incurred by them in connection with the use or occupation including, but not limited to, ongoing lease or licence payments.
- (c) The Operators and Associated Operators agree to fully cooperate with the Purchaser in any reasonable arrangement to confer the benefit, possession and use of the Asset on, or to, the Purchaser.

10. Indemnities in relation to Third Party Leases or Licences

10.1 Operators' indemnity

Subject to Completion occurring, each Operator and each Associated Operator (as applicable) indemnifies the Purchaser from and against all Liabilities suffered, paid or incurred by the Purchaser resulting from any breach, non performance or non observance of any obligation under a Third Party Lease or Licence and any Claim made by a counter party under that Third Party Lease or Licence arising from events, acts or omissions occurring or relating to the period before the Transfer Date.

10.2 Purchaser's indemnity

Subject to Completion occurring, the Purchaser indemnifies each Operator and each Associated Operator (as applicable) from and against all Liabilities suffered, paid or incurred by them resulting from any breach, non performance or non observance of any obligation under a Third Party Lease or Licence and any Claim made by a counter party under that Third Party Lease or Licence arising from events, acts or omissions occurring or relating to the period after the Transfer Date.

11. Staff

11.1 Offers of employment

Not later than 10 Business Days prior to the Transfer Date the Purchaser agrees to make offers of employment to those members of Staff notified to it by the Nominated Operator as *Available Staff* under the Current Service Contract (**Available Staff**) which:

- (a) are on terms no less favourable considered as a whole to the Available Staff than their terms of employment with an Operator or an Associated Operator (as applicable);
- (b) provide for the continuity of Staff Liabilities and entitlements in relation to long service leave;

- (c) meet the relevant criteria of offers of acceptable alternative employment set out in the enterprise or workplace agreement certified or lodged under the *Workplace Relations Act 1996* (Cth) applicable to the Staff; and
- (d) will take effect on the Transfer Date.

11.2 Termination of employment of Transferring Staff

At Completion, each Operator and each Associated Operator (as applicable) agrees to release from their employment (with effect from the Transfer Date) all Available Staff who accept offers of employment from the Purchaser made in accordance with clause 11.1 (**Transferring Staff**).

11.3 Assumption of Staff Liabilities

- (a) The Purchaser agrees to assume, recognise, become solely responsible for, and indemnify each Operator and each Associated Operator (as applicable) in relation to, all Staff Liabilities in respect of the Transferring Staff as at the Transfer Date.
- (b) In consideration for the assumption by the Purchaser of the Staff Liabilities for the Transferring Staff, each Operator and each Associated Operator (as applicable) agrees to pay to the Purchaser an amount (**Transferring Staff Payment**) calculated as follows:

$$\text{Transferring Staff Payment} = (1 - T) \times \text{SLTS}$$

where:

T = the corporate tax rate (expressed as a decimal figure), applicable on the Transfer Date;

SLTS = the aggregate of the Staff Liabilities for all Transferring Staff (less the Sick Leave Discount) calculated and valued by an independent actuary who:

- (i) is jointly appointed by the Director, the relevant Operator or Associated Operator (as applicable) and the Purchaser;
- (ii) must apply relevant Australian accounting standards; and
- (iii) must apply any assumptions agreed to by the Director, the relevant Operator or Associated Operator (as applicable) and the Purchaser, and

Sick Leave Discount = 80% of the Staff Liabilities that relate specifically to the sick leave entitlements of the Transferring Staff,

and which will be deducted as set out in Schedule 1.

- (c) In relation to Available Staff who do not accept an offer by the Purchaser under clause 11.1 (**Non-Transferring Staff**) each Operator and each Associated Operator (as applicable) remains liable for, and agrees to indemnify the Director and Purchaser for, any Staff Liabilities for the Non Transferring Staff.

12. Warranties

12.1 Warranties

Each Operator and each Associated Operator (as applicable) represents and warrants to the Purchaser that each of the Warranties is true and accurate and not misleading:

- (a) at the date of this agreement; and
- (b) as at Completion by reference to the facts and circumstances then existing.

12.2 Reliance of Purchaser

Each Operator and each Associated Operator (as applicable) acknowledges that the Purchaser enters into this agreement in reliance on the Warranties.

12.3 Application of Warranties

Each of the Warranties:

- (a) remains in full force after Completion;
- (b) is separate and independent and not limited or restricted by any other Warranty or provision of this agreement; and
- (c) is not affected by any investigation made by or on behalf of the Purchaser or any information relating to the Bus Operations or Assets of which the Purchaser has knowledge, actual or constructive.

12.4 Operator to disclose breach

Each Operator and each Associated Operator agrees to disclose to the Purchaser in writing, promptly on its becoming aware of the same, full details of any fact, matter, event or circumstance which:

- (a) does or might constitute a breach of any of the Warranties when given on the execution of this agreement; or
- (b) will or might constitute a breach of any of the Warranties when deemed given again immediately prior to Completion.

12.5 Indemnity for Warranty Claims

Without limiting the other provisions of this clause 12, each Operator and each Associated Operator (as applicable) indemnifies the Purchaser for all Liabilities that the Purchaser suffers or incurs by reason of any Warranty Claim.

12.6 Notice of Warranty Claims

The Purchaser agrees to give the Nominated Operator and each relevant Operator and or Associated Operator (as applicable) written notice (including details) of a Warranty Claim or anything the Purchaser becomes aware of that may result in a Warranty Claim (**Claim Notice**).

12.7 Time limits for Claim Notices and Warranty Claims

An Operator or Associated Operator (as applicable) will not be liable for any Warranty Claim unless it receives a Claim Notice for the Warranty Claim within one year after the Transfer Date.

13. Capacity

Each party represents and warrants to each other party that:

- (a) it is validly existing under the laws of its place of incorporation or registration;
- (b) it has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) it has taken all necessary action to authorise its entry into and performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) its obligations under this agreement are valid and binding and enforceable against it in accordance with their terms;

- (e) to the extent that it enters into this agreement in a trustee capacity:
 - (i) its appointment as trustee of the relevant trust is valid and subsisting and it is not aware of any action to remove or replace it as trustee;
 - (ii) the trust deed for the relevant trust authorises its entry into this agreement; and
 - (iii) it has a right of recourse to the assets of the relevant trust sufficient to cover any Claim that may be made against it under this agreement; and
- (f) the execution, delivery and performance by it of this agreement (and any other agreement required to be entered into by it in connection with this agreement) will not violate in any respect a provision of:
 - (i) its constitution or other constituent documents;
 - (ii) any agreement or arrangement to which it is party or by which it is bound; or
 - (iii) a law or treaty or a judgement, ruling, order or decree of a Government Body binding on it.

14. Goods and Services Tax

14.1 Interpretation

Words or expressions used in this clause 14 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

14.2 Consideration is GST exclusive

Any consideration or amount to be paid or provided for a supply made under or in connection with this agreement, unless specifically described as **GST inclusive**, does not include GST payable on that supply.

14.3 Gross up of consideration

If a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is stated specifically as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) agrees to also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

14.4 Going concern

The Operators and the Purchaser agree that the sale of the Owned Assets and the assignment or novation of the Third Party Leases or Licences under this agreement constitutes the supply of a going concern for the purposes of the GST law only, and for no other purpose.

14.5 Reimbursement

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a Liability incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Liability relates.

15. General

15.1 Alterations

This agreement may be altered only in writing signed by each party.

15.2 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

15.3 Costs

- (a) Each party agrees to pay its own costs of negotiating, preparing and executing this agreement.
- (b) Each Operator and each Associated Operator (as applicable) will be responsible for any capital gains tax liability triggered by the transfer, assignment or novation of Assets under this agreement.
- (c) Any stamp duty levied on this agreement or any of the transactions contemplated by it is the responsibility of the Purchaser.

15.4 Survival

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

15.5 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one agreement.

15.6 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

15.7 Inconsistency

If there is any inconsistency between this agreement and the Current Service Contract, the Director will instruct the parties how that inconsistency is to be resolved.

15.8 Further action

Each party agrees to do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

15.9 Document subject to Transport Act and PTCA

Nothing in this agreement will affect or limit any powers or rights that the parties may have under the Transport Act or the PTCA, except where those powers or rights have been expressly waived by the party entitled to the benefit of the right or power.

15.10 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

15.11 Waiver

Unless otherwise provided in this agreement, a party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of

a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15.12 Relationship

Nothing in this agreement creates a relationship of employment, trust, agency or partnership between the parties.

15.13 Confidentiality

A party may only use information obtained from another party for the purposes of this agreement, and must keep that information and the existence and terms of this agreement and any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this agreement) or the party has independently created the information or if it is trivial or obvious;
- (b) disclosure is required by law or a Government Body; or
- (c) disclosure is made to:
 - (i) the Staff, to the extent that they need to have the information for the performance of their duties in respect of the Current Services Contract and this agreement;
 - (ii) a party's advisors in connection with this document, including its bankers, accountants, lawyers and insurance brokers; and
 - (iii) any other person who must know for the purposes of this agreement with the consent of the relevant party on the basis that the person keeps the information confidential.

15.14 Announcements

A public announcement in connection with this agreement or a transaction contemplated by it must be agreed by the parties before it is made, except if required by law or a Government Body, in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party.

15.15 Governing law and jurisdiction

This agreement is governed by the laws of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

15.16 Notices and other communications

- (a) A notice, demand, consent, approval or communication given under this agreement (Notice) must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this agreement); and
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 15.16(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;

- (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
- (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

- (c) Any notice, demand, consent, approval or communication by the Purchaser to an Operator under this document must be given to, or be with, the Nominated Operator on behalf of the relevant Operator, unless otherwise expressly provided in this document.
- (d) Any notice or communication received by the Purchaser from the Nominated Operator will be deemed to have been authorised by the Operator on whose behalf the Nominated Operator purports to be acting.

Schedule 1 - Transfer Price

1. Transfer Price

- (a) The Transfer Price payable by the Purchaser for the Assets is calculated as follows:

$$\text{Transfer Price} = \text{Aggregate Bus Price} + \text{Aggregate Lease Adjustment Amount} + \text{Depot Price} + \text{Business Systems Price} + \text{Bus Operations IP Price} + \text{Other Assets Price} - \text{Transferring Staff Payment}$$

where:

Aggregate Bus Price = the aggregate of the Bus Price for each Contract Bus to be transferred.

Aggregate Lease Adjustment Amount = the aggregate of the Lease Adjustment Amount for each Bus Lease to be novated.

Bus Price = the purchase price of a Contract Bus as calculated under clause 2(a) of this Schedule 1.

Depot Price = the purchase price for the Owned Depots calculated under clause 3 of this Schedule 1.

Business Systems Price = the purchase price for the Business Systems calculated under clause 5 of this Schedule 1.

Bus Operations IP Price = the purchase price for the Bus Operations IP calculated under clause 6 of this Schedule 1.

Lease Adjustment Amount = the amount calculated under clause 2(b) of this Schedule 1 in relation to the novation of a Bus Lease.

Other Assets Price = the purchase price payable for all Assets other than those referred to above, calculated under clause 7 of this Schedule 1.

Transferring Staff Payment = the amount referred to in clause 11.3(b).

- (b) If the Assets are transferred subject to encumbrances under an Allocation Statement, the Transfer Price calculated under clause 1(a) of this Schedule 1 will be reduced by an amount equal to the net present value of those encumbrances.

2. Bus Price

- (a) The purchase price for a Contract Bus to be transferred under this agreement will be the market value of that Contract Bus calculated under clause 4(b) of this Schedule 1.
- (b) In relation to the novation of a Bus Lease under this agreement, the parties agree that:
- (i) if the market value of the Contract Bus to which that Bus Lease applies (calculated under clause 4(b) of this Schedule 1) is greater than the pay out amount or termination value under that Bus Lease at the Transfer Date then the Purchaser must pay the amount of the excess to the Nominated Operator;
 - (ii) if the market value of the Contract Bus to which that Bus Lease applies (calculated under clause 4(b) of this Schedule 1) is less than the pay out amount or

termination value under that Bus Lease at the Transfer Date then the Nominated Operator must pay to the Purchaser (or the Purchaser may deduct by way of set off against the Aggregate Bus Price) the amount of the shortfall; and

- (iii) if the Bus Lease is an operating lease then no fee will be payable for the novation.

3. Depot Price

The purchase price for the Owned Depots to be transferred under this agreement will be calculated in accordance with Schedule 5.

4. Market Value of Assets

- (a) Where the purchase price of an Asset is to be calculated at its market value, then the following provisions of this clause apply.
- (b) At least 14 days prior to the Transfer Date in clause 30.2 of the Current Service Contract the Director and the Nominated Operator must jointly appoint a valuer to provide a market valuation of the relevant Asset to be transferred on the following basis:
 - (i) the valuer is to act as an expert and not as an arbitrator;
 - (ii) the relevant Operator or Associated Operator (as applicable) is a willing but not anxious seller and the Purchaser is a willing but not anxious buyer;
 - (iii) there is a reasonable period within which to negotiate the value of the relevant Asset having regard to the condition of that Asset and the state of the market for that Asset;
 - (iv) the market valuation is to be on a GST exclusive basis; and
 - (v) the relevant asset is to be valued having regard to the operational requirements of the business with no value for goodwill.
- (c) If the Director and the Nominated Operator do not mutually agree on the appointment of a valuer in accordance with clause 4(b) of this Schedule 1, either party may request the President of the Institute of Chartered Accountants to appoint a valuer on behalf of the parties to provide a valuation in accordance with this clause.
- (d) The market value of each Asset will be the valuation obtained under clause 4(b) of this Schedule 1 in respect of that Asset.
- (e) A valuer appointed under this clause must have appropriate qualifications and experience to provide a fair and reasonable valuation.
- (f) The valuation provided by the valuer shall be final and binding on the parties except in the case of fraud or gross negligence.

5. Business Systems Price

- (a) The purchase price for the Business Systems to be transferred under this agreement is calculated as follows:

Business Systems Price = The lesser of the Market Value of the Business Systems and the Replacement Cost of the Business Systems

where:

Market Value of the Business Systems = the market value of the Business Systems determined by a valuer appointed under, and on the same basis provided for in, clause 4(b) of this Schedule 1.

Replacement Cost = the listed price of the relevant Business System (or an equivalent) by the manufacturer or supplier from whom the Business System was acquired (or the manufacturer or supplier of the equivalent).

- (b) The work product and data component of the Business Systems shall have a nil value for the purpose of calculating the Business Systems Price under this clause.
- (c) The Business Systems Price calculated under clause 5(a) of this Schedule 1 will be capped at a maximum of 5% of the Local Service Payments under the Current Service Contract for the 12 months preceding the Transfer Date.
- (d) The value of any Intellectual Property in the Business Systems will be incorporated in the calculation of the Bus Operations IP Price under clause 6 of this Schedule 1.

6. Bus Operations IP Price

Bus Operations IP will be deemed to have a nil value for the purpose of a transfer under this agreement.

7. Other Assets Price

The purchase price for all Assets to be transferred under clause under this agreement (other than those Assets for which the purchase price is calculated under clauses 1 to 6 of this Schedule 1) is the aggregate of the market value of each Asset calculated under clause 4 of this Schedule 1.

Schedule 2 - Warranties

1. Each Operator and each Associated Operator (as applicable) is the absolute legal and beneficial owner of each Owned Asset and has full capacity to transfer the unencumbered title in the Owned Assets as contemplated by this agreement.
2. Each Third Party Lease or Licence (except those in relation to Non Transferable Bus Operations IP and Non Transferable Business Systems) is capable of assignment or novation as contemplated by this agreement.
3. At Completion, there will be no Encumbrances over or affecting any Asset in the nature of Security Interests and neither an Operator nor any Associated Operator is party to any agreement to grant any Encumbrance over any Asset.
4. The Assets:
 - (a) comprise all of the assets used by the Operators in conducting the Bus Operations;
 - (b) are the only assets necessary for the conduct and operation of the Bus Operations;
 - (c) are fit for their intended purpose; and
 - (d) are in the state required under the Current Service Contract.

Schedule 3 – Contract Buses

[insert]

Schedule 4 – Non Transferable Assets

Nil

Schedule 5 – Terms and conditions applicable to the sale of a Contract Depot

1. The Law Institute of Victoria copyright Contract of Sale of Real Estate (With GST gross up wordings Approved VLRPA, EEA 1980, S53A 2001) (**LIV Contract**) will be entered into in relation to the Contract Depots and the Particulars of Sale will be completed as follows:
 - (a) the purchaser will be the Purchaser;
 - (b) the vendor will be an Operator or Associated Operator (as applicable) who owns the Contract Depot;
 - (c) the land will be the Contract Depot;
 - (d) there will be no chattels sold under the LIV Contract;
 - (e) the Depot Price for the purpose of clause 3 of Schedule 1 will be the amount determined under special condition 2(b) below;
 - (f) the deposit will be \$1.00 which must be paid on the day of sale;
 - (g) settlement will take place on the Transfer Date, however this may be extended in order to enable the purchaser to effect due diligence under paragraph 2(c) below;
 - (h) the vendor will be obliged to deliver vacant possession of the property to the purchaser at settlement.
2. The LIV Contract will contain special conditions in the following terms:
 - (a) the purchaser must reimburse at settlement any GST for which the vendor is liable on the sale;
 - (b) the Depot Price will be determined as follows:
 - (i) the price will be the market value of the property on the day of sale as agreed by the vendor and the purchaser or, if they fail to agree within 14 days after the day of sale, determined by a valuer appointed by the President of the Australian Property Institute (Victorian Division) on the application of the purchaser;
 - (ii) the valuer must be a member of the Australian Property Institute (Victorian Division) having at least 15 years experience in valuing premises of a similar kind to the property;
 - (iii) the parties may each make written submissions to the valuer. The purchaser will have the right to make an additional written submission during or after the due diligence period referred to in paragraph 2(c) below. The valuer must not make a determination of the market value of the property until after:
 - (A) the purchaser makes this additional written submission; or
 - (B) the purchaser tells the valuer that the purchaser will not make the additional submission;
 - (iv) the valuer must be instructed to determine the market value on the basis that:
 - (A) the property may be used for any purpose permitted by the planning regulations and guidelines of the relevant Government Body applicable as at the date of valuation; and

- (B) the market value must reflect any actual or likely contamination of, or contamination liability attached or relating to, the property;
 - (v) the valuer must be instructed to make the determination not less than seven days before the date fixed for settlement; and
 - (vi) the valuer will act as an expert and the valuer's determination will bind the parties.
- (c) the purchaser will have the right of access to the property and records in relation to the property from the day of sale to carry out the usual purchaser's due diligence including, without limitation, as to the condition of the improvements on the property, the extent of any contamination of the property and, where the contamination has or may have migrated from the property, the extent of any contamination of surrounding properties.

Schedule 6 – Novation Deed

Details

Date

Parties

Name	[Lessor]
Short form name	Lessor
Notice details	[Insert]

Name	[Operator name]
Short form name	Operator
Notice details	[insert details]
	Facsimile: [insert details]
	Attention: [insert details]

Name	[Purchaser]
Short form name	Purchaser
Notice details	

Background

- A. The Operator has entered into the Bus Leases with the Lessor.
- B. The Operator, the Lessor and the Purchaser wish to novate the Bus Leases.

Agreed terms

1. Defined terms and interpretation

1.1 Definitions

In this Novation Deed unless the context otherwise requires:

Authorisation means:

- (a) any authorisation, approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them; and .
- (b) for anything which a Government Agency may prohibit or restrict with a specified period, the expiry of that period without intervention or other action by that Government Agency.

Bus Leases means the bus leases listed in the Schedule to this Novation Deed.

Business Day means any day other than a Saturday, Sunday or public holiday in Victoria.

Effective Date means the date specified as such in the Schedule to this Novation Deed.

Government Agency means:

- (a) a government or any governmental, semi-governmental or judicial entity or body, whether foreign or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board or other government, semi-government, judicial, administrative, monetary or fiscal authority, whether statutory or not.

Notice has the meaning given in clause 8.

Novation Deed means this document.

Recipient has the meaning given in clause 7.3.

Supplier has the meaning given in clause 7.3.

1.2 Interpretation

In this Novation Deed, unless the context otherwise requires, the following rules of construction will apply in the interpretation of this Novation Deed:

- (e) the singular includes the plural and vice versa and a reference to any gender includes the other genders;
- (f) a reference to a clause, schedule or annexure is to a clause, schedule or annexure of or to this Novation Deed;
- (g) a reference to a contract or document is to that contract or document as amended, novated, supplemented or replaced from time to time;
- (h) a reference to a person includes a corporation, firm, partnership, association, trust, joint venture, authority, Government Body or other legal entity and vice versa;

- (i) a reference to any legislation or legislative provision is to that legislation or provision as amended, modified, re-enacted, consolidated or replaced from time to time and includes any regulation or other instrument issued under that legislation or provision;
- (j) a reference to a party or person includes the successors and permitted assigns of that party or person;
- (k) if any amount is payable under this Novation Deed on a day which is not a Business Day, that amount must be paid on the next day that is a Business Day;
- (l) headings and sub-headings are for convenience and do not affect interpretation;
- (m) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (n) the meaning of general words is not limited by specific examples introduced by *including*, or *for example*, or similar expressions;
- (o) a general obligation imposed on a party must not be read down or limited by reference to a more specific obligation, unless this Novation Deed expressly provides otherwise;
- (p) where a party releases another party from Claims, it will be deemed to have released the other party from all Claims which it has, but for the execution of this Novation Deed might have had, or may have in the future in respect of the relevant subject matter;
- (q) a reference to A dollars, \$A, the word dollar or \$ is to Australian currency; and
- (r) a rule of construction does not apply to the disadvantage of a party because that party was responsible directly or indirectly for the preparation of this Novation Deed or any part of it.

2. Novation and release

2.1 Novation from Effective Date

By way of novation and with effect from the Effective Date:

- (a) the Purchaser is substituted for the Operator under the Bus Leases as if named as an original party to the Bus Leases in place of the Operator;
- (b) the Purchaser assumes all of the obligations of the Operator under the Bus Leases arising on or after the Effective Date;
- (c) all of the rights and benefits of the Operator under the Bus Leases are conferred on the Purchaser; and
- (d) every reference in the Bus Leases to *the Lessee* is to be read as if it were a reference to the Purchaser.

2.2 Release by the Lessor

With effect from the Effective Date, the Lessor releases the Operator from all its obligations and liabilities under the Bus Leases arising on or after the Effective Date.

3. Amendments to Bus Leases

3.1 Amendments to Bus Leases

The Bus Leases are amended with effect from the Effective Date as set out in the Schedule to this Novation Deed.

3.2 Construction of Bus Leases

Subject to the provisions of this Novation Deed, this Novation Deed and the Bus Leases will be read and construed as one document.

4. Indemnities

4.1 Operator indemnity

The Operator unconditionally and irrevocably indemnifies the Purchaser against any liability, cost, damages, debt, expense, tax or loss incurred or payable by the Purchaser as a result of any suit, action, demand, cause of action or proceeding against the Purchaser under or in respect the Bus Leases which relates to any act or omission of the Operator at any time before the Effective Date.

4.2 Purchaser indemnity

The Purchaser unconditionally and irrevocably indemnifies the Operator against any liability, cost, damages, debt, expense, tax or loss incurred or payable by the Operator as a result of any suit, action, demand, cause of action or proceeding against the Operator under or in respect the Bus Leases which relates to any act or omission of the Purchaser at any time on or after the Effective Date.

5. Representations and warranties

5.1 Representations and warranties

Each of the parties represents and warrant to the other parties that:

- (a) it is properly incorporated under the laws of the place of its incorporation;
- (b) it has full power and authority to enter into and perform its obligations under this Novation Deed and it has taken all corporate and other action necessary to authorise the execution, delivery and performance of this Novation Deed;
- (c) it benefits by entering into this Novation Deed;
- (d) this Novation Deed has created valid and binding obligations enforceable against it in accordance with its terms;
- (e) the execution of this Novation Deed and the performance by it of its obligations or the exercise of its rights under this Novation Deed does not and will not:
 - (i) contravene its constitution;
 - (ii) contravene a law or Authorisation or require that any Authorisation be obtained;
 - (iii) contravene any agreement or obligation binding on it or applicable to its assets, revenues or business;
 - (iv) exceed any limits on its powers or the powers of its directors;
- (f) in entering this Novation Deed, it is not acting as a trustee of any trust; and
- (g) no application or order has been made for winding-up or liquidation of it, no action has been taken to seize or take possession of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as they fall due.

5.2 Repetition

The representations and warranties in this Novation Deed are made on the date of this Novation Deed and are repeated on the Effective Date.

5.3 Reliance

Each party acknowledges that the other parties have entered into this Novation Deed in reliance on the representations and warranties in clause 5.1.

6. Costs, expenses and duties

6.1 Costs and expenses

Subject to clause 6.2, the parties agree to bear their own expenses of agreeing and executing this Novation Deed.

6.2 Other duties

The Purchaser agrees to pay all registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, registration, performance, enforcement or attempted performance or otherwise in respect of this Novation Deed or any payment or receipt or other transaction contemplated by this Novation Deed.

7. Goods and Services Tax

7.1 Interpretation

Words or expressions used in this clause 7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

7.2 Consideration is GST exclusive

Any consideration or amount to be paid or provided for a supply made under or in connection with this Novation Deed, unless specifically described as GST inclusive, does not include GST payable on that supply.

7.3 Gross up of consideration

If a party (**Supplier**) makes a supply under or in connection with this Novation Deed on which GST is imposed (not being a supply the consideration for which is stated specifically as GST inclusive):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) agrees to also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

7.4 Reimbursement

If a payment to a party under this Novation Deed is a reimbursement or indemnification, calculated by reference to a Liability incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Liability relates.

8. Notices

- (a) A notice, demand, consent, approval or communication given under this Novation Deed (**Notice**) must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this Novation Deed);
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 8(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

9. General provisions

9.1 Severability

A term or part of a term of this Novation Deed that is illegal or unenforceable may be severed from this Novation Deed and the remaining terms or parts of the terms of this Novation Deed continue in force.

9.2 Counterparts

This Novation Deed may be executed in counterparts. All executed counterparts constitute one Novation Deed.

9.3 Further action

Each party agrees to do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Novation Deed and any transaction contemplated by it.

9.4 Moratorium legislation

To the extent permitted by law, a provision of a law is excluded if it does or may, directly or indirectly:

- (a) lessen or vary in any other way the obligations of any party under this Novation Deed; or
- (b) delay, curtail or prevent or adversely affect in any other way the exercise by a party of any of its rights, remedies or powers under this Novation Deed.

9.5 Governing law and jurisdiction

This Novation Deed is governed by the laws of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Executed as a deed in Melbourne.

Execution

[Operator execution clause]

[Lessor execution clause]

[Purchaser execution clause]

Schedule

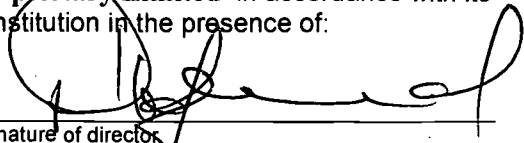
1. Terms and expressions defined in the Novation Deed have the same meaning when used in this Schedule.
2. For the purpose of the Novation Deed:
 - (a) the Bus Lease(s) are:
[##]; and
 - (b) the Effective Date is [insert date].
 - (c) the address, attention details and facsimile number for notices to the Purchaser are:
Address: [##]
Attention: [##]
Facsimile no: [##]

Signing page

EXECUTED as an agreement.

Executed by W Sinclair & Sons

Proprietary Limited in accordance with its constitution in the presence of:

 ←

Signature of director

DOUGLAS KEFFORD

Name of director (print)

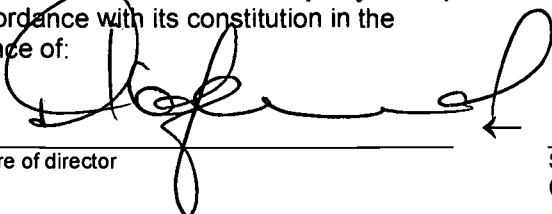
 ←

Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD

Name of director/company secretary (print)

Executed by Kefford Properties Pty Ltd
(as trustee for the Kefford Property Trust)
in accordance with its constitution in the presence of:

 ←

Signature of director

DOUGLAS KEFFORD

Name of director (print)

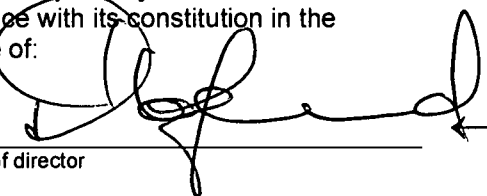
 ←

Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD

Name of director/company secretary (print)

Executed by Eastern Suburbs Omnibus
Services Proprietary Limited in accordance with its constitution in the presence of:

 ←

Signature of director

DOUGLAS KEFFORD

Name of director (print)

 ←

Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD

Name of director/company secretary (print)

Executed by [insert Purchaser] in accordance with its constitution in the presence of:

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Option to buy real property

89-93 Atherton Road, Oakleigh
Victoria 3166

Kefford Properties Pty Ltd (as trustee for the Kefford
Property Trust) (**Grantor**)

The Director of Public Transport (**Grantee**)

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Option to buy real property

89-93 Atherton Road, Oakleigh Victoria 3166

Information Table	3
Agreed Terms	3
1. Defined terms	3
2. Grant of Option	3
3. Option Fee	4
3.1 Acknowledgement of Option Fee	4
3.2 Option Fee property of Grantor	4
4. How the option is exercised	4
5. Contract	4
6. Effect of exercising the option	4
7. Grantor to execute copy contract	4
8. Grantor's obligations until option ends	4
9. Nominee	5
9.1 How a nomination is made	5
9.2 Effect of nomination	5
10. Notices	5
Schedule 1 – Option exercise notice (clause 4)	7
Schedule 2 – Nomination notice (clause 9)	8
Schedule 3 – Contract terms (clause 5)	9
Signing Page	10

Information table

Date

23 JUN 2008

Parties

Name **Kefford Properties Pty Ltd (as trustee for the Kefford Property Trust)**
ABN 64 005 222 015
 Short form name **Grantor**
 Notice details 14-16 Carrington Drive, Albion, Victoria 3020

Name **The Director of Public Transport under the Transport Act 1983 (Vic) on behalf of the Crown in right of the State of Victoria under the PTCA**
 Short form name **Grantee**
 Notice details Level 14, 121 Exhibition Street, Melbourne, Victoria, 3001
 Facsimile: 9655 8993
 Attention: Director

Agreed terms

1. Defined terms

In this document:

Contract means the contract of sale of the Property in the form required under clause 5.

Operator means W Sinclair & Sons Proprietary Limited ABN 67 004 482 142.

Option Fee means \$1.00.

Option Period means the period beginning on the date that the Director has given notice to the Operator terminating the Service Contract (**Termination Notice**) and ending at 5.00pm on the effective termination date set out in the Termination Notice.

Property means the property:

- (a) situated at and known as 89-93 Atherton Road, Oakleigh Victoria 3166 being the whole of the land described in certificate of title volume 8429 folio 661; and
- (b) includes any property the freehold title in which is acquired as a Contract Depot under clause 16 of the Service Contract after the date of this deed and before the commencement of the Option Period,

unless disposed of as contemplated under clause 21 of the Service Contract before the option is exercised.

Service Contract means the contract between the Grantee and the Operator dated on or about the date of this deed relating to the provision by the Operator of regular passenger services.

Termination Transfer Agreement means the agreement of that name annexed to the Service Contract, signed by the Grantor, and which the Operator delivered to the Grantee as a condition precedent to commencement of the Service Contract under which the Property will be transferred if and when the Service Contract is terminated.

Vendor's Statement means the statement under section 32 of the Sale of Land Act 1962 (Vic).

2. Grant of option

The Grantor grants to the Grantee an option to buy the Property on the terms in the Contract and the Termination Transfer Agreement.

3. Option Fee

3.1 Acknowledgment of Option Fee

The Grantor acknowledges receipt of the Option Fee.

3.2 Option Fee property of Grantor

The Option Fee is the property of the Grantor, whether or not the option is exercised.

4. How the option is exercised

To exercise the option, the Grantee must have given a Transfer Notice under the Service Contract and agrees to deliver to the Grantor before the end of the Option Period:

- (a) an option exercise notice in the form in Schedule 1; and
- (b) two copies of the Contract executed by the Grantee with the day of sale completed as the day on which the Grantee exercises the option.

5. Contract

The Contract will be prepared by the Grantee and be on the terms set out in Schedule 3.

6. Effect of exercising the option

If the Grantee exercises the option as set out in clause 4, then from the date the Grantee does so, the Grantor is bound to sell and the Grantee is bound to buy the Property on the terms in the Contract and the Termination Transfer Agreement. The notice delivered by the Grantee under clause 4(a) and the copies of the Contract delivered by the Grantee under clause 4(b) constitute evidence of the contract arising on exercise of the option.

7. Grantor to execute copy contract

Although a binding contract exists between the Grantor and the Grantee on exercise of the option as set out in clause 4, as soon as practicable after the option is exercised, the Grantor agrees to execute the Contract the Grantee has delivered under clause 4 and have one executed copy delivered to the Grantee together with the Vendor's Statement.

8. Grantor's obligations until option ends

Until the end of the Option Period the Grantor:

- (a) agrees to take all reasonable steps to maintain the Property and all improvements on it in the condition they are in at the date of this deed except for fair wear and tear;
- (b) agrees to repair any damage to the Property and the improvements on it except for fair wear and tear;
- (c) agrees to maintain insurances for all improvements on the Property for their full replacement value; and
- (d) agrees not to:
 - (i) sell, agree to sell or grant an option to purchase over the Property;
 - (ii) grant any mortgage, charge, easement, lease, or any other interest in the Property;
 - (iii) grant any licence over the Property; or
 - (iv) otherwise encumber or deal with the Property in any way.

9. Nominee

9.1 How a nomination is made

If the Grantee has not exercised the option, the Grantee may nominate another person to exercise the option by delivering to the Grantor a nomination notice in the form in Schedule 2 completed and executed by the Grantee and the nominee.

9.2 Effect of a nomination

If the Grantee nominates a nominee under clause 9.1, then from the date the Grantee delivers the nomination notice listed in that clause:

- (a) the nominee may exercise the option and the Grantee may not; and
- (b) this deed is to be read as if 'Grantee' is replaced by the name of the nominee whenever it appears in clauses 4, 6, 7 and Schedule 3;

10. Notices

A notice, consent, approval, request or demand in connection with this deed:

- (a) must be in writing;
- (b) must be signed by the party giving it or that party's authorised officer, attorney, or solicitor;
- (c) may be addressed to the relevant party's solicitor named in the Contract.
- (d) must be left at or posted by prepaid post (airmail, if posted outside Australia) to the address of the addressee, or sent to the addressee's facsimile number, or delivered to the facilities of a document exchange of which the addressee is a member, set out in the Contract or the Information table or, if the addressee notifies another address, facsimile number or document exchange for receipt of documents, then at or to that address or facsimile number or document exchange;
- (e) is taken to be received:

- (i) if hand delivered, on delivery;
 - (ii) if posted in Australia, on the third business day after posting;
 - (iii) if posted outside Australia, on the seventh business day after posting;
 - (iv) if delivered to the facilities of a document exchange, on the second business day after delivery there; or
 - (v) if sent by facsimile, when the machine sending the facsimile generates a report showing that the total number of pages of the facsimile were successfully sent to the facsimile number of the addressee; and
- (f) unless a later date is specified in it, takes effect on the date it is taken to be received.

Schedule 1 – Option exercise notice (clause 4)

To Kefford Properties Pty Ltd (as trustee for the Kefford Property Trust) ABN 64 005 222 015
(**Grantor**)

The Director of Public Transport (**Director**) exercises the option granted in the deed of option to buy real property between the Grantor and the Director dated [insert date] in relation to the property at 89-93 Atherton Road, Oakleigh Victoria 3166.

Date:

[insert Director's signoff]

Schedule 2 – Nomination notice (clause 9)

To: Kefford Properties Pty Ltd (as trustee for the Kefford Property Trust) ABN 64 005 222 015
(Grantor)

The Director of Public Transport (**Director**) nominates [insert name of nominee] to be his nominee to exercise the option to buy real property between the Grantor and the Director dated [insert date] in relation to the property at 89-93 Atherton Road, Oakleigh Victoria 3166.

The Nominee's address for service is: [insert]

Date:

[insert Director's signoff]

Schedule 3 – Contract terms (clause 5)

The Contract will be on the following terms:

1. The form will be the Law Institute of Victoria copyright Contract of Sale of Real Estate (With GST gross up wordings Approved VLRPA, EEA 1980, S53A 2001) and the Particulars of Sale will be completed as follows:
 - (a) the purchaser will be the Grantee and or nominee;
 - (b) the vendor will be the Grantor;
 - (c) the land will be the Property;
 - (d) there will be no chattels sold under the contract;
 - (e) the price will be the amount determined under the special condition of the contract described at paragraph 2(b) below;
 - (f) the deposit will be \$1.00 which must be paid on the day of sale;
 - (g) settlement will take place on the Transfer Date described in the Service Contract, however this may be extended in order to enable the purchaser to effect due diligence under paragraph 2(c) below; and
 - (h) the vendor will be obliged to deliver vacant possession of the property to the purchaser at settlement.
2. The Contract will contain special conditions in the following terms:
 - (a) the purchaser agrees to reimburse at settlement any GST for which the vendor is liable on the sale;
 - (b) the price will be determined as follows:
 - (i) the price will be the market value of the property on the day of sale as agreed by the vendor and the purchaser or, if they fail to agree within 14 days after the day of sale, determined by a valuer appointed by the President of the Australian Property Institute (Victorian Division) on the application of the purchaser;
 - (ii) the valuer must be a member of the Australian Property Institute (Victorian Division) having at least 15 years experience in valuing premises of a similar kind to the property;
 - (iii) the parties may each make written submissions to the valuer. The purchaser will have the right to make an additional written submission during or after the due diligence period referred to in paragraph 2(c) below. The valuer must not make a determination of the market value of the property until after:
 - (A) the purchaser makes this additional written submission; or
 - (B) the purchaser tells the valuer that the purchaser will not make the additional submission;
 - (iv) the valuer must be instructed to determine the market value on the basis that:

- (A) the property may be used for any purpose permitted by the planning regulations and guidelines of the relevant Government Body applicable as at the date of valuation; and
 - (B) the market value must reflect any actual or likely contamination of, or contamination liability attached or relating to, the property;
 - (v) the valuer must be instructed to make the determination not less than seven days before the date fixed for settlement; and
 - (vi) the valuer will act as an expert and the valuer's determination will bind the parties.
- (c) unless the purchaser has done so prior to exercising the option, the purchaser will have the right of access to the property and records in relation to the property from the day of sale to carry out the usual purchaser's due diligence including, without limitation, as to the condition of the improvements on the property, the extent of any contamination of the property and, where the contamination has or may have migrated from the property, the extent of any contamination of surrounding properties.

Signing page

EXECUTED as a deed

Dated [23 JUN 2008]

Signature 

Hector McKenzie

[Name and title] ~~Delegate of the~~ Director of Public Transport

Witnessed by:

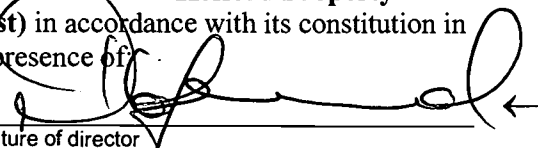


ERICA KHENG LI CHAN

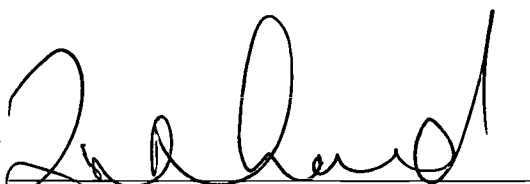
525 Collins Street, Melbourne

~~An Australian Legal Practitioner within the~~
meaning of the Legal Profession Act 2004

Executed by Kefford Properties Pty Ltd
(as trustee for the Kefford Property
Trust) in accordance with its constitution in
the presence of:


Signature of director

DOUGLAS KEFFORD
Name of director (print)


Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD
Name of director/company secretary (print)

AO Direct Deed

Metropolitan Bus Services Contract – Local Services

The Director of Public Transport (**Director**)

Kefford Properties Pty Ltd (as trustee for the Kefford Property Trust) (**Associated Operator**)

W Sinclair & Sons Proprietary Limited

Eastern Suburbs Omnibus Services Proprietary Limited
(each an **Operator** and together the **Operators**)

In relation to the depot located at Atherton Road, Oakleigh that is owned by the Associated Operator and made available to the Operator for use in the provision of Local Services.

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

AO Direct Deed

Details	5
Agreed terms	6
1. Defined terms & interpretation	6
1.1 Defined terms	6
1.2 Interpretation	7
1.3 Determination, Statement and certificate conclusive	7
1.4 Delegation	7
1.5 Director's discretion	7
1.6 Consents and approvals	8
1.7 Transfer of functions	8
2. MBSC	8
3. Consent, acknowledgements and agreements	8
4. General undertakings	9
4.1 Undertakings of the Associated Operator	9
4.2 Undertakings of the Director	9
5. Termination or suspension of AO Subcontract	9
5.1 Termination or suspension for default	9
5.2 Cure rights	10
5.3 Application of clauses	10
6. Interim Operator	10
6.1 Appointment	10
6.2 Associated Operator to assist	11
7. Acquisition on Termination	11
7.1 Option	11
7.2 Conditions	11
7.3 Due diligence - AO Contract Depots	11
7.4 Allocation Statement	12
7.5 Audit of Bus condition	12
7.6 Leased Assets	12
7.7 Operator to facilitate	13
7.8 Transfer of Staff	13
7.9 Restrictions relating to Staff	14
7.10 Intellectual Property licences	14
7.11 Intellectual Property Indemnity	14
7.12 Associated Operator's End of Term Option	14
7.13 Going concern	15
7.14 Operator to facilitate	15
7.15 No frustration	16
8. Dealing with Assets	16
8.1 Restriction in relation to AO Contract Buses and AO Contract Depots	16
8.2 Notification in relation to AO Contract Depots	16
8.3 Restrictions in relation to Leases	16

8.4	Restrictions on Nominated Contract Buses	16
8.5	Consequences of dealings with Assets	17
9.	Representations and warranties	17
9.1	Warranties correct	17
9.2	Notification of change	17
9.3	Reliance on representations and Warranties	17
9.4	No representations or warranties by the Director	17
10.	Director's Rights	17
10.1	Exercise Events	17
10.2	General powers	17
10.3	Specific powers	17
10.4	Director's specific Termination powers	19
10.5	Discharge or acquire Security Interest	19
10.6	Period for exercise	19
10.7	Co-operation in exercise of power of sale	20
10.8	Appointment of Attorney	20
10.9	Enforcement and other expenses	20
10.10	General indemnity	21
10.11	Equitable relief	21
10.12	Receipt by Director	21
10.13	Third parties need not enquire	22
10.14	Notice, demand or lapse of time required by Law	22
10.15	Director and Attorney not restricted	22
10.16	Director and Attorney not mortgagee in possession or liable	22
10.17	Director may set off	22
10.18	Reinstating avoided transaction	22
10.19	Authorised Representatives and communications	23
10.20	Performance	23
10.21	Not a charge	23
11.	Dispute resolution	23
11.1	Notice of dispute	23
11.2	Parties to meet	23
11.3	Referral to senior executives	23
11.4	Referral to Expert or Arbitrator	24
11.5	Issues for resolution by an Expert	24
11.6	Selection of Arbitrator or Expert	24
11.7	Procedure on arbitration	24
11.8	Procedure on resolution by Expert	24
11.9	Court proceedings and other relief	24
11.10	Exclusion	24
11.11	Performance not affected	24
12.	GST	25
12.1	Interpretation	25
12.2	Consideration is GST exclusive	25
12.3	Gross up of consideration	25
12.4	Reimbursement	25
13.	General	25
13.1	Alterations and termination	25

13.2	Independent	25
13.3	Assignment	25
13.4	Costs	26
13.5	Survival	26
13.6	Counterparts	26
13.7	Contra proferentem	26
13.8	No merger	26
13.9	Entire agreement	26
13.10	Trustee Capacity	26
13.11	Further action	27
13.12	Document subject to Transport Act and PTCA	27
13.13	Severability	27
13.14	Waiver	27
13.15	Rights held on trust	27
13.16	Governing law and jurisdiction	27
13.17	Notices and other communications	27
Schedule 1 – Warranties		29
Signing page		31

Details

Date

23 JUN 2008

Parties

Name **The Director of Public Transport** under the *Transport Act 1983* (Vic) on behalf of the Crown in right of the State of Victoria under the PTCA

Short form name **Director**

Notice details Level 14, 121 Exhibition Street, Melbourne, Victoria 3000

Name **Kefford Properties Pty Ltd (as trustee for the Kefford Property Trust)**
ABN 64 005 222 015

Short form name **Associated Operator**

Notice details 14-16 Carrington Drive, Albion, Victoria 3020

Name **W Sinclair & Sons Proprietary Limited ABN 67 004 482 142**

Short form name **Operator**

Notice details 9 Slough Road, Altona, Victoria 3018

Name **Eastern Suburbs Omnibus Services Proprietary Limited**
ABN 51 004 231 396

Short form name **Operator**

Notice details 9 Slough Road, Altona, Victoria 3018

Background

- A The Director has agreed to allow the Operators to subcontract the provision of part of the Local Services to the Associated Operator.
- B The Associated Operator has agreed to grant the Director rights over its assets including on the termination of the MBSC.
- C This Deed sets out the parties' agreement as to how the Director may exercise his rights, and other relevant matters between the parties.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

In this Deed, unless the context requires another meaning:

AO Contract Bus means a Contract Bus owned or leased by the Associated Operator and used or to be used in the provision of any of the Local Services.

AO Contract Depot means a Contract Depot owned or leased by the Associated Operator and used or to be used in the provision of any of the Local Services, including the land, buildings and other improvements comprising the Depot.

AO End of Term Depot Option Deed has the meaning given in clause 7.12(b).

AO End of Term Option has the meaning given in clause 7.12(a).

AO Subcontract means any agreement between the Operator and the Associated Operator, under which the Associated Operator agrees to provide services or assets required for the Operators to fulfil their obligations under the MBSC.

Attorney means an attorney appointed by the Director under clause 10.8.

Arbitrator has the meaning given in clause 11.4.

Deed means this AO direct deed, including its schedules and annexures.

Default means:

- (a) any breach by any Operator of any of its obligations under the AO Subcontract or any event of default, termination event or similar event (whatever called) under the AO Subcontract; or
- (b) any other event or circumstance which, alone or with the giving of notice or passage of time or both, would entitle the Associated Operator to avoid, terminate, discharge or rescind the AO Subcontract or treat it as repudiated or to suspend the Associated Operator's performance of obligations under it.

Default Notice has the meaning given in clause 5.1(a).

Dispute Notice has the meaning given in clause 11.1.

Enforcing Party means the Director or any agent, attorney or nominee appointed or acting under this Deed, or the MBSC.

Exercise Event means the giving of:

- (a) a Termination Notice under clause 28.3 of the MBSC; or
- (b) a Step-in Notice under clause 27.1 of the MBSC.

Expert has the meaning given in clause 11.4.

MBSC means the Metropolitan Bus Services Contract dated on or about the date of this Deed between the Operators, the Director and the Parent Guarantor.

Potential Default means any event or circumstance that, in the reasonable opinion of the relevant party, indicates a material risk of Default.

Power means any right, power, authority, discretion or remedy under a document or applicable law.

Purchaser has the meaning given to it in clause 7.1(a).

Reporting Body means:

- (a) a Government Body; and
- (b) a self-regulatory organisation established under statute or a stock exchange.

Termination Date means:

- (a) the effective date of termination of the MBSC or the scheduled expiry date of the MBSC, whichever is applicable; or
- (b) if the Operator and the Director extend the MBSC under clause 5.3 of the MBSC or renew the MBSC under clause 5.2 of the MBSC, the date of termination or scheduled expiry of the MBSC as extended or renewed whichever is applicable.

Termination Transfer Agreement Date has the meaning given to it in clause 7.2.

Transaction Document has the meaning given in the MBSC but also includes:

- (a) this Deed; and
- (b) any other document or Deed that the Director and the Associated Operator agree is to be a Transaction Document for the purposes of this Deed.

1.2 Interpretation

- (a) A term defined in the MBSC, and not defined in this Deed, has the same meaning when used in this Deed.
- (b) The provisions of clause 1.2 and clause 1.3 of the MBSC are incorporated into, and apply to, this Deed as if set out in full and all references to:
 - (i) *this document*, except in clause 1.3(c), were references to this Deed; and
 - (ii) *Operator* were references to Associated Operator.

1.3 Determination, Statement and certificate conclusive

Except where otherwise provided in this Deed any determination, statement or certificate by the Director or his Authorised Representative provided for in this Deed is conclusive and binds the parties in the absence of manifest error.

1.4 Delegation

The Director is permitted under section 9(7) of the Transport Act and section 35(2) of the PTCA to delegate his powers under this Deed to another person. If he does so, he agrees to give notice to the Nominated Operator and the Nominated Operator will be entitled to rely on that notice of delegation.

1.5 Director's discretion

The parties acknowledge and agree that in the interpretation of this Deed:

- (a) anything which the Director does, fails to do or purports to do under his executive powers or his functions and powers under any Law will not be deemed to be an act or omission by the Director under this Deed;

- (b) unless by Law, or in the exercise of his executive powers, the Director has a duty or is required to act or not act, the Director is not relieved from any Claim that any Operator may have against the Director for exercising or not exercising any of his functions or powers in a manner contrary to an express obligation of the Director under this Deed, the existence of any obligation and the existence and amount of any Claim to be assessed assuming clause 1.5(a) does not apply;
- (c) nothing in a Transaction Document will in any way:
 - (i) prevent the exercise of any statutory power or discretion by any Government Body;
 - (ii) require the Director to exercise a power or discretion in a manner that promotes the objectives and expected outcomes of a Transaction Document if the Director regards that exercise as not in the public interest;
 - (iii) require the Director to develop or implement new policy in a manner that is only consistent with the objectives and expected outcomes of a Transaction Document;
 - (iv) require the Crown in right of the State to legislate in the future in a manner that is only consistent with the objectives and expected outcomes of a Transaction Document; or
 - (v) require the Director to act in any other way that the Director regards as not in the public interest.

1.6 Consents and approvals

Unless expressly provided otherwise, if the doing of any act, matter or thing under this Deed is dependent on the consent or approval of the Director, the consent or approval may be given conditionally or unconditionally or withheld by the Director, in his absolute and unfettered discretion.

1.7 Transfer of functions

The Associated Operator acknowledges that the Director may be reconstituted, renamed or replaced and that some or all of the powers of the Director may be transferred to, or vested in, a Government Body. If that occurs, references in this Deed to the Director must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers.

2. MBSC

If the MBSC requires the Operator to procure that the Associated Operator do or refrain from doing any thing, the Associated Operator undertakes to the Director to do or refrain from doing that thing.

3. Consent, acknowledgements and agreements

The Associated Operator acknowledges and agrees that:

- (a) the exercise of any of the Director's Powers under the MBSC or this Deed will not of itself contravene or constitute a Default under the AO Subcontract or entitle the Associated Operator to exercise any Power (including termination) under it;
- (b) any Enforcing Party may, at any time after the Director has given the Associated Operator a copy of the Step-in Notice given to the Nominated Operator under the MBSC, exercise all or any of the Powers, and perform all or any of the obligations, of the Operators under

or in relation to the AO Subcontract as if it were an Operator to the exclusion of the Operators;

- (c) without limiting the liability of the Operators (who continue to be responsible for the performance of their obligations under the AO Subcontract), no Enforcing Party will be liable, or taken to have assumed liability, for any obligation of an Operator under the AO Subcontract by reason only of:
 - (i) the exercise of any of the Director's Powers under the MBSC or this Deed; or
 - (ii) the exercise of any of the Operators' Powers, or the performance of any of their obligations, under the AO Subcontract; and
- (d) without limiting clause 3(c), nothing in this Deed requires an Enforcing Party to adopt or accept the obligations of the Operators, in whole or in part, under the AO Subcontract.

4. General undertakings

4.1 Undertakings of the Associated Operator

Unless the Director otherwise agrees in writing, the Associated Operator must:

- (a) not materially amend or supplement, or consent to any material amendment or supplement of, the AO Subcontract;
- (b) not, except as permitted by clause 5:
 - (i) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of; or
 - (ii) suspend the performance of any of its obligations under, the AO Subcontract;
- (c) notify the Director of any Default as soon as it becomes aware of it;
- (d) use its reasonable endeavours to notify the Director of a Potential Default within a reasonable period of becoming aware of it; and
- (e) promptly provide a copy to the Director of any notice given or received by it terminating, or suspending the performance of any obligations under, the AO Subcontract.

4.2 Undertakings of the Director

Unless the Associated Operator otherwise agrees in writing, the Director must:

- (a) give the Associated Operator a copy of any notice given to the Nominated Operator extending or renewing the term of the MBSC, promptly after that notice is given to the Nominated Operator; and
- (b) give the Associated Operator a copy of any notice given to the Nominated Operator terminating the MBSC, promptly after that notice is given to the Nominated Operator.

5. Termination or suspension of AO Subcontract

5.1 Termination or suspension for default

- (a) Subject to clause 5.1(b), the Associated Operator may only terminate, or suspend the performance of its obligations under, the AO Subcontract as a result of a Default under the terms of the AO Subcontract and if:

- (i) the Associated Operator has given notice to the Director and the Nominated Operator specifying the Default (**Default Notice**); and
- (ii) either:
 - (A) if the Default is capable of remedy, the Default has not been remedied within 30 days of receipt of the Default Notice by the Director and the Nominated Operator or any longer period allowed for remedy of the Default under the AO Subcontract; or
 - (B) if the Default is not capable of remedy, all of the obligations of the Operators under the AO Subcontract (excluding any obligation the subject of an existing Default and accrued obligation) do not commence and continue to be performed within 30 days of receipt of the Default Notice by the Director and the Nominated Operator or any longer period allowed under the AO Subcontract.
- (b) The Associated Operator must not terminate, or suspend the performance of its obligations under, the AO Subcontract as a result of a Default if:
 - (i) the Director has notified the Associated Operator that he is entitled to exercise his Step-In Rights under the MBSC; and
 - (ii) an Enforcing Party is performing all of the obligations of the Operators under the AO Subcontract (excluding any obligation the subject of an existing Default and accrued obligations).
- (c) Clause 5.1(a) and 5.1(b) do not prejudice the Associated Operator's rights against the Operator in respect of remedies other than termination of the AO Subcontract or suspension of the performance by the Associated Operator of its obligations under the AO Subcontract.

5.2 Cure rights

- (a) On becoming aware of any Default, an Enforcing Party may take steps to:
 - (i) remedy, or procure the remedy of, the Default; or
 - (ii) if the Default is not capable of remedy, commence and continue to perform the obligations of the Operator under the AO Subcontract.
- (b) The Associated Operator must promptly provide the Enforcing Party with any relevant information in its possession reasonably requested by an Enforcing Party for the purpose of exercising its Powers under this Deed (including details of any steps which the Associated Operator considers appropriate to be taken to remedy the Default or, if the Default is not capable of remedy, to commence and continue to perform all of the obligations of the Operator under the AO Subcontract).

5.3 Application of clauses

Clause 5.1 applies despite anything in the AO Subcontract or any other document and whether or not the Director has exercised any Power under the MBSC or this Deed.

6. Interim Operator

6.1 Appointment

The Director may appoint an entity to provide the Local Services or services substantially similar to the Local Services on a temporary or interim basis following termination of the MBSC under clause 28.3 of the MBSC on terms agreed between the Director and the Interim Operator.

6.2 Associated Operator to assist

Without limiting the Associated Operator's undertakings under clause 2 and clause 4, the Associated Operator acknowledges that Continuity of the Local Services is crucial to the Director and the users of the Local Services and agrees to comply with the provisions of clause 7 and 8 and otherwise to cooperate in all respects and do all things reasonably requested by the Director to facilitate the transfer of the Bus Operations (including, if applicable, the transfer of the Assets) from the Associated Operator to the Interim Operator following the giving of a Termination Notice.

7. Acquisition on Termination

7.1 Option

- (a) Without limiting the Associated Operator's undertakings under clause 2 and clause 4, and subject to clause 7.6 and 7.10, the Associated Operator grants to the Director or his nominee (**Purchaser**) an option to acquire (by way of sale, assignment or novation as the case requires) any or all of the Assets used in the Bus Operations (to the extent that they are owned, leased or otherwise used by the Associated Operator), at the Transfer Price, to be exercised by providing the Associated Operator with a copy of the Transfer Notice given to the Nominated Operator under the MBSC.
- (b) If a copy of the Transfer Notice is given to the Associated Operator by the Director, the Associated Operator must not Dispose of any Assets the subject of that Transfer Notice after it has been given.

7.2 Conditions

Without limiting the Associated Operator's undertakings under clause 2 and clause 4, and subject to clause 7.6 and 7.10, the Associated Operator agrees to sell, assign or novate the Assets owned, leased or otherwise used by it and which are the subject of a Transfer Notice to the Purchaser on the following terms and conditions:

- (a) the purchase price for those Assets will be the Transfer Price;
- (b) those Assets must be free from encumbrances in the nature of Security Interests (except if the transfer is effected under an Allocation Statement);
- (c) the Purchaser may conduct due diligence on those Assets;
- (d) in relation to the Owned Depots, in accordance with any Termination Depot Option Deed;
- (e) the Termination Transfer Agreement will be entered into between the Purchaser and the Associated Operator within 14 days of the date that the Associated Operator receives a copy of the Transfer Notice (**Termination Transfer Agreement Date**);
- (f) the Associated Operator for valuable consideration, to secure the performance of its obligation under clause 7.2(e) to enter into the Termination Transfer Agreement, irrevocably appoints the Director as its attorney to execute the Termination Transfer Agreement and all ancillary documents and to do all other things necessary to complete the transactions contemplated by the Termination Transfer Agreement, if the Associated Operator has not signed the Termination Transfer Agreement by the Termination Transfer Agreement Date. The Associated Operator agrees to ratify anything done by the Director acting under this power of attorney.

7.3 Due diligence - AO Contract Depots

The Associated Operator grants, and agrees to procure that any associate of the Associated Operator that owns an AO Contract Depot grants, to the Director, the Director's Associates and a

Successor Operator, the right of access to that AO Contract Depot to carry out the usual purchaser's due diligence including, without limitation, as to the condition of improvements on the property, the extent of contamination of the property and, where the contamination has or may have migrated from the property, the extent of any contamination of the surrounding property.

7.4 Allocation Statement

- (a) The parties acknowledge and agree that:
 - (i) this clause 7 (other than clause 7.12) is a transfer provision for the purposes of Division 5 of Part 3 of the PTCA;
 - (ii) the Associated Operator is a person to whom the Allocation Statement mechanism under the PTCA applies;
 - (iii) the Assets may be transferred by Allocation Statement under the PTCA if the transfer process provided for in this clause 7 is not completed due to any action or inaction on the part of the Associated Operator; and
 - (iv) the Assets are *relevant property* for the purposes of Division 5 of Part 3 of the PTCA.
- (b) If the Termination Transfer Agreement has not been entered into by the Termination Transfer Agreement Date the Director may, as soon as practicable after the Termination Transfer Agreement Date, sign and give to the Minister an Allocation Statement allocating the Asset to the Purchaser with effect from the Termination Transfer Date at the Transfer Price.
- (c) Despite that the Termination Transfer Agreement may have been entered into, if the Director considers that the transfer of any Asset under that Termination Transfer Agreement may not occur on or before the Transfer Date, the Director may sign and give to the Minister an Allocation Statement allocating that Asset to the Purchaser with effect from the Transfer Date at the Transfer Price.
- (d) The Director agrees to take all reasonable steps to:
 - (i) procure the Minister's approval of an Allocation Statement given under clause 7.4(b) or (c); and
 - (ii) ensure that the Allocation Time fixed by the Minister for the purpose of that Allocation Statement is the Transfer Date and that the purchase price for the Assets is the Transfer Price.

7.5 Audit of Bus condition

Prior to the Transfer Date the Director and a valuer appointed under the MBSC may inspect any or all of the AO Contract Buses to be transferred under this clause for the purpose of ascertaining their condition and the extent of compliance with clause 11.1 of the MBSC.

7.6 Leased Assets

Without limiting the Associated Operator's undertakings under clause 2 and clause 4:

- (a) where an Asset is leased under a finance Lease the Associated Operator agrees, where requested by the Director, to use its reasonable endeavours to procure the assignment or novation of that Lease to the Purchaser by the Transfer Date and if that assignment or novation is considered by the Director to be unlikely to be effected by the Transfer Date then the Associated Operator agrees to exercise any right it has to acquire ownership of that Asset and transfer it under this clause; and

- (b) where an Asset is leased i under an operating Lease the Associated Operator agrees, where requested by the Director, to use its reasonable endeavours to procure the assignment or novation of its interest in that Lease to the Purchaser by the Transfer Date.

7.7 Operator to facilitate

Without limiting the Associated Operator's undertakings under clause 2 and clause 4:

- (a) the Associated Operator agrees to facilitate the transfer of the Assets under this clause 7, and will not do anything which is likely to frustrate that transfer; and
- (b) following the giving of a Transfer Notice, the Associated Operator agrees to allow the Purchaser reasonable access to the Assets and the Staff engaged by the Associated Operator to facilitate completion of the sale, assignment or novation of the Assets under this clause.

7.8 Transfer of Staff

Without limiting the Associated Operator's undertakings under clause 2 and clause 4:

- (a) to the extent it is required to do so under the AO Subcontract, the Associated Operator agrees to use its best endeavours to ensure that an appropriate number of employed Staff (having regard to the number, skills, qualifications and experience of Staff required by the Operator to operate the Bus Operations but excluding the Exempt Staff) (**Available Staff**) are available to be offered employment by the Purchaser following the Transfer Date;
- (b) the Director agrees to procure any Purchaser to make offers of employment to all of the Available Staff which:
 - (i) are on terms no less favourable considered as a whole to the Available Staff than their terms of employment with the Associated Operator;
 - (ii) provide for continuity of Staff Liabilities and long service leave entitlements;
 - (iii) meet the relevant criteria of offers of acceptable alternative employment set out in the enterprise or workplace agreement certified or lodged under the *Workplace Relations Act 1996* (Cth) applicable to the Staff; and
 - (iv) take effect from the end of the Term;
- (c) in relation to Available Staff who accept offers of employment from the Purchaser (**Transferring Staff**), the Associated Operator agrees to pay to the Purchaser an amount (**Transferring Staff Payment**) for assuming the Staff Liabilities of those Transferring Staff calculated as follows:

$$\text{Transferring Staff Payment} = (1 - T) \times SLTS$$

where:

T = the corporate tax rate (expressed as a decimal figure) applicable on the Transfer Date;

$SLTS$ = the aggregate of the Staff Liabilities for all Transferring Staff (less the Sick Leave Discount) calculated and valued by an independent actuary who:

- (i) is jointly appointed by the Director, the Operator and the Purchaser;
- (ii) must apply relevant Australian accounting standards; and
- (iii) must apply any assumptions agreed to by the Director, the Operators and the Purchaser,

Sick Leave Discount = 80% of the Staff Liabilities that relate specifically to the sick leave entitlements of the Transferring Staff,

and which will be deducted as set out in Schedule 7 item 1 of the MBSC; and

- (d) in relation to Available Staff who do not accept an offer by the Purchaser under clause 7.8(b) (**Non-Transferring Staff**) the Associated Operator remains liable for, and agrees to indemnify the Director and Purchaser for, any Staff Liabilities for the Non-Transferring Staff.

7.9 Restrictions relating to Staff

Unless required under any award, certified agreement or workplace agreement, under contract or any law, the Associated Operator agrees not to vary, or purport or promise to vary, the terms or conditions of employment of any member of Staff (other than the Exempt Staff) or to engage additional Staff after a Termination Notice is given.

7.10 Intellectual Property licences

Without limiting the Associated Operator's undertakings under clause 2 and clause 4, to the extent that:

- (a) any Bus Operations IP that is owned by the Associated Operator is not transferred under this clause 7, the Associated Operator agrees to grant to the Director or any Successor Operator, Interim Operator or Step-in Party appointed by the Director, an irrevocable, perpetual, non-exclusive, royalty free, transferable licence (with a right to sub-licence) to use that Bus Operations IP for the purpose of permitting any Successor Operator, Interim Operator or Step-in Party to provide or promote the Local Services or equivalent services during any Step-in Period or following Termination and for no other purpose; and
- (b) the Associated Operator makes use of Intellectual Property in conducting the Bus Operations which is not owned by it or the Director, the Associated Operator agrees to use its best endeavours to ensure that it will be able to assign or novate that Intellectual Property under clause 7.1 or to grant the Director a licence to that Intellectual Property if required on the terms stated in clause 7.10(a).

7.11 Intellectual Property Indemnity

The Associated Operator agrees to indemnify and hold the Director and any Successor Operator, Interim Operator or Step-in Party harmless against all Losses arising out of or in connection with the Director's or any Successor Operator's, Interim Operator's or Step-in Party's use of the Intellectual Property in a manner contemplated by clause 7.10 infringing any third party's rights in the Intellectual Property.

7.12 Associated Operator's End of Term Option

- (a) Despite any other provision of this document the Associated Operator may, at least 18 months before the End of Term, grant to the Director or his nominee an option to acquire all of the Assets owned, leased or otherwise used by the Associated Operator in the Bus Operations on the same terms as if he had a termination option under clause 7.1 to 7.11 inclusive (**AO End of Term Option**).
- (b) The AO End of Term Option will be granted by the delivery to the Director of written notice and (if the option relates to the freehold in any AO Contract Depot) a counterpart of the Termination Depot Option Deed (in relation to any AO Contract Depot):
 - (i) varied by:
 - (A) replacing the definition of Option Period with the following:

***Option Period** means the period beginning on the date of delivery of this document to the Director as required by clause 30.12(b) of the Service Contract (and clause 7.12(b) of the AO Direct Deed entered into between the Grantee, the Operator and the Grantor) and ending at 5.00pm on the date on which the Term of the Service Contract expires.;*

- (B) amending clause 4 of the Termination Depot Option Deed to read as follows:

To exercise the option, the Grantee agrees to deliver to the Grantor before the end of the Option Period:

- (a) *an option exercise notice in the form in Schedule 1; and*
(b) *two copies of the Contract executed by the Grantee with the day of sale completed as the day on which the Grantee exercises the option; and*

- (ii) executed by the Associated Operator,

(AO End of Term Depot Option Deed).

- (c) Where the AO End of Term Option is exercised:

- (i) the Director may, by giving at least two months written notice extend the Term on the same terms and conditions as the MBSC for six or 12 months;
- (ii) the Director will prepare and deliver to the Associated Operator a transfer agreement in substantially the same form as the Termination Transfer Agreement for execution by the Associated Operator and the power of attorney granted by the Operator under clause 7.2(f) will apply to allow the Director to execute the transfer agreement if the Associated Operator has not provided the executed transfer agreement to the Director within five Business Days. For the purposes of this clause 7 and the AO End of Term Depot Option Deed the transfer agreement will be referred to as the Termination Transfer Agreement;
- (iii) all references in clauses 7.1 to 7.11 and Schedule 7 of the MBSC to:
- (A) the Transfer Date will be deemed to be references to the date that is 30 days after delivery of the counterpart of the AO End of Term Depot Option Deed under clause 7.12(b);
- (B) the Termination Notice will deemed to be references to the counterpart of the AO End of Term Depot Option Deed delivered by the Associated Operator under clause 7.12(b); and
- (C) the Transfer Notice will deemed to be references to the notice by which the Director exercises the option granted under clause 7.12(b).

7.13 Going concern

The Associated Operator agrees to maintain and manage the Assets in a way that a Successor Operator, Interim Operator or Step-in Party is able at any time to take over the Bus Operations as a going concern where the MBSC is Terminated under clause 28.3 of the MBSC.

7.14 Operator to facilitate

If the Bus Operations are to be transferred to an Interim Operator or a Successor Operator following Termination, the Associated Operator agrees to facilitate in all respects the transfer of the Bus Operations to the Interim Operator or Successor Operator as the case may be, including the assignment, transfer or novation of any relevant contract used in the Bus Operations.

7.15 No frustration

The Associated Operator agrees not to do anything which directly or indirectly avoids, or materially prejudices or frustrates the transfer of the Bus Operations as a going concern under clause 30 of the MBSC following Termination of the MBSC.

8. Dealing with Assets

8.1 Restriction in relation to AO Contract Buses and AO Contract Depots

Without limiting the Associated Operator's undertakings under clause 2 or clause 4 but subject to clauses 8.3 and 8.4, the Associated Operator agrees not to:

- (a) create or allow to exist any Security Interest over any AO Contract Bus, AO Contract Depot or Lease; or
- (b) Dispose of any AO Contract Bus or AO Contract Depot or other Asset (directly or indirectly), other than in accordance with the Bus Replacement Program or unless the Asset Disposed of is being replaced by an asset having a similar or better functionality or condition,

where the effect of that action would materially and adversely affect:

- (c) the Operator's ability to provide the Local Services; or
- (d) the Continuity of the Local Services; or
- (e) the Director's rights under a Transaction Document.

8.2 Notification in relation to AO Contract Depots

The Associated Operator agrees to provide reasonable prior notification to the Director of any proposed Disposal of an AO Contract Depot.

8.3 Restrictions in relation to Leases

The Associated Operator agrees not to except with the prior written consent of the Director:

- (a) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept the repudiation of a Lease;
- (b) suspend the performance of any of its obligations under a Lease;
- (c) do or permit anything that would enable or give grounds to another party to do anything referred to in clauses 8.3(a) or (b) in relation to a Lease; or
- (d) materially amend or supplement any provision of a Lease, or waive or grant any indulgence in respect of any material provision of that Lease that would have an effect on the exercise of any power or the performance of any obligation under that Lease,

where the effect of that action would materially and adversely affect:

- (e) the Operator's ability to provide the Local Services; or
- (f) the Continuity of the Local Services; or
- (g) the Director's rights under a Transaction Document.

8.4 Restrictions on Nominated Contract Buses

Without limiting the Associated Operator's obligations under clause 2 and clause 4 and despite clause 8.3 the Associated Operator agrees not to (without the Director's prior written consent) Dispose of any Nominated Contract Bus (directly or indirectly), other than in accordance with the Bus Replacement Program.

8.5 Consequences of dealings with Assets

If the Director considers that any action of the Associated Operator breaches clauses 8.4 or under clause 8.1 or 8.3 is likely to result in one or more of the consequences in clauses 8.1(c), 8.1(d), 8.1(e) or clauses 8.3(e), 8.3(f), 8.3(g), then the Director may issue a Show Cause Notice under clause 28.2 of the MBSC.

9. Representations and warranties

9.1 Warranties correct

The Associated Operator represents and warrants to the Director that the warranties set out in Schedule 1 are at the date of this Deed, and will be at the Commencement Date, true, correct and not misleading, except as disclosed in writing to and accepted by the Director prior to the relevant date.

9.2 Notification of change

The Associated Operator agrees to notify the Director immediately on becoming aware that any of the warranties set out in Schedule 1 has become untrue or misleading.

9.3 Reliance on representations and Warranties

The Associated Operator acknowledges that the Director has entered, or will enter, into the Transaction Documents in reliance on the Warranties.

9.4 No representations or warranties by the Director

The Associated Operator acknowledges that, before entering into any Transaction Document, it made all enquiries that it wanted to make in relation to the subject matter of the Transaction Documents, and it did not rely on any representation or warranty by or on behalf of the Director. The Associated Operator waives all Claims in connection with any representation or warranty made by or on behalf of the Director.

10. Director's Rights

10.1 Exercise Events

This clause 10 does not limit the Associated Operator's undertakings in clause 2 or clause 4 and applies if an Exercise Event occurs and if the Director has given the Associated Operator a copy of the notice of the relevant Exercise Event.

10.2 General powers

The Director or a Step-in Party may, without demand or notice to anyone (unless notice is required as described in clause 10.14), do all things that a mortgagee in possession of the Assets can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee in possession of the Assets;
- (b) given to a receiver under the Corporations Act; and
- (c) specified in clause 10.3 and clause 10.4,

provided that, if the Director has given a Step-in Notice, neither the Director or the Step-in Party may do anything contemplated in or permitted by clause 10.4.

10.3 Specific powers

The Director or a Step-in Party may do everything they think necessary to do any or all of the following in connection with their Powers to ensure Continuity of the Local Services, whether in their or the Associated Operator's name or otherwise and whether or not they have possession of the Assets including:

- (a) **(recover, possess and control)** access, recover, manage, take or give up possession or control of any Assets;
- (b) **(receive income and profits)** receive the income and profits of the Assets;
- (c) **(carry on business)** carry on, promote, restructure or participate in the Associated Operator's business in relation to the Assets, and access the land or premises of that business;
- (d) **(insurance)** insure the Assets and settle and compromise insurance claims;
- (e) **(improve or invest)** maintain, invest, deposit, improve or alter the Assets to improve their value or saleability or to obtain income or returns from it (including to acquire or take on lease any asset as part of the Assets or build, rebuild, pull down or alter a structure or improvement on any Depot);
- (f) **(deposited documents)** complete and deal with any document deposited with the Director relating to Assets, including any transfer in blank;
- (g) **(assume obligations)** assume obligations of the Associated Operator or both;
- (h) **(accounts)** operate bank accounts forming part of the Assets and open and operate further bank accounts in the Associated Operator's name and to the Associated Operator's exclusion;
- (i) **(contracts, instruments and rights)** perform or observe the Associated Operator's obligations or enforce or exercise the Associated Operator's rights, powers, discretions or remedies (or refrain from doing so) under:
 - (i) a contract, instrument, arrangement forming part of the Assets (including voting and proxy rights);
 - (ii) a Transaction Document (including to cure an Exercise Event) or other document entered into by the Director in exercise of a Power,
 and, only if the Director has given a Termination Notice, vary, terminate or rescind any of them or novate or otherwise transfer to any person the Associated Operator's obligations under any of them;
- (j) **(Liquidation)** initiate and participate in any Liquidation of any person (including voting at meetings and appointing proxies);
- (k) **(proceedings)** commence, prosecute, defend, discontinue, compromise, submit to arbitration and settle proceedings in connection with this document or the Assets; whether in or before a Government Body;
- (l) **(raise money)** obtain financial accommodation (including from the Director or Director's Associate) and give guarantees, in each case with or without granting a Security Interest over the Assets and regardless of priority ranking;
- (m) **(receipts)** give receipts for money and other property he receives;
- (n) **(employ and delegate)** employ and discharge staff, professional advisers, consultants, contractors, agents and auctioneers for the purposes of this document, and at the remuneration that the Director thinks fit, and to delegate to any person any of his Powers (including this right of delegation);
- (o) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and

- (p) **(incidental power)** do anything expedient or incidental to exercise any of his Powers, without limiting those Powers.

10.4 Director's specific Termination powers

In addition to the powers in clause 10.3, where the Director has given a Termination Notice, the Director may do any or all of the following in connection with his Powers, whether in his or the Associated Operator's name or otherwise and whether or not he has possession of the Assets:

- (a) **(sell, assign or exchange)** sell, assign or help sell all or any Assets to any person or exchange it for any other property or rights, on terms the Director thinks fit, with or without other property;
- (b) **(options, Lease, rights)** grant, acquire, renew, vary, accept the surrender of or terminate an option, Lease or other right over the Assets on the terms he thinks fit, and with or without any other property;
- (c) **(sell to Director)** without limiting any other provision of this document, sell any of the Assets to the Director or Successor Operator as contemplated in clause 7; and
- (d) **(hive off)** promote the formation of any company to acquire any Assets.

10.5 Discharge or acquire Security Interest

- (a) The Director may, provided he has given a Termination Notice, do any one or more of the following:
 - (i) purchase a debt or liability secured by a prior Security Interest over or in respect of any of the Assets;
 - (ii) pay the amount required to discharge or satisfy that debt or liability; and
 - (iii) take a transfer or assignment of that Security Interest and any guarantee, document or right ancillary or collateral to it (including any Security Interest over other property if the debt or liability repaid was secured over both Assets and other property).
- (b) If the Director exercises his rights in this clause 10.5:
 - (i) the Associated Operator is indebted to the Director for the same amount paid by the Director or the amount of the debt or liability acquired (whichever is higher) and that amount is immediately payable to the Director;
 - (ii) the Director may rely on a written notice from the holder of any Security Interest (**Chargee**), or on an ancillary or collateral document, as to the amount and property secured by that Security Interest;
 - (iii) the Chargee need not enquire whether any amount is owing under a Transaction Document; and
 - (iv) the Associated Operator irrevocably directs any Chargee to give the Director any information it requires in connection with the Security Interest.

10.6 Period for exercise

The Director acknowledges that it is intended that the powers under clauses 10.2 to 10.5 are to be exercised during:

- (a) any Step-in Period (except the powers in clause 11.4); and or
- (b) the period from the Termination Date to the date on which completion occurs under the Termination Transfer Agreement.

10.7 Co-operation in exercise of power of sale

- (a) If the Director wishes to exercise a right to sell any Assets, the Associated Operator agrees to do or cause to be done all things necessary to enable an expeditious sale and transfer to the purchaser for the value as estimated by the Director, in the manner and on terms the Director thinks fit.
- (b) To the extent that the Director sells any Asset pursuant to his Powers under this clause for a sale price that is less than the Transfer Price for that Asset, the Director agrees to compensate the Associated Operator for the amount of the shortfall.

10.8 Appointment of Attorney

- (a) The Associated Operator for valuable consideration, to secure the performance of the obligations of the Associated Operator under this document, irrevocably appoints the Director and each Authorised Representative of the Director separately as its attorney to do any or all of the following on the Associated Operator's behalf and in the Associated Operator's or the attorney's name after an Exercise Event occurs:
 - (i) anything which the Associated Operator is required to do under a Transaction Document or under Law in connection with a Transaction Document;
 - (ii) anything which the Attorney considers necessary or expedient to give effect to a Power or exercise of a Power, or to perfect any Transaction Document, including by signing any document for that purpose; and
 - (iii) anything which an attorney is expressly empowered to do under a Transaction Document on the Associated Operator's behalf.
- (b) The Associated Operator agrees to ratify anything done by its Attorney under this power of attorney. An Attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

10.9 Enforcement and other expenses

The Associated Operator agrees to pay or reimburse on demand by the Director all costs and expenses of the Director and an Attorney (and any of their respective officers, employees and agents) in connection with:

- (a) exercising, enforcing or protecting a Power in relation to Assets owned, leased or otherwise used by the Associated Operator or the Bus Operations conducted by the Associated Operator, or attempting to do so;
- (b) a Sale Default or the exercise or procuring performance or satisfaction of the Step-in Powers;
- (c) any Government Body enquiry concerning the Associated Operator;
- (d) maintaining, preserving or protecting the Assets owned, leased or otherwise used by the Associated Operator; and
- (e) obtaining professional advice from a person or consultant about any matter of concern to the Director or an Attorney in connection with rights against, or obligations of, the Associated Operator under a Transaction Document or the Assets owned, leased or otherwise used by the Associated Operator.

This includes any legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

10.10 General indemnity

- (a) The Associated Operator indemnifies the Director, his Authorised Representatives and any Attorney (and its respective officers, employees and agents) against, and agrees to pay to the Director on demand amounts equal to, any Loss arising as a result of or in connection with:
 - (i) an indemnity given by the Director to an administrator of the Associated Operator;
 - (ii) the Assets;
 - (iii) a Sale Default caused by, or arising as a result of the occurrence of an act or omission or event in respect of, the Associated Operator;
 - (iv) the Director acting or relying in good faith on any notice or communication from the Associated Operator; and
 - (v) the Director relying on information supplied by or on behalf of the Associated Operator which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis) and any professional consultant's fees in connection with the above.

- (b) The Director, his Authorised Representatives or an Attorney need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in a Transaction Document. Unless otherwise stated, each indemnity or reimbursement obligation is separate and independent of each other obligation of the party giving it, is absolute, irrevocable, unconditional and payable on demand and continues despite any settlement of account, termination of any Transaction Document.

10.11 Equitable relief

- (a) Without limiting any other provisions of this Deed, the Associated Operator acknowledges that damages will not be an adequate remedy for:
 - (i) any Sale Default;
 - (ii) any breach of clause 27 of the MBSC or any circumstance where a Step-in Party is prevented or frustrated from exercising the Step-in Powers; or
 - (iii) any breach of clause 7,(each a **Specific Breach**).
- (b) Each party to this document agrees that, without limiting any other right, remedy or action it has in connection with any actual or threatened Specific Breach by the other party, it is entitled to seek equitable relief (including specific performance or injunctive or declaratory relief) to restrain any actual or threatened Specific Breach by the other party and the other party agrees not to oppose the granting of relief on the basis that the party seeking the relief has not or will not suffer any actual loss or damage.

10.12 Receipt by Director

A receipt given by the Director or an Attorney (or of their Authorised Representative) for any money payable to it, or any asset receivable by it, relieves the person paying that money or delivering the asset from all liability to enquire as to the dealing with, or application of, that money or asset.

10.13 Third parties need not enquire

A person dealing with the Director or an Attorney is protected from any impropriety or irregularity of that dealing, and need not enquire whether any of them has been properly appointed or has executed or registered an instrument or exercised a Power properly or with authority.

10.14 Notice, demand or lapse of time required by Law

If a notice, demand or lapse of time is required by Law before the Director can exercise a Power, then:

- (a) that notice, demand or lapse of time is dispensed with to the extent allowed by that Law; or
- (b) if not allowed to be dispensed with, but the period of notice, demand or lapse of time is allowed by that Law to be shortened or fixed, it is shortened and fixed to one day.

10.15 Director and Attorney not restricted

The Director or an Attorney need not:

- (a) exercise a Power, give a consent or make a decision under this document unless a Transaction Document expressly provides otherwise; or
- (b) resort to a Power before resorting to any other Power.

10.16 Director and Attorney not mortgagee in possession or liable

To the extent permitted by Law, the Director and any Attorney will:

- (a) not be, nor account or be liable as, mortgagee in possession due to exercise of a Power; or
- (b) not be liable to anyone for any Loss in relation to an exercise or attempted exercise of a Power, or a failure or delay in exercising a Power.

10.17 Director may set off

The Director may, without any demand or notice, set off and apply indebtedness he owes to the Associated Operator against any money owing to him by the Associated Operator under any Transaction Document, whether or not the amount owed by the Director or the Associated Operator is immediately payable or is owed alone or with any other person. The Associated Operator irrevocably authorises the Director to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

10.18 Reinstating avoided transaction

The Associated Operator agrees that if a payment or other transaction relating to an Exercise Event is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an **Avoidance**), then even though the Director knew or should have known of the Avoidance:

- (a) each Power and the Associated Operator's liability under each Transaction Document will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) the Associated Operator will immediately execute and do anything required by the Director to restore the Director to his position immediately before the Avoidance (including reinstating any Transaction Document).

This clause 10.18 survives any termination or full or partial discharge or release of any Transaction Document.

10.19 Authorised Representatives and communications

The Associated Operator irrevocably authorises the Director to rely on a certificate by any person purporting to be its director or company secretary as to the identity and signatures of its Authorised Representatives, and to rely on any notice or other document contemplated by any Transaction Document which bears the purported signature (whether given by facsimile or otherwise) of its Authorised Representative. The Associated Operator warrants that those persons have been authorised to give notices and communications under or in connection with the Transaction Documents.

10.20 Performance

For the purposes of this clause 10:

- (a) if a time is not specified for the performance by the Associated Operator of an obligation under this document, it must be performed promptly;
- (b) the Director may do anything which the Associated Operator fails to do as required by, or in accordance with, this document. This does not limit or exclude the Director's Powers in any way;
- (c) powers under the Transaction Documents are cumulative and do not limit or exclude Powers under Law; and
- (d) full or partial exercise of a Power does not prevent a further exercise of that or any other Power. No failure or delay in exercising a Power operates as a waiver or representation.

10.21 Not a charge

The parties agree that this clause 10:

- (a) is not a charge and does not create a Security Interest in favour of the Director;
- (b) does not give or grant the Director any proprietary interest by way of security or otherwise in the Associated Operator or the Assets; and
- (c) grants the Director contractual rights only, which rights may be exercised by the Director or the Attorney,

and any reference in clause 10 to the Director having or engaging similar rights to that of a mortgagee (or having the right to appoint a receiver or the like) are not intended to confer a right in the nature of a security on the Director.

11. Dispute resolution

11.1 Notice of dispute

If a dispute or difference arises under or in connection with this document, either party may give the other written notice expressing the nature of the dispute or differences (**Dispute Notice**).

11.2 Parties to meet

As soon as practicable after receipt by a party of a Dispute Notice the parties agree to ensure that senior and relevant representatives of both parties meet and attempt to resolve the issue.

11.3 Referral to senior executives

If the issue is not resolved within 10 Business Days of the receipt of the Dispute Notice, it must be immediately referred to the most senior executive officers of the parties who will personally or through their nominated delegates, (who must be senior to the persons who met under clause 11.2), meet as soon as practical and attempt to resolve the issue.

11.4 Referral to Expert or Arbitrator

If the issue is not resolved within 20 Business Days of the receipt of the Dispute Notice, either party may:

- (a) if the issue is of a technical nature or if this document requires, refer it for resolution to a person who is an independent expert in its subject matter (**Expert**); or
- (b) if the issue is not of a technical nature, refer it to an independent person (**Arbitrator**) for arbitration.

11.5 Issues for resolution by an Expert

An issue is of a technical nature if it is of a kind that, if it were litigated, could be resolved on expert evidence alone. If the parties are unable to agree whether or not an issue is of a technical nature, the opinion of the Director as to whether or not the issue should be referred to an Expert prevails.

11.6 Selection of Arbitrator or Expert

If the parties are unable to agree on who to appoint as an Arbitrator or an Expert the Director may make the appointment. In making the appointment, the Director agrees to select a person who is independent of the parties and who is suitably qualified.

11.7 Procedure on arbitration

Subject to any other provision of this document to the contrary, an arbitration is to be conducted in accordance with the *Commercial Arbitration Act 1984* (Victoria) and subject to that Act, with the expedited commercial arbitration rules of the Institute of Mediators & Arbitrators (Australia).

11.8 Procedure on resolution by Expert

- (a) The Expert appointed under clause 11.4 or 11.6 acts as an expert and not as an arbitrator.
- (b) Each party to a dispute which is referred to the Expert for determination must have a reasonable opportunity to make submissions to the Expert.
- (c) The costs of the Expert must be borne in equal shares by the parties.
- (d) The Expert's decision is final and binding on the parties to the dispute, except to the extent of fraud, gross negligence or a manifest error.

11.9 Court proceedings and other relief

- (a) A party may not start court proceedings in relation to any issue or dispute under this document unless it has complied with this clause.
- (b) This clause does not prohibit a party from seeking and obtaining appropriate injunctive or interlocutory relief from a court to preserve property or rights or to avoid Losses which are not compensatable in damages.

11.10 Exclusion

This clause does not apply to any dispute relating to or arising out of the exercise or non-exercise by the Director of any right or discretion conferred on the Director by the PTCA or otherwise by Law.

11.11 Performance not affected

Despite the parties having a dispute or difference, they agree to continue to perform their respective obligations under this document.

12. GST

12.1 Interpretation

Words or expressions used in this clause 12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

12.2 Consideration is GST exclusive

Any consideration or amount to be paid or provided for a supply made under or in connection with this document, unless specifically described as GST inclusive, does not include GST payable on that supply.

12.3 Gross up of consideration

If a party (**Supplier**) makes a supply under or in connection with this Deed on which GST is imposed (not being a supply the consideration for which is stated specifically as GST inclusive):

- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

12.4 Reimbursement

If a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a Loss incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which the Loss relates.

13. General

13.1 Alterations and termination

The Associated Operator agrees not to amend or terminate any Transaction Document without the Director's prior written consent.

13.2 Independent

- (a) The relationship of the Director and the Associated Operator is that of principal and sub-contractor of a contractor to the principal. Nothing constitutes the parties as partners of each other, nor as parties to a joint venture. Except as is expressly provided in this document, neither party is the agent of the other or has the power to bind the other.
- (b) The Associated Operator agrees not to hold itself out as the agent of the Director unless this Deed otherwise authorises it to do so.

13.3 Assignment

- (a) The Associated Operator may only assign a Transaction Document or a right under a Transaction Document with the prior written consent of the Director.
- (b) The Associated Operator agrees to obtain the Director's prior written consent to any Change in Control during the Term.
- (c) The consent of the Director under clauses 13.3(a) or 13.3(b) will not be unreasonably withheld where the assignment, transfer or change is to:
 - (i) a relative of the Associated Operator;

- (ii) a relative of the person having effective control of the Associated Operator (where the Associated Operator is a body corporate); or
- (iii) a body corporate under the effective control of a person referred to in subparagraph (i) or (ii),

provided that:

- (iv) in the case of a Change in Control situation, the Associated Operator retains its Accreditation; or
- (v) in the case of an assignment or transfer, the assignee or transferee obtains Accreditation and enters into a new deed with the Director on the same terms and conditions as set out in this Deed and providing for any other matter that the Director considers reasonably to be relevant.

13.4 Costs

- (a) Each party must pay its own costs of negotiating, preparing and executing the Transaction Documents.
- (b) The Associated Operator will be responsible for any capital gains tax liability triggered by the transfer of the Assets under clause 7.

13.5 Survival

Any indemnity or any obligation of confidence under this Deed is independent and survives termination of this Deed. Any other term by its nature intended to survive termination of this Deed survives termination of this Deed.

13.6 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

13.7 Contra proferentem

The Transaction Documents are not to be interpreted against the interests of a party merely because that party proposed the relevant Transaction Document or some provision in it or because that party relies on a provision of the relevant Transaction Document to protect itself.

13.8 No merger

The rights and obligations of the parties under this Deed do not merge on completion of any transaction contemplated by this Deed.

13.9 Entire agreement

The Transaction Documents constitute the entire agreement between the parties in connection with their subject matter and supersede all previous agreements or understandings between the parties in connection with their subject matter.

13.10 Trustee Capacity

- (a) The Associated Operator agrees to advise the Director at the time it enters into any Transaction Document whether it does so as the trustee of any trust.
- (b) If the Associated Operator does enter into a Transaction Document in a trustee capacity, it warrants that:
 - (i) its appointment as trustee of the relevant trust is valid and subsisting and it is not aware of any action to remove or replace it as trustee;
 - (ii) the trust deed for the relevant trust authorises its entry into the Transaction Documents; and

- (iii) it has a right of recourse to the assets of the relevant trust sufficient to cover any Claim that may be made against it under the Transaction Documents.

13.11 Further action

Each party agrees to do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Deed and any transaction contemplated by it.

13.12 Document subject to Transport Act and PTCA

Nothing in this Deed will affect or limit any powers or rights that the parties may have under the Transport Act or the PTCA, except where those powers or rights have been expressly waived by the party entitled to the benefit of the right or power.

13.13 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the terms of this Deed continue in force.

13.14 Waiver

Unless otherwise provided in this Deed, a party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

13.15 Rights held on trust

The Associated Operator acknowledges and agrees that:

- (a) a waiver, release, acknowledgement or indemnity in favour of the Director's Associates is held on trust by the Director for the benefit of any of the Director's Associates; and
- (b) the consent of the Director's Associates referred to in clause 13.15(a) is not required for any alterations to this Deed.

13.16 Governing law and jurisdiction

This Deed is governed by the laws of the State and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State.

13.17 Notices and other communications

- (a) A notice, demand, consent, approval or communication given under this Deed (**Notice**) must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender (or any other person specified in this Deed); and
 - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.
- (b) A Notice given in accordance with clause 13.17(a) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight

Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Schedule 1 – Warranties

Each of the following warranties is given by the Associated Operator in relation to itself and its subsidiaries:

- (a) all of the information, representations and other matters of fact communicated in writing to the Director (or its representatives) by the Associated Operator and its directors, officers, employees, servants, agents or Related Entities, relating to the subject matter of this Deed were (at the dates submitted to the Director or its representatives) and remain, in all material respects, true and not misleading;
- (b) it is a corporation duly incorporated and validly existing under the Laws of the State;
- (c) it has the power to enter into, and perform under, the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated;
- (d) it has taken all necessary corporate action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party and to carry out the transactions contemplated by those documents;
- (e) each Transaction Document to which it is expressed to be a party creates valid and binding obligations on it and is enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (f) the execution and performance by it of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents did not and will not violate in any respect a provision of:
 - (i) a Law or treaty or a judgment, ruling, order or decree of a Government Body binding on it; or
 - (ii) its constitution or other constituent documents;
- (g) except as disclosed to the Director no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it and in particular there is no outstanding workers' compensation claim;
- (h) no resolution has been passed for its winding up;
- (i) no resolution has been passed for the appointment of an administrator to it;
- (j) there is no unsatisfied judgment against it;
- (k) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertaking or assets or income;
- (l) each Authorisation that is required in relation to:
 - (i) the execution, delivery and performance by it of the Transaction Documents to which it is expressed to be party and the transactions contemplated by those documents; and
 - (ii) its business as now conducted or contemplated and that is material (including, under the Act),

has been obtained or effected. Each is in full force and effect. It has complied with each of them and has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Commencement Date, it is only given as at the Commencement Date;

- (m) all returns, notices and other documents required to be lodged or given by it under the Corporations Act and other relevant acts and regulations have been duly and properly prepared and lodged or given;
- (n) it has duly observed and complied in all respects with the provisions of all Laws and all orders, notices, awards and determinations made by any Government Body in any way relating to or binding on it or any property owned or occupied by it;
- (o) all copies of documents (including its latest audited accounts and all Authorisations) given by it or on its behalf to the Director are true and complete copies. Where applicable, those documents are in full force and effect;
- (p) it complies with the privacy Laws, and any guidelines issued by the Commissioner under the relevant privacy Law;
- (q) each of the AO Contract Buses the subject of an AO Subcontract complies with the requirements set out in clause 12.1 of the MBSC; and
- (r) each of the AO Contract Depots the subject of an AO Subcontract complies with the requirements set out in clause 15 of the MBSC.

Signing page

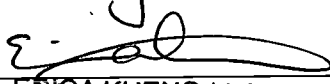
EXECUTED as a Deed.

Dated **23 JUN 2008**


Signature
Hector McKenzie

[Name and title] Delegate of the Director of Public Transport

Witnessed by


ERICA KHENG LI CHAN
525 Collins Street, Melbourne
An Australian Legal Practitioner within the meaning of the Legal Profession Act 2004

Executed by Kefford Properties Pty Ltd
(as trustee for the Kefford Property Trust)

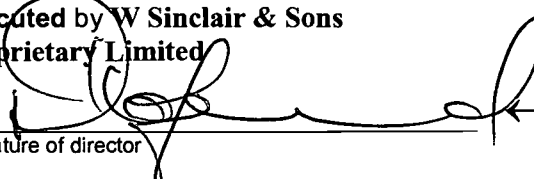

Signature of director

DOUGLAS KEFFORD
Name of director (print)

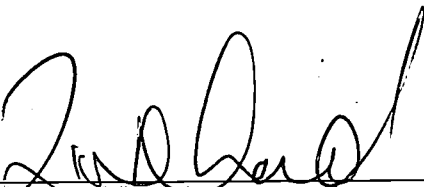

Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD
Name of director/company secretary (print)

Executed by W Sinclair & Sons
Proprietary Limited

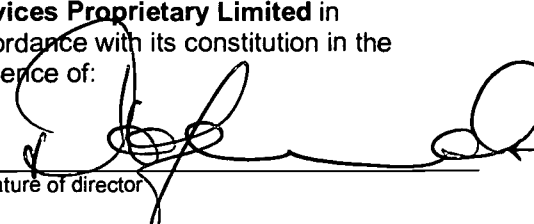

Signature of director

DOUGLAS KEFFORD
Name of director (print)

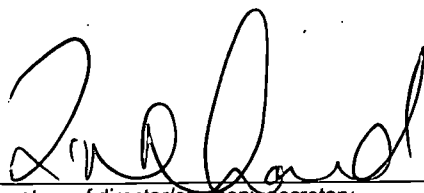

Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD
Name of director/company secretary (print)

Executed by Eastern Suburbs Omnibus
Services Proprietary Limited in
accordance with its constitution in the
presence of:


Signature of director

DOUGLAS KEFFORD
Name of director (print)


Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD
Name of director/company secretary (print)

Release Deed

The Director of Public Transport (**Director**)
W Sinclair & Sons Proprietary Limited (**Operator**)

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Release Deed

Details	3
Agreed terms	4
1. Defined terms	4
2. Termination of the TSA and Renewed TSA	4
3. Mutual release and covenant	4
4. Miscellaneous	5
Signing page	7

Details

Date

23 JUN 2008

Parties

Name **The Director of Public Transport on behalf of the Crown in right of the State of Victoria**
Short form name **Director**
Notice details **Level 14, 121 Exhibition Street, Melbourne, Victoria 3000**
Facsimile: (03) 9655 8993
Attention: Director

Name **W Sinclair & Sons Proprietary Limited ABN 67 004 482 142**
Short form name **Operator**
Notice details **9 Slough Road, Altona, Victoria 3018**

Background

- A The Secretary and the Operator entered into a Transport Services Agreement - Metropolitan Buses on or about April 1998 (TSA) in relation to the provision by the Operator of *regular passenger services*. The TSA expired on 31 December 2007.
- B The Director and the Operator entered into a Renewed TSA on or about 21 December 2007 for the provision of *regular passenger services* for an interim period on and from 1 January 2008 until 31 March 2008 (**Renewed TSA**). The expiry date of the Renewed TSA was extended in March 2008 to 30 June 2008.
- C The Operator has been awarded a new *service contract* for the provision of *regular passenger services* that will commence on the Effective Date, at which time the Renewed TSA will expire.
- D The parties have agreed to release each other from all Claims arising under the TSA and the Renewed TSA on the terms set out in this deed.

Agreed terms

1. Defined terms

In this deed, unless the contrary intention is stated:

Claim includes any claim, proceeding, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at law or otherwise) .

Director's Associates means the Crown in right of Victoria, VicRoads, Metlink, the Transport Ticketing Authority, any relevant roads authority, a Victorian Government Body, and any officer, employee, agent, contractor, consultant, delegate or adviser of, or to, any of them.

Effective Date means 1 July 2008.

Government Body means any court or tribunal with relevant jurisdiction, any local, state or national government or governmental, administrative, fiscal, or judicial body, department, commission, authority, tribunal, agency, entity, council, ministry, official or public or statutory person.

Minister means the State Minister for Public Transport.

Pre Commencement Service Adjustments has the meaning given in the new Metropolitan Bus Services Contract – Local Services between the parties.

Related Parties means the parties, employees and agents and, if a corporation, its associates (as defined in the *Corporations Act 2001* (Cth)).

Renewed TSA means the agreement referred to in Background Item B.

State means the State of Victoria.

Secretary means the Secretary to the Department of Infrastructure for and on behalf of the Crown in right of the State.

TSA means the agreement referred to in Background Item A.

2. Termination of the TSA and Renewed TSA

The parties acknowledge and agree that the TSA and the Renewed TSA terminated according to their terms which are unaltered by the terms of this deed.

3. Mutual release and covenant

3.1 Operator's release

Subject to clause 3.6, on and from the Effective Date, the Operator and the Operator's Related Parties unconditionally, irrevocably and absolutely release and forever discharge the Director and the Director's Associates from all Claims arising out of or under or in connection with the TSA and the Renewed TSA.

3.2 Operator's covenant

The Operator and the Operator's Related Parties:

- (a) covenant in favour of the Director and the Director's Associates:
 - (i) not to pursue, bring or procure that a third party brings or pursues, provide financial support for or otherwise support any Claim in any court or tribunal in respect of any matter which is the subject of a release under clause 3.1;
 - (ii) not to assert in relation to any matter the subject of a release under clause 3.1 any Claim against any other person who, in turn, may assert a Claim for contribution indemnity or any Claim in warranty against any of the released parties;
- (b) represent and warrant that they have not sold, assigned, granted or transferred to any other person any Claim covered by the terms of this deed; and
- (c) indemnify each of the Director and the Director's Associates from and against any Claims arising from or in any way connected with a breach by any of them of clauses 3.2(a) and (b).

3.3 Director's release

On and from the Effective Date, the Director unconditionally, irrevocably and absolutely releases and forever discharges the Operator from all Claims arising out of or under or in connection with the TSA and the Renewed TSA.

3.4 Extent of releases

A release or covenant in favour of a person who is not a party to this deed is a right held on trust for the benefit of the person by any party with whom the person has a relationship by virtue of which the person has the benefit of the release or covenant.

3.5 Absolute bar

This deed may be pleaded and tendered by any party as an absolute bar and defence to any proceeding brought in breach of the terms of this deed.

3.6 Outstanding Claims

This deed does not apply to any Claims arising out of or under or in connection with the TSA or the Renewed TSA that were made prior to, and remain unresolved as at, the Effective Date including Claims for payment for provision of the Pre Commencement Service Adjustments.

3.7 Operator as agent

To the extent that a release or covenant is given in this deed by a Related Party of the Operator, the Operator confirms that it gives that release or covenant as agent for that Related Party.

4. Miscellaneous

4.1 Alterations

This deed may be altered only in writing signed by each party.

4.2 Counterparts

This deed may be executed in counterparts. All executed counterparts constitute one document.

4.3 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed and anything contemplated by it.

4.4 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the terms of this deed continue in force.

4.5 Entire agreement

- (a) This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- (b) The parties expressly disclaim and warrant that they have not relied upon any prior telephone discussions, correspondence, statements, representations or agreements with respect to the subject matter of this deed, and any telephone discussions, correspondence, statements, representations or agreements are superseded by the terms of this deed.

4.6 Confidentiality

A party may only use confidential information of another party for the purposes of this deed, and must keep the existence and the terms of this deed and any confidential information of another party confidential except where:

- (a) the information is in the public domain (but not because of a breach of this deed) or the party has independently created the information;
- (b) disclosure is required by law or a regulatory body (including a relevant stock exchange);
- (c) disclosure is made to a person who must know for the purposes of this deed on the basis that the person keeps the information confidential; or
- (d) disclosure is required by the Director, State, the Minister or any State government body:
 - (i) under the *Freedom of Information Act 1982* (Victoria);
 - (ii) under the *Ombudsman Act 1973* (Victoria);
 - (iii) to satisfy the disclosure requirements of the Victorian Auditor General and to satisfy the requirements of parliamentary accountability, or, in the case of the Minister, to fulfil his or her duties of office; or
 - (iv) under State government procurement practices and procedures.

4.7 Governing law and jurisdiction

This deed is governed by the law of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Signing page

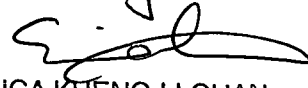
EXECUTED as a deed.

Signature  ←

Hector McKenzie

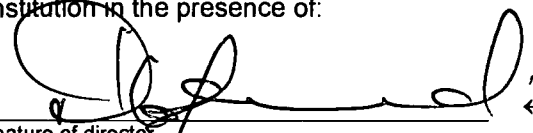
[Name and title] ~~Delegate of the Director of Public Transport~~

Witnessed by:

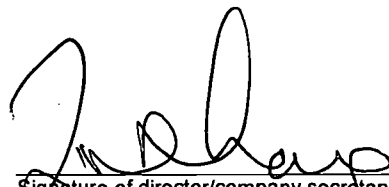


ERICA KHENG LI CHAN
525 Collins Street, Melbourne
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

**Executed by W Sinclair & Sons
Proprietary Limited** in accordance with its
constitution in the presence of:

Signature of director  ←

DOUGLAS KEFFORD
Name of director (print)

 ←
Signature of director/company secretary
(Please delete as applicable)

BEVAN KEFFORD
Name of director/company secretary (print)



Release Deed

The Director of Public Transport (**Director**)
Eastern Suburbs Omnibus Services Proprietary Limited
(**Operator**)

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Release Deed

Details	3
Agreed terms	4
1. Defined terms	4
2. Termination of the TSA and Renewed TSA	4
3. Mutual release and covenant	4
4. Miscellaneous	5
Signing page	7

Details

Date

23 JUN 2008

Parties

Name **The Director of Public Transport on behalf of the Crown in right of the State of Victoria**
Short form name **Director**
Notice details Level 14, 121 Exhibition Street, Melbourne, Victoria 3000
Facsimile: (03) 9655 8993
Attention: Director

Name **Eastern Suburbs Omnibus Services Proprietary Limited**
ABN 51 004 231 396
Short form name **Operator**
Notice details 9 Slough Road, Altona, Victoria 3018

Background

- A The Secretary and the Operator entered into a Transport Services Agreement - Metropolitan Buses on or about April 1998 (TSA) in relation to the provision by the Operator of *regular passenger services*. The TSA expired on 31 December 2007.
- B The Director and the Operator entered into a Renewed TSA on or about 21 December 2007 for the provision of *regular passenger services* for an interim period on and from 1 January 2008 until 31 March 2008 (**Renewed TSA**). The expiry date of the Renewed TSA was extended in March 2008 to 30 June 2008.
- C The Operator has been awarded a new *service contract* for the provision of *regular passenger services* that will commence on the Effective Date, at which time the Renewed TSA will expire.
- D The parties have agreed to release each other from all Claims arising under the TSA and the Renewed TSA on the terms set out in this deed.

Agreed terms

1. Defined terms

In this deed, unless the contrary intention is stated:

Claim includes any claim, proceeding, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at law or otherwise) .

Director's Associates means the Crown in right of Victoria, VicRoads, Metlink, the Transport Ticketing Authority, any relevant roads authority, a Victorian Government Body, and any officer, employee, agent, contractor, consultant, delegate or adviser of, or to, any of them.

Effective Date means 1 July 2008.

Government Body means any court or tribunal with relevant jurisdiction, any local, state or national government or governmental, administrative, fiscal, or judicial body, department, commission, authority, tribunal, agency, entity, council, ministry, official or public or statutory person.

Minister means the State Minister for Public Transport.

Pre Commencement Service Adjustments has the meaning given in the new Metropolitan Bus Services Contract – Local Services between the parties.

Related Parties means the parties, employees and agents and, if a corporation, its associates (as defined in the *Corporations Act 2001* (Cth)).

Renewed TSA means the agreement referred to in Background Item B.

State means the State of Victoria.

Secretary means the Secretary to the Department of Infrastructure for and on behalf of the Crown in right of the State.

TSA means the agreement referred to in Background Item A.

2. Termination of the TSA and Renewed TSA

The parties acknowledge and agree that the TSA and the Renewed TSA terminated according to their terms which are unaltered by the terms of this deed.

3. Mutual release and covenant

3.1 Operator's release

Subject to clause 3.6, on and from the Effective Date, the Operator and the Operator's Related Parties unconditionally, irrevocably and absolutely release and forever discharge the Director and the Director's Associates from all Claims arising out of or under or in connection with the TSA and the Renewed TSA.

3.2 Operator's covenant

The Operator and the Operator's Related Parties:

- (a) covenant in favour of the Director and the Director's Associates:
 - (i) not to pursue, bring or procure that a third party brings or pursues, provide financial support for or otherwise support any Claim in any court or tribunal in respect of any matter which is the subject of a release under clause 3.1;
 - (ii) not to assert in relation to any matter the subject of a release under clause 3.1 any Claim against any other person who, in turn, may assert a Claim for contribution indemnity or any Claim in warranty against any of the released parties;
- (b) represent and warrant that they have not sold, assigned, granted or transferred to any other person any Claim covered by the terms of this deed; and
- (c) indemnify each of the Director and the Director's Associates from and against any Claims arising from or in any way connected with a breach by any of them of clauses 3.2(a) and (b).

3.3 Director's release

On and from the Effective Date, the Director unconditionally, irrevocably and absolutely releases and forever discharges the Operator from all Claims arising out of or under or in connection with the TSA and the Renewed TSA.

3.4 Extent of releases

A release or covenant in favour of a person who is not a party to this deed is a right held on trust for the benefit of the person by any party with whom the person has a relationship by virtue of which the person has the benefit of the release or covenant.

3.5 Absolute bar

This deed may be pleaded and tendered by any party as an absolute bar and defence to any proceeding brought in breach of the terms of this deed.

3.6 Outstanding Claims

This deed does not apply to any Claims arising out of or under or in connection with the TSA or the Renewed TSA that were made prior to, and remain unresolved as at, the Effective Date including Claims for payment for provision of the Pre Commencement Service Adjustments.

3.7 Operator as agent

To the extent that a release or covenant is given in this deed by a Related Party of the Operator, the Operator confirms that it gives that release or covenant as agent for that Related Party.

4. Miscellaneous

4.1 Alterations

This deed may be altered only in writing signed by each party.

4.2 Counterparts

This deed may be executed in counterparts. All executed counterparts constitute one document.

4.3 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed and anything contemplated by it.

4.4 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the terms of this deed continue in force.

4.5 Entire agreement

- (a) This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
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A party may only use confidential information of another party for the purposes of this deed, and must keep the existence and the terms of this deed and any confidential information of another party confidential except where:

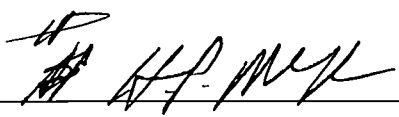
- (a) the information is in the public domain (but not because of a breach of this deed) or the party has independently created the information;
- (b) disclosure is required by law or a regulatory body (including a relevant stock exchange);
- (c) disclosure is made to a person who must know for the purposes of this deed on the basis that the person keeps the information confidential; or
- (d) disclosure is required by the Director, State, the Minister or any State government body:
 - (i) under the *Freedom of Information Act 1982* (Victoria);
 - (ii) under the *Ombudsman Act 1973* (Victoria);
 - (iii) to satisfy the disclosure requirements of the Victorian Auditor General and to satisfy the requirements of parliamentary accountability, or, in the case of the Minister, to fulfil his or her duties of office; or
 - (iv) under State government procurement practices and procedures.

4.7 Governing law and jurisdiction

This deed is governed by the law of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Signing page

EXECUTED as a deed.

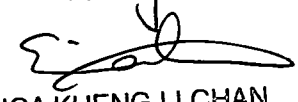
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Signature

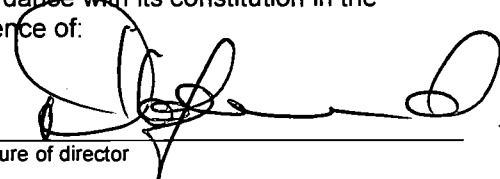
Hector McKenzie

[Name and title] ~~Delegate of the Director of Public~~
Transport

Witnessed by


ERICA KHENG LI CHAN
525 Collins Street, Melbourne
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

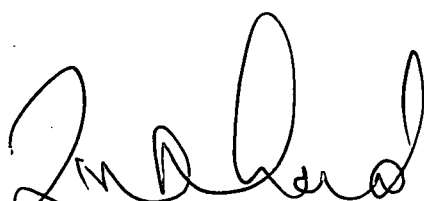
**Executed by Eastern Suburbs Omnibus
Services Proprietary Limited in
accordance with its constitution in the
presence of:**

 ←

Signature of director

DOUGLAS KEFFORD

Name of director (print)

 ←

Signature of director/company secretary
(Please delete as applicable)

BRAM KEFFORD

Name of director/company secretary (print)

Agreement To Issue Recipient Created Tax Invoices

THIS AGREEMENT is made on this 23rd day of June 2008

BETWEEN: **DIRECTOR of PUBLIC TRANSPORT** under the *Transport Act 1983 (Vic)* on behalf of the Crown in right of the State of Victoria (Director)

AND: **W Sinclair & Sons Proprietary Limited ABN 67 004 482 142**

Eastern Suburbs Omnibus Services Proprietary Limited ABN 51 004 231 396

(each a **Supplier** and together the **Suppliers**)

RECITALS

- (a) The Department of Transport, which includes the Director, is registered (**ABN 17 441 396 042**) for the purpose of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Law**) and is the *Recipient* of any taxable supply under the Metropolitan Bus Services Contract – Local Services (**MBSC**) entered into on or about the date of this Agreement; and
- (b) Pursuant to section 29-70(3) of the GST Law the Recipient of a taxable supply may issue a Recipient Created Tax Invoice (**RCTI**) to the Supplier; and
- (c) Pursuant to paragraph 13 of Goods and Services Tax Ruling GSTR 2000/10 (**Ruling**) the Commissioner of Taxation has set out requirements for a Supplier and a Recipient to enter into an RCTI arrangement; and
- (d) The parties to this Agreement wish to establish an RCTI arrangement in respect of the regular passenger services to be provided by the Suppliers under the MBSC (**Supplies**).

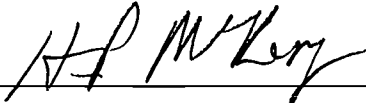
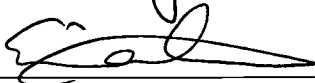
The Parties agree as follows:

TERMS

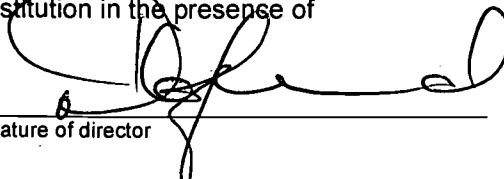
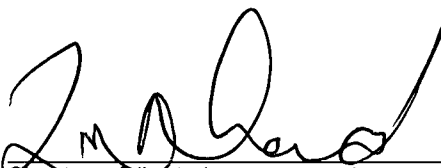
- 1. In this Agreement:
 - a) all definitions and interpretations will have the meaning given to them by the GST Law; and
 - b) Nominated Operator means the Supplier specified in the MBSC as the Nominated Operator.
- 2. The RCTI is a tax invoice belonging to the class of invoices that the Commissioner of Taxation has determined in writing in the Ruling may be issued by the Recipient of the Supplies.
- 3. The Recipient can issue tax invoices in respect of the Supplies.
- 4. The Nominated Operator must provide its Australian Business Number to the Recipient and this must be disclosed on the RCTI.
- 5. The Recipient shall issue the original or a copy of the RCTI to the Nominated Operator within 28 days of the making, or determining the value, of the taxable supply and retain the original or a copy.
- 6. The Recipient shall issue the original or a copy of a recipient created adjustment note to the Nominated Operator and shall retain the original or a copy.
- 7. The Recipient shall reasonably comply with its obligations under Australian taxation laws.
- 8. The Suppliers shall not issue tax invoices in respect of the Supplies for which a RCTI was, or will be, issued.

9. The Nominated Operator acknowledges that it is a Registered Enterprise in accordance with the GST Law and agrees that it shall notify the Recipient if it ceases to be Registered.
10. The Recipient acknowledges that it is a Registered Enterprise in accordance with the GST Law and agrees that it will notify the Nominated Operator if it ceases to be Registered.

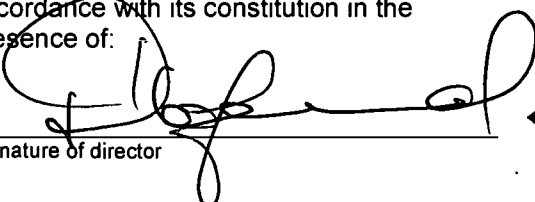
Executed as an agreement.

 Signature Hector McKenzie	Witnessed by:  ERICA KHENG LI CHAN 525 Collins Street, Melbourne An Australian Legal Practitioner within the meaning of the Legal Profession Act 2004
[Name and title] Delegate of the Director of Public Transport	

**Executed by W Sinclair & Sons
Proprietary Limited** in accordance with its
constitution in the presence of

 Signature of director DOUGLAS KEFFORD Name of director (print)	 Signature of director/company secretary (Please delete as applicable) BRAM KEFFORD Name of director/company secretary (print)
--	---

**Executed by Eastern Suburbs Omnibus
Services Proprietary Limited** in
accordance with its constitution in the
presence of:

 Signature of director DOUGLAS KEFFORD Name of director (print)	 Signature of director/company secretary (Please delete as applicable) BRAM KEFFORD Name of director/company secretary (print)
--	---

W Sinclair & Sons Proprietary Limited (Operator)

Metropolitan Bus Service Contract – Local Services (Contract) Operator Authorisation Certificate (clause 3.1(a))

Accreditation

The directors of the Operator have considered the accreditation requirements under the *Public Transport Competition Act 1995 (Victoria) (PTCA)* and the *Transport Act 1983 (Victoria) (Transport Act)* and certify that, as at the Commencement Date in the Contract:

1. the Operator holds, and is complying with the conditions of, Accreditation number AO-000470 under Part 2 of the PTCA to operate *road transport passenger services*, which includes the Local Services (as defined in the Contract);
2. the following Associated Operator (who will provide Local Services) holds, and is complying with the conditions of, Accreditation under Part 2 of the PTCA to operate *road transport passenger services*:
 - (a) Eastern Suburbs Omnibus Services Pty Ltd – Accreditation number AO-000318;
3. all Drivers hold Accreditation under Part VI, Division 6 of the Transport Act to drive a *commercial passenger vehicle*, which includes a Contract Bus (as defined in the Contract), and the Operator holds a copy of each Driver's Certificate of Accreditation; and
4. there is no current action or inquiry by the Director or the Safety Director (as the case may be) against the Operator, any Associated Operator or any Driver in relation to their respective Accreditations.

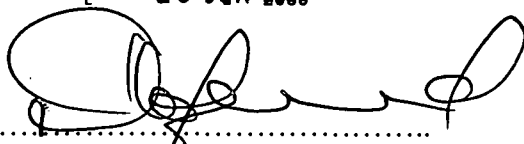
Authorisations

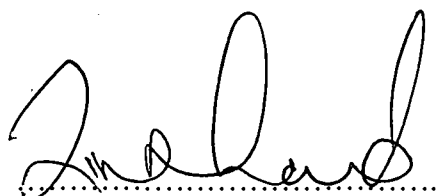
The directors certify that there are no other Authorisations (as defined in the Contract) necessary for the Operator to perform its obligations under the Transaction Documents.

Verification

The Director may request that the Operator provide him with a schedule listing all Drivers and their Accreditation details and or allow him to inspect copies of the Drivers' Certificates of Accreditation. The Operator agrees to comply with the Director's request promptly.

Dated [23 JUN 2008


.....
(insert name) Director
DOUGLAS KEFFORD


.....
(insert name) Director
BRAM KEFFORD.

COPY

Oakleigh



Westpac
Australia's First Bank

Westpac Banking Corporation ABN 33 007 457 141

Premium Business Group
360 Collins Street
Melbourne VIC 3000
Telephone: 03 96083263
Facsimile: 03 9670 4947

BANKER'S UNDERTAKING

To: Director of Public Transport under the Transport Act 1983 (Vic) on behalf of the Crown in right of the State of Victoria under the PTCA of Level 14, SX1, 121 Exhibition Street, Melbourne Victoria 3000 (the "Favouree")

At the request of: Kefford Corp Pty Limited ACN 006 822 432 (the "Customer")

and in consideration of the Favouree accepting this Undertaking Provision of regular passenger services, WESTPAC BANKING CORPORATION (the "Bank") unconditionally undertakes to pay on demand any amount or amounts which may from time to time be demanded in writing purporting to be signed by or on behalf of the Favouree, up to a maximum aggregate sum of \$662,000.00 (the "Amount").

Payment of the Amount or any part thereof will be made by the Bank to the Favouree without reference to the Customer and regardless of any notice from the Customer to the Bank not to pay any amount.

The Bank's obligations under this Undertaking cease on the earliest of the following:

- written notification is received by the Bank from the Favouree that the Undertaking is no longer required
- the Undertaking is returned to the Bank
- all payments by the Bank to the Favouree under the Undertaking total the Amount
- the Favouree notifies the Bank that the payments made by the Bank constitute the total amount required to be paid
- **1 August 2011**

Notwithstanding any other obligations of the Bank under this Undertaking the Bank may at any time, without being required to do so, extinguish any liability it has under the Undertaking by paying to the Favouree the Amount less any amount or amounts it has previously paid under this Undertaking, or any lesser amount the Favouree notifies the Bank as being acceptable to it.

The benefit of this Undertaking is personal to the named Favouree and is not capable of assignment.

BANKER'S UNDERTAKING

By: WESTPAC BANKING CORPORATION ABN 33 007 457 141 (the "Bank")
To: Director of Public Transport under the Transport Act 1983 (Vic) on behalf of the
Crown in right of the State of Victoria under the PTCA of Level 14, SX1, 121
Exhibition Street, Melbourne Victoria 3000 (the "Favouree")
At the request of: Kefford Corp Pty Limited ACN 006 822 432 (the "Customer")
Amount: \$662,000.00
Expiry Date: 1 August 2011

Dated at Melbourne, this 28 July 2008

I certify that the Attorney for the Bank, with
whom I am personally acquainted or as to whose
identity I am otherwise satisfied, signed this
instrument in my presence.

SIGNED by Colin Garfield as attorney for
Westpac Banking Corporation
ABN 33 007 457 141 under power of
attorney registered Permanent Order Book
No 277 page 016.

Signature of Witness: John

Name of Witness: JASMINE OHRI

Address of Witness: Level 7, 360
Collins Street, Melbourne
3000

[Signature]
Signature

By executing this instrument the attorney
states that the attorney has received no
notice of the revocation of the power of
attorney.

Please forward all notices and correspondence to The Manager, Westpac Banking Corporation at Premium Business Group 360 Collins Street Melbourne VIC 3000 (ref: Premium Business Group branch).
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