

ANNEXURE I

Draft Contract

METRO TASMANIA PTY LTD
(ACN 081 467 281)

and

[NAME OF CONTRACTOR]
(ACN [ACN])

**CONTRACT FOR BODY REPAIRS AND MAINTENANCE
SERVICES**

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DETAILS

Date of Agreement The [day of month e.g. fifth] day of [month] [year]

Parties Metro and Contractor

Metro

Name **Metro Tasmania Pty Ltd**
ACN **081 467 281**
Address **212-220 Main Road, Moonah in Tasmania 7009**
Contact **Ian Ward**
Fax **(03) 6272 8101**
Email **ian.ward@metrotas.com.au**

Contractor

Name [insert]
ACN [insert]
Address [insert]
Contact [insert]
Fax [insert]
Email [insert]

BACKGROUND

- A Metro has undertaken a competitive tender process in order to select a preferred supplier to provide the Services (**the Request for Tender**).
- B The Contractor provides services of a type similar to the Services in the ordinary course of its business and has provided Metro with a tender dated [insert date] in response to the Request for Tender.
- C Metro wishes to appoint the Contractor to provide the Services for Metro on the terms and conditions contained in this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless the contrary intention is expressed:

Agreement means this Agreement including all schedules and appendices.

Business Day means a day on which authorised deposit-taking institutions (as defined in the *Banking Act 1959* (Cth)) in Hobart are open for general banking business, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date that the Services are to commence, as set out in Item 1.

Completion Date means the date that the Services are to be completed, as specified in Item 2.

Confidential Information means verbal and written information in any form (including paper, electronic or digital form), which is either:

- (a) disclosed by one party to the other, on the basis that it is confidential;
- (b) not generally known; or
- (c) otherwise confidential under any applicable law;

and specifically includes:

- (d) information relating to or about the business affairs and operations of either party;
- (e) information relating to or about any development, marketing or project of either party;
- (f) information relating to or about the operations of Metro; or
- (g) this Agreement, its subject matter and negotiations pertaining to it.

Consumables includes body filler, tape, rivots, sikaflex and any item not specific to the repair of Metro buses.

Contractor means the party described as such in the Details and, where the context permits, includes the Contractor's employees (including Specified Personnel), sub-contractors and agents.

Contractor Representative has the meaning given in clause 6.2 (Contractor's Representative).

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

CPI Adjustment Date means the date set out in Item 5.

Date of Completion means the date that the performance of the Services is completed by the Contractor to the satisfaction of Metro, in its absolute discretion, and notified by Metro to the Contractor in writing.

Details means that part of this Agreement headed "Details".

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth.) and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in this Agreement.

Insolvency Event means the occurrence of any of the following events in relation to either party:

- (a) a party commits any act which is defined as "an act of bankruptcy" under the *Bankruptcy Act 1966* (Cth), regardless of whether or not the party is an individual;
- (b) an application is made to a court for a provisional or final order declaring a party provisionally or finally bankrupt or insolvent;
- (c) a special resolution is passed to wind up the party;
- (d) a party:
 - (i) has a controller (as defined in the Corporations Act) appointed;
 - (ii) is in liquidation or provisional liquidation,
 - (iii) is under administration or wound up; or
 - (iv) has had a receiver appointed to any part of its property;
- (e) a mortgagee, charge or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the party;
- (f) the party applies for, consents to, or acquiesces in the appointment of a trustee or receiver in respect of the party or any of its property;
- (g) the party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act) in respect of any part of the property of the party;

- (h) the party is or states that it is unable to pay its debts when they fall due;
- (i) except to reconstruct or amalgamate while solvent on terms approved by the other party, the party enters into or resolves to enter into a scheme of arrangement, compromise or re-construction with its creditors (or any class of them) or with its members (or any class of them) or proposes a reorganisation, re-arrangement, moratorium or other administration of the party's affairs;
- (j) the party is the subject of an event described in section 459(C)(2)(b) of the Corporations Act; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the party.

Intellectual Property means all copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and know-how and all other intellectual property rights resulting from intellectual activity.

Item means an item in Schedule 1 of this Agreement.

Job Sheet means a job sheet created in the Maintenance System by a Metro employee, agent or contractor which details particular work required to be performed by the Contractor under this Agreement.

Lease means the lease of the Leased Premises between Metro and the Contractor dated on or about the date of this Agreement on the terms set out in Appendix 1.

Leased Premises means the premises leased by the Contractor pursuant to the Lease at 212-220 Main Road, Moonah (certificate of title volume 23108 folio 1) and 168 Wellington Street, Launceston (certificate of title volume 219141 folio 1).

Legislative Requirements means Acts, Ordinances, regulations, by-laws, orders, awards and proclamations whether Commonwealth, State or local.

Maintenance System means Metro's Fleet Maintenance Management System (TIMS) which creates Job Sheets for each item of work to be performed by the Contractor on Metro's buses.

Market Cost means the amount paid by the Contractor for each part plus the amount referred to in Schedule 4, required for the Contractor to perform the Services, as substantiated by the Contractor to the satisfaction of Metro (in its discretion).

Metro means the party described as such in the Details and, where the context

admits, includes Metro's employees, sub-contractors and agents.

Metro Material means any material provided by, or on behalf of, Metro to the Contractor for the purpose of this Agreement, including documents, equipment, information and data stored by any means.

Metro Representative has the meaning given in clause 6.1 (Metro's Representative).

Non-Core Work means work that is not included in the scope of the Services and includes large accident repairs deemed by the Metro Representative to be of a value greater than \$5,000 (excluding GST) and non-standard work (eg installing a television screen inside a bus or other similar bus modifications) to be conducted on Metro buses.

Peak Operating Times has the meaning given in clause 8, Schedule 2.

Proposed Personnel means any personnel proposed by the Contractor to replace any Specified Personnel under clause 5 (Personal Performance).

Purchase Order means a purchase order generated by the Maintenance System for particular Services required to be performed by the Contractor under this Agreement.

Services means the services described in Schedule 2.

Specified Personnel means the personnel of the Contractor who will carry out the Services as set out in Item 3.

Term has the meaning given in clause 2 (Term).

1.2. Interpretation

In this Agreement, unless the contrary intention is expressed:

- (a) a reference to this Agreement includes its schedules, appendices, annexures and attachments, and any variation or replacement of any of it;
- (b) a reference to a statute, ordinance, code or other legislative instrument includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and conversely;
- (d) a reference to a gender includes reference to each other gender;
- (e) a reference to a person includes:
 - (i) an individual, a firm, a body corporate, an unincorporated association or a statutory or responsible authority or other

authority, as constituted from time to time; and

- (ii) the person's executors, administrators, successors and permitted assigns;
- (f) an agreement, representation or warranty by, or for, two or more persons binds, or is for their benefit, together and separately;
- (g) a covenant forbidding a person from doing something, also forbids that person from authorising or allowing another person to do it;
- (h) a reference to anything (including an amount) is a reference to all or any part of it, and a reference to a group of persons is a reference to any one or more of them;
- (i) a reference to a clause, paragraph, schedule, annexure or appendix, is a reference to a clause, paragraph, schedule, annexure or appendix in or to it;
- (j) a reference to "writing" includes a reference to printing, typing, lithography, photography and other methods of representing or reproducing words, figures, diagrams and symbols in a tangible and visible form;
- (k) a reference to a day is to be interpreted as the period of time starting at midnight and ending twenty-four (24) hours later;
- (l) a reference to a month or a year means a calendar month or a calendar year respectively;
- (m) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (n) a term of inclusion is not to be interpreted to be a term of limitation;
- (o) all references to monetary sums in it, or to be made under it, are to Australian currency;
- (p) a reference to the payment of money within a specified time, means the full crediting and clearance of any cheque or electronic transfer into the payee's account within that time;
- (q) it operates under Tasmanian time;
- (r) if the day on or by which an act, matter or thing is to be done under it is not a Business Day, then that act, matter or thing must be done no later than the next Business Day;

- (s) an uncertainty or ambiguity in the meaning of a provision is not to be interpreted against a party only because that party prepared the provision; and
- (t) headings are included for convenience only, do not form part of it, and are not to be used in its interpretation.

2. TERM

2.1. Initial Term

This Agreement commences on the Commencement Date, and subject to clauses 2.2 (Further Term) and 13 (Termination), continues until the Completion Date (**the Initial Term**).

2.2. Further Term

- (a) Subject to clause 11)(b), Metro may, after consideration of those matters detailed in clause 2.3 (Metro Considerations) extend the Initial Term of this Agreement for a further period of two (2) years commencing on the day after the Completion Date by notice in writing delivered to the Contractor (**the Extension Notice**) with such notice to be delivered to the Contractor not less than forty-five (45) days prior to the Completion Date.
- (b) An extension of the Initial Term of this Agreement becomes effective when the Extension Notice is received by the Contractor.
- (c) Any extension will be on the same terms and conditions, as set out in this Agreement, with the exception of:
 - (i) this clause 2.2 together with clauses 2.3 and 4.2 being deleted; and
 - (ii) any adjustment in respect of the schedule of rates for the Services pursuant to clause 4.2 (Fee for Further Term).

2.3. Metro Considerations

In determining if the Initial Term is to be extended Metro will consider:

- (d) the performance of the Contractor in delivering the Services during the Initial term;
- (e) any adjustment in respect of the Contract Fee proposed by the Contractor pursuant to clause 11)(a) (Fee for Further Term); and
- (f) such other matters as Metro, in its absolute discretion, deems relevant.

3. CONTRACTOR TO PROVIDE SERVICES

3.1. Obligation of Contractor

The Contractor must ensure that the Services are provided:

- (a) by employees, contractors, agents or other persons of the Contractor who:
 - (i) are appropriately qualified and licensed to conduct or provide the Services;
 - (ii) are suitably trained, fit, healthy and experienced in rendering the Services; and
 - (iii) have been made aware of (and will comply with) the provisions of this Agreement which apply to them;
- (b) with the due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in providing services similar to the Services;
- (c) from (and including) the Commencement Date to (and including) the Completion Date, or by such other date as Metro may direct by giving notice to the Contractor in writing;
- (d) in accordance with Schedule 2;
- (e) in accordance with all Legislative Requirements applicable to the Services; and
- (f) in accordance with Metro's Code of Conduct and any other reasonable directions.

3.2. Job Sheets for Services

- (a) Metro will use reasonable endeavours to ensure that the Contractor is able to access the Maintenance System at all times during the Term of this Agreement.
- (b) The Contractor must not perform any Services unless and until a Job Sheet for those Services is created in the Maintenance System.
- (c) Metro makes no warranty or guarantee of any kind regarding the volume of Services that the Contractor will be required to provide under this Agreement.
- (d) Once a Job Sheet is created for particular Services, the Maintenance System will generate a Purchase Order which must be completed by the

Contractor for the relevant Services to be undertaken.

- (e) The Contractor must liaise with the Metro Representative to obtain their confirmation and execution of the Purchase Order for the particular Services detailed in the relevant Job Sheet. Metro acknowledges that this Purchase Order may not be signed by the Metro Representative until after the relevant Services have been completed by the Contractor.

3.3. Step-in rights

- (a) Without prejudice to any other rights or remedies that Metro may have, if the Contractor fails to perform any part of the Services in accordance with this Agreement, and fails to rectify that non-performance within 5 days of receiving notice to do so from Metro (**Non-Performed Services**), Metro may perform, or have performed, the Non-Performed Services and the Contractor indemnifies Metro from and against all costs incurred by Metro in connection with having the Non-Performed Services performed in accordance with this clause 3.3, where these costs exceed the amount that would have otherwise been paid by Metro to the Contractor for the Non-Performed Services.
- (b) The Contractor will not be entitled to receive any payment in relation to the Non-Performed Services.

3.4. Non-core work

- (a) Metro may also ask the Contractor to provide a quote in relation to certain Non-Core Work. The Contractor's quote must be based on the rates included in the schedule of rates for Non-Core Work in Schedule 3, adjusted in accordance with clause 4.2 (Fee for Further Term) and clause 4.3 (CPI Adjustment).
- (b) The Contractor will not be required to perform any Non-Core Work unless and until the Contractor's quote is accepted by Metro in writing.
- (c) Where Metro accepts the Contractor's quote for Non-Core Work, the Contractor must perform the Non-Core Work in accordance with the terms of this Agreement as if references to "Services" were references to "Non-Core Work".
- (d) For the avoidance of doubt, there is no obligation on Metro to accept any quote from the Contractor in relation to Non-Core Work and Metro may engage a third party to perform any Non-Core Work at any time.

3.5. Supply of parts and consumables

The Contractor will ensure that all parts and consumables required to be supplied by the Contractor as part of provision of the Services will:

- (a) be supplied with the due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in providing services similar to the Services;
- (b) be supplied exercising reasonable skill, care and diligence;
- (c) be supplied in accordance with all applicable:
 - (i) Legislative Requirements and any standards, codes of conduct and guidelines which are imposed under any Legislative Requirements or by any authority; and
 - (ii) licences, approvals, authorisations and permits;
- (d) be provided together with all documents required to transfer ownership in the parts and consumables and the benefit of any warranties in relation to the parts and consumables (if any), to Metro;
- (e) comprise the best available materials suitable for the intended use of the parts and consumables;
- (f) be of merchantable quality and will be free from defects in design, materials and workmanship;
- (g) operate satisfactorily and reliably under all normal operating conditions;
- (h) be fit for the purpose communicated by Metro to the Contractor or, if no such purpose is communicated, for the purpose for which goods of that type are usually acquired and/or used; and
- (i) be free from all liens and encumbrances;

3.6. Warranties regarding parts and consumables

The Contractor warrants that:

- (a) the Contractor has good title to all parts and consumables to be supplied in the course of providing the Services;
- (b) the Contractor is legally entitled to transfer, and will transfer, ownership of those parts and consumables to Metro;
- (c) in agreeing to supply those parts and consumables and in supplying the parts and consumables, the Contractor does not, and will not infringe:

- (i) any rights which any person may have in respect of the parts and consumables; or
- (ii) any Legislative Requirements which apply in respect of the parts and consumables; and
- (d) those parts and consumables comply with all Legislative Requirements, standards, codes and any required licences, approvals, authorisations and permits.

3.7. Liquidated damages

- (a) In performing the Services, the Contractor must take all steps necessary to ensure that:
 - (i) the number of Metro buses not available for during Peak Operating Times is minimised; and
 - (ii) on any day during Peak Operating Times there are to be no more than three Metro buses not available in Hobart, no more than one Metro bus not available in Launceston and no more than one Metro bus not available in Burnie (**Unavailable Buses Limit**).
- (b) The Contractor acknowledges and agrees that Metro will incur loss and damage if the number of Metro buses not available for Peak Operating Times on any day exceeds the Unavailable Buses Limit in Hobart, Launceston or Burnie.
- (c) Subject to clause 3.7(f), where the number of Metro buses not available for Peak Operating Times on any day exceeds the Unavailable Buses Limit in Hobart, Launceston or Burnie, then liquidated damages in the amount of \$1,000 per day for each unavailable bus in excess of the Unavailable Buses Limit will be due and payable by the Contractor to Metro:
 - (i) from and including the first day on which the number of Metro buses not available for Peak Operating Times exceeded the Unavailable Buses Limit in Hobart, Launceston or Burnie;
 - (ii) to and including the next day on which the number of Metro buses not available for Peak Operating Times was less than the Unavailable Buses Limit in Hobart, Launceston and Burnie.
- (d) The Contractor acknowledges and agrees that the amount of liquidated damages set out in clause 3.7(c):

- (i) has been agreed between the parties in good faith; and
 - (ii) represents a genuine pre-estimate of the loss and damage which Metro is likely to incur if the number of Metro buses not available for Peak Operating Times on any day exceeds the Unavailable Buses Limit in Hobart, Launceston or Burnie.
- (e) Metro may recover the amount of liquidated damages calculated in accordance with clause 3.7(c):
 - (i) on demand from the Contractor; or
 - (ii) by deducting the amount of the liquidated damages from any amount owing by Metro to the Contractor.
- (f) Metro acknowledges and agrees that the Contractor shall not be liable to pay liquidated damages under this clause if the majority of buses which are not available during the Peak Operating Times on any day is caused by the acts and/or negligence of an employee of Metro or any other person who is not an employee, contractor, or invitee of the Contractor.

4. PRICING AND PAYMENT

4.1. Pricing

Subject to the Contractor complying with its obligations under this Agreement, Metro must pay to the Contractor a fee for the delivery of the Services, calculated in accordance with the schedule of rates for the Services set out in Schedule 3 (Prices) and adjusted in accordance with clause 4.3 (CPI Adjustment) and as adjusted pursuant to clause 4.2 (Fee for Further Term).

4.2. Fee for Further Term

- (a) No later than sixty (60) days prior to the Completion Date the Contractor must notify Metro of any adjustment in respect of the schedule of rates for the Services set out in Schedule 3 (Prices) as adjusted in accordance with clause 4.4 (CPI Adjustment) that would apply to the Further Term if Metro exercised its option to extend the Initial Term pursuant to clause 2.2 (Further Term).
- (b) If Metro exercises the option to extend the Initial Term of this Agreement pursuant to clause 2.2 (Further Term) and accepts the adjusted schedule of rates for the Services proposed by the Contractor pursuant to clause 4.2(a), then the adjusted schedule of rates for the Services will apply as of and from the first day of the Further Term.

4.3. Invoices

- (a) Within 10 Business Days of the end of a calendar month, the Contractor must issue a valid Tax Invoice to Metro for the total cost of Services performed by the Contractor in the previous month.
- (b) All payments under this Agreement will be made by Metro no later than 30 days after the receipt by Metro of an invoice for payment subject to:
 - (i) the invoice being a valid Tax Invoice for the purposes of the GST Act;
 - (ii) the invoice including details of the Services performed and the associated dates of performance, up to the date of invoice;
 - (iii) the invoice setting out a separate amount for GST; and
 - (iv) Metro being satisfied that the Contractor has complied with all of its obligations under this Agreement.

4.4. CPI adjustment

- (a) CPI Formula

The rates included in the schedule of rates set out in Schedule 3 (Prices) will be reviewed and adjusted on each CPI Adjustment Date in accordance with the following formula:

$$A = B \times C/D$$

Where:

- A = the rates payable from and including the relevant CPI Adjustment Date;
- B = the rates payable immediately before the relevant CPI Adjustment Date;
- C = the Consumer Price Index All Groups Hobart for the quarter immediately preceding the particular review date; and
- D = the Consumer Price Index All Groups Hobart for the quarter immediately preceding the previous CPI Adjustment Date or the Commencement Date, whichever is later.

- (b) Amendment to Consumer Price Index Formula

If either:

- (i) the Consumer Price Index All Groups Hobart ceases to be published quarterly; or
- (ii) the method of calculation of the Consumer Price Index All Groups Hobart substantially alters;

then the Consumer Price Index All Groups Hobart is to be replaced by the nearest equivalent price index and any necessary consequential amendments are to be made. That index and those amendments are to be determined as follows:

- (iii) by agreement between the parties; or
- (iv) if the parties do not agree, by the officer in charge of the Hobart office of the Australian Bureau of Statistics or his or her nominee (acting as an expert and not as an arbitrator), whose decision is binding and conclusive. The costs of such referral of the decision shall be borne equally by the parties.

References to the Australian Bureau of Statistics includes references to the Bureau but with a different name at any time and a person or authority at any time having similar functions in place of the Bureau.

5. PERSONAL PERFORMANCE

5.1. Specified Personnel

The Services must be personally undertaken only by the Specified Personnel.

5.2. Change in Specified Personnel

- (a) The Contractor must advise Metro in writing as soon as the Contractor becomes aware of any of the Specified Personnel being unavailable to carry out the Services.
- (b) If clause 5.2(a) (Change in Specified Personnel) applies, the Contractor must:
 - (i) notify Metro of any Proposed Personnel;
 - (ii) if requested by Metro, provide Metro with a resume and/or curriculum vitae for each Proposed Personnel; and
 - (iii) obtain Metro's consent in relation to any Proposed Personnel; prior to appointing any Proposed Personnel to carry out any part of the Services.

- (c) Once Metro gives consent under clause 5.1(b)(iii) (Change in Specified Personnel), the Contractor must appoint any Proposed Personnel that Metro has consented to for performance of the Services.
- (d) The Contractor must continue to follow the process in clause 5.1(b) (Change in Specified Personnel) until any Proposed Personnel required are acceptable to Metro and appointed by the Contractor.
- (e) Any replacement of Specified Personnel by the Contractor, or provision of Proposed Personnel to Metro, under this clause 5.1 will be performed by the Contractor at its cost.

5.3. Contractor's Specified Personnel

The Contractor must ensure that each of its Specified Personnel:

- (a) are appropriately qualified and licensed to conduct the Services; and
- (b) are aware of the terms and conditions of this Agreement, and perform the Services in accordance with this Agreement.

5.4. Alcohol and other drugs

- (a) The Contractor is required to fully cooperate with Metro in relation to the implementation of Metro's Alcohol and Other Drug Procedure, including any request by Metro to undertake a drug or alcohol test.
- (b) The Contractor will reimburse Metro for the cost of conducting an alcohol or other drug test where that test returns a result that is inconsistent with the standard detailed in Metro's Alcohol and Other Drugs Procedure, such as the requirement for contractors to have a blood alcohol content not exceeding 0.00%.

5.5. Access to Site

Metro will provide to the Contractor access to any site owned, leased or otherwise controlled by Metro (**Site**) as is reasonably necessary for the Contractor to carry out the Services but subject to:

- (a) the requirements contained in clauses 5.3 (Drug and alcohol testing), 5.6 (Workplace health and safety obligations) and 8 (Insurance);
- (b) the Services performed on the Site must be performed within Metro's normal working hours notified by Metro to the Contractor;
- (c) Services performed on the Site must be performed in accordance with any requirements specified in Schedule 2 (Services); and

- (d) the Contractor must make good any damage caused to the Site by the Contractor or its employees, agents or subcontractors.

5.6. Workplace Health and Safety

The Contractor:

- (a) acknowledges and agrees that during the Term (whether or not the performance of the Services requires the Contractor to enter the Site), the Contractor must, and must ensure that all of the Specified Personnel, comply with all applicable Legislative Requirements in relation to workplace health and safety at all times while on the Site or performing the Services;
- (b) must provide to Metro all things necessary to enable Metro to meet its obligations under any applicable workplace health and safety Legislative Requirements;
- (c) agrees that the Contractor has received from Metro all relevant information held by Metro that may reasonably be required by the Contractor to discharge the duties imposed on the Contractor by any applicable workplace health and safety Legislative Requirements;
- (d) must notify Metro in writing where there is a conflict under the workplace health and safety Legislative Requirements and any other requirements under this Agreement and must consult, cooperate and coordinate with Metro or other applicable duty holders to find an appropriate resolution;
- (e) must provide to Metro, when required by Metro, evidence satisfactory to Metro of the Contractor's compliance with any applicable Legislative Requirements;
- (f) must, as far as is reasonably practicable, consult, cooperate and coordinate its activities with Metro or any other applicable duty holders, in all work, health and safety matters connected, arising out of, or associated with providing the Services and this Agreement;
- (g) must promptly notify Metro of any security breaches, accident, property or environmental damage or notifiable incident pursuant to any applicable Legislative Requirements in relation to workplace health and safety, which occur during the course of performing the Services; and
- (h) must not do anything which may place Metro in breach of any applicable workplace health and safety Legislative Requirements and other legal requirements.

5.7. Responsibility of Contractor

- (a) The Contractor is fully responsible for the performance of the Services under this Agreement and will not be relieved from that responsibility due to:
 - (i) acceptance by Metro of the Specified Personnel; or
 - (ii) payment by Metro under this Agreement.
- (b) The Contractor agrees to supervise the performance of each of the Specified Personnel and will ensure that such personnel comply at all times with the obligations of the Contractor under this Agreement.

6. LIAISON AND REPORTING

6.1. Metro's Representative

- (a) Metro may from time to time appoint individuals to exercise any functions of Metro under this Agreement (**Metro Representative**) but not more than one of Metro's Representatives will be delegated the same function at the same time. The appointment of Metro's Representatives will not prevent Metro from exercising any function.
- (b) Metro may notify the Contractor in writing of:
 - (i) The appointment and the name of any Metro Representative and the functions delegated to that Metro Representative;
 - (ii) The termination of the appointment of a Metro Representative.

6.2. Contractor's Representative

- (a) The Contractor must at all times have an individual to whom Metro or Metro's Representatives can give directions and make enquiries (**Contractor's Representative**).
- (b) The Contractor must notify Metro in writing of the name of the individual. The individual will be known as the 'Contractor's Representative'.
- (c) Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.
- (d) Directions given to the Contractor's Representative will be deemed to have been given to the Contractor.
- (e) The Contractor's Representative must liaise with, and report to a Metro Representative as and when reasonably required by that Metro

7. INDEMNITIES

7.1. Contractor indemnifies Metro

The Contractor is liable for and indemnifies Metro against all loss (including legal costs and expenses on a solicitor/own client basis), liability (including for any loss or damage to property, injury or death to any person) and claims by any person, arising directly or indirectly from or in connection with any one or more of the following:

- (a) the performance of the Services;
- (b) the breach of any provision of this Agreement by the Contractor;
- (c) the breach of any Legislative Requirements by the Contractor; or
- (d) the negligence of the Contractor in relation to performance of the Services,

except to the extent that any loss, liability or claim is caused by the negligence or default of Metro.

7.2. Metro indemnifies Contractor

Metro is liable for and indemnifies the Contractor for the Market Cost of each part (excluding Consumables) ordered but not yet used by the Contractor, which at the time of the order is necessary for the Contractor to perform the Services (in the reasonable opinion of both the Contractor and Metro) if any of the following events occur:

- (a) this Agreement expires or is terminated for any reason; or
- (b) the parties do not enter into a similar agreement acceptable in all respects to both parties after the expiry of the Term; or
- (c) a particular part is no longer required for use by the Contractor in performing the Services due to Metro no longer using the model bus to which that part relates.

7.3. Nature of indemnities

The indemnities in clause 7.1 (Contractor indemnifies Metro) and 7.2 (Metro indemnifies Contractor):

- (a) are continuing obligations of the Contractor and Metro respectively, separate and independent from any other obligations; and

- (b) survive the expiry or termination (for any reason) of this Agreement.

8. INSURANCE

8.1. Contractor to insure

The Contractor must take out and maintain for the Term of this Agreement the following insurance policies:

- (c) public liability insurance for at least the amount specified in Item 4 (with Metro noted as an interested party);
- (d) workers' compensation insurance as required by law; and
- (e) any other insurance which Metro (acting reasonably) may require.

8.2. Contractor to notify Metro

The Contractor must notify Metro in writing as soon as practicable:

- (a) if an insurance policy referred to in clause 8.1 (Contractor to insure) lapses, is cancelled or is materially altered; or
- (b) if the Contractor claims, or becomes entitled to claim, under such an insurance policy for something related to delivering the Services.

8.3. Evidence of insurance

The Contractor must provide to Metro a certificate of currency for each insurance policy required under clause 8.1 (Contractor to insure):

- (a) before the Contractor starts to carry out the Services; and
- (b) on Metro's request.

8.4. Metro may insure

If the Contractor fails to comply with any of its obligations under this clause 8, Metro may do everything necessary to comply with such obligations and recover, upon demand, all expenses incurred in doing so, from the Contractor.

8.5. Contractor not to prejudice insurance

- (a) The Contractor must not do anything or allow anything to be done, in respect of this Agreement, which may affect Metro's rights under any insurance policy or which may increase any insurance premium payable by Metro.
- (b) If the Contractor does anything which increases the amount of any insurance premium payable by Metro, then the Contractor must, upon

demand, pay Metro the amount by which Metro's premium has been increased.

9. METRO MATERIAL

9.1. Metro Material remains property of Metro

Metro Material remains the property of Metro throughout the Term, and on the expiration or earlier termination of this Agreement, the Contractor must immediately return any Metro Material given to the Contractor, or in the Contractor's possession, to Metro. The Contractor must pay the cost of delivery for such return.

9.2. Third party rights in Metro Material

Metro must inform the Contractor of any Metro Material in which third parties hold the Intellectual Property and any conditions or limitations attaching to the use of that material. The Contractor must use Metro Material only under the conditions and limitations to which it is subject.

9.3. Contractor must keep Metro Material safe

The Contractor is responsible for the safe keeping and maintenance of Metro Material throughout the Term.

10. CONFIDENTIALITY

10.1. Confidential Information

Both parties undertake, in respect of any Confidential Information:

- (a) not to disclose such information to any person, subject to clause 10.2 (Disclosure) without the prior written consent of the disclosing party, unless and until:
 - (i) such information becomes generally available to the public in printed publications in general circulation in Australia, through no action, default or other breach by the recipient party; or
 - (ii) the recipient party is required by law to make disclosure, and then only to such extent;
- (b) to keep such documents and any other material containing or incorporating any Confidential Information, in safe custody;
- (c) not to make copies or take extracts of any Confidential Information;

- (d) to immediately return to the disclosing party, all Confidential Information, upon the termination of this Agreement; and
- (e) to delete or erase any Confidential Information stored by the recipient party in any computer, electronic, or other information retrieval system, records or database, if requested by the disclosing party.

10.2. Disclosure

Each party may, notwithstanding clause 10.1 (Confidential Information), disclose Confidential Information to such of its representatives who may need such information and only to the extent so needed, to enable such party to fulfil its obligations under this Agreement.

10.3. Advertising and Announcement

The Contractor may not, without the prior written consent of Metro, advertise or announce or allow to be advertised or announced, that the Services have been or will be supplied or rendered to Metro.

10.4. Contractor's employees to comply

The Contractor must ensure that all of its employees, agents and sub-Contractors who have access to Confidential Material, are aware of, and comply with, the obligations under this clause 10.

10.5. Privacy obligations preserved

Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cth).

11. ACCESS

At all reasonable times, the Contractor must:

- (a) give to Metro or to any person authorised by Metro, access to any premises where the Services are being undertaken; and
- (b) allow those persons to inspect the performance of the Services and any Metro Material, Contract Material or other material relevant to the Services.

12. NEGATION OF EMPLOYMENT AND AGENCY

12.1. No representation by Contractor, sub-Contractors etc

The Contractor:

- (a) must not represent itself; and
- (b) must ensure that its sub-contractors, employees and agents do not represent themselves;

as being sub-contractors, employees or agents of Metro.

12.2. Contractor remains independent Contractor

Despite any degree of direction, control or supervision that Metro directly or indirectly exercises over or in respect of the Contractor, or the Contractor's employees, agents or sub-contractors in the discharge of duties, obligations, and covenants under this Agreement, the Contractor is taken to be and remains an independent Contractor of Metro.

13. TERMINATION

13.1. Suspension

Metro may by notice to the Contractor suspend the provision of the Services and payment for Services under this Agreement if:

- (c) the Contractor has failed to complete any Services within the timeframes specified by Metro to the Contractor during the course of the Agreement; or
- (d) the Contractor is otherwise in default under this Agreement

and such non-compliance is not remedied by the Contractor within 14 days after Metro gives the Contractor notice to remedy it.

The rights of Metro under this clause 13.1 are without prejudice to Metro's rights to take action under clause 13.3 (Default).

13.2. Reinstatement

Metro will only reinstate the Services if Metro is satisfied (in its discretion) that the Contractor has taken action to rectify the cause of the suspension under clause 13.1 (Suspension).

13.3. Default

Either party (the **Non-Defaulting Party**) may terminate this Agreement by giving the other party (the **Defaulting Party**) notice if:

- (a) the Defaulting Party repudiates its obligations under this Agreement;
- (b) the Defaulting Party does not comply with an obligation under this Agreement and, in the Non-Defaulting Party's reasonable opinion:

- (i) the non-compliance can be remedied, but the Defaulting Party does not remedy it within 14 days after the Non-Defaulting Party gives the Defaulting Party notice to remedy it; or
- (ii) the non-compliance cannot be remedied; or
- (c) an Insolvency Event occurs in respect of the Defaulting Party.

13.4. Indemnity

If this Agreement is terminated under clause 13.3 (Default):

- (a) the Defaulting Party indemnifies the Non-Defaulting Party against any liability or loss arising and any cost incurred (whether before or after termination of this Agreement) in connection with the Defaulting Party's breach of this Agreement and the termination of this Agreement; and
- (b) the Non-Defaulting Party must take reasonable steps to mitigate its loss.

13.5. Lease

Metro may terminate this Agreement on written notice to the Contractor if the Lease ends or is terminated for any reason.

13.6. Reimbursement

Where, before termination of this Agreement under clause 13.3 (Default) or clause 13.5 (Lease), Metro has made any payment to the Contractor in advance, the total amount of that advance payment must be repaid by the Contractor to Metro on termination and, if not repaid, is recoverable by Metro from the Contractor as a debt.

13.7. Rights not prejudiced

If this Agreement is terminated under clause 13.3 (Default) or clause 13.5 (Lease):

- (a) the parties are relieved from future performance of this Agreement, without prejudice to any right of action that has accrued prior to the date of termination; and
- (b) rights to recover damages are not affected by the termination.

14. WAIVER AND VARIATION

- (a) No failure by a party to exercise, nor any delay in exercising, a right, power or remedy operates as a waiver.
- (b) A single or partial exercise of a right, power or remedy does not preclude

any other, or further, exercise of that, or any other right, power or remedy.

- (c) A waiver is neither valid nor binding on the party granting it, unless made in writing signed by the party to be bound by the waiver.
- (d) An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

15. GOVERNING LAW AND JURISDICTION

15.1. Law of Tasmania

The law of Tasmania governs this Agreement, and the parties submit to the jurisdiction of the Courts of Tasmania.

15.2. Proceedings issued under or about this Agreement

Any proceedings issued against Metro under, or about, this Agreement, must be instituted either:

- (a) in a Tasmanian court; or
- (b) in the Federal Court, from the Tasmanian Registry of that court.

16. RESOLUTION OF DISPUTES

16.1. Notice

If a party has a dispute or complaint against the other, that party (**Notifying Party**) must notify the other party in one of the ways described in clause 18 (Notices). The Notifying Party must ensure that the notice contains specific detail identifying the nature of the dispute or complaint.

16.2. Best endeavours to resolve

Both parties within 21 days of the delivery of a dispute notice will meet and use their best endeavours to resolve the dispute or complaint to the mutual satisfaction of both parties as soon as possible.

16.3. Arbitration

- (a) If the parties are not able to reach a resolution of the dispute or complaint within a reasonable period of time (in any event being no more than 21 days after the date of receipt of the notice of the dispute or complaint), then the dispute or complaint must be submitted for arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Fast Track Arbitration Rules (**Referral of Dispute**).

- (b) The parties must consult with a view to selecting a single arbitrator but in the event they are unable to agree on the appointment of a single arbitrator within 10 days of the Referral of Dispute, the matter will be referred to an arbitrator to be appointed by the President (or their nominee) for the time being of the Law Society of Tasmania.
- (c) The decision of the arbitrator must be final and conclusive and binding on the parties and the parties must sign all documents and do all things necessary to give effect to the decision of the arbitrator.
- (d) Each party must bear their own costs of and incidental to the arbitration, except where stipulated to the contrary by the arbitrator.
- (e) For disputes or complaints which involve a claim for less than \$50,000.00, arbitration will take place by way of written submissions supported by relevant documents alone unless both parties agree otherwise.

16.4. Exceptions

Nothing in this clause 16 prevents:

- (a) either party from seeking urgent interlocutory relief;
- (b) Metro from seeking recovery for any claim that Metro reasonably considers to be a monetary claim,
from a Court of competent jurisdiction or by such other manner as is appropriate in the circumstances; or
- (c) Metro from exercising its rights to suspend or terminate this document under clause 13 (Termination).

16.5. Continuing obligations

The parties agree to continue to perform their obligations under this document, notwithstanding the existence of a dispute or complaint.

16.6. Survival

This clause 16 survives the expiry or termination (for any reason) of this Agreement.

17. SUB-CONTRACTING AND ASSIGNMENT

17.1. Contractor not to sub-contract or assign

Without Metro's prior written consent, the Contractor must not subcontract, assign, part with or be relieved from, any rights, powers or obligations arising

under this Agreement.

17.2. Contractor remains responsible

Unless Metro agrees otherwise in writing, the Contractor remains responsible for the performance of the Services despite that the Contractor has sub-contracted or assigned the performance of any part of the Services.

17.3. Sub-Contractors must have insurance

If Metro gives written consent under clause 17.1 (Contractor not to sub-contract or assign), then the Contractor must ensure that all sub-Contractors have in place, and keep current, before carrying on any part of the Services, the same insurances as the Contractor is required to have in place under clause 8.1 (Contractor to insure).

17.4. No further sub-contracting

No sub-Contractor of the Contractor may further subcontract any of the Services.

18. NOTICES

18.1. How to give a notice

A notice or other communication to be given or made under this Agreement must be in writing and addressed to the recipient party at their address, or to their email address or fax number (as the case may require) outlined in the Details.

18.2. How to serve a notice

A notice or other communication is taken to have been duly served:

- (a) in the case of hand delivery - when delivered;
- (b) if sent by prepaid post - on the third Business Day after the date of posting;
- (c) if sent by facsimile transmission (if the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) - upon completion of sending if completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9.00 am. on the next Business Day in that place; or
- (d) if sent by email – at the time the email message is sent, unless:
 - (i) the sender receives and automated email notification that the email transmission has failed or has been delayed within 12 hours

of sending the notice; or

- (ii) the sender receives automated email notification to the effect that the recipient is not likely to receive the notice until a later date, which will then become the deemed date of receipt.

However, if the intended recipient has notified a changed postal address, changed email address or changed fax number, then the communication must be to that postal address or fax number.

18.3. Sufficiency of notice etc

A notice or other communication to be given or made under this Agreement is sufficient if:

- (a) in the case of Metro, it is under the hand of Metro or its agents or solicitors; and
- (b) in the case of the Contractor, it is under the hand of the Contractor or its agent or solicitors.

18.4. Signatures

A printed or copied signature is sufficient when sending a demand, written consent or other communication by facsimile transmission or by attachment to an email.

19. SEVERANCE

19.1. Reading down, severance

- (a) If a provision of this Agreement or its application to a person or circumstance is or becomes void, invalid, illegal or unenforceable, then so far as possible, the provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable.
- (b) If a provision, or part of it, cannot be so read down, then the provision, or part of it, will be taken to be void and severable and the remaining provisions of this Agreement will not be affected or impaired in any way.

19.2. Altering the basic nature of this Agreement

Clause 19.1 (Reading down, severance) has no effect if the severance alters the basic nature of this Agreement, or is contrary to public policy.

20. METRO'S RIGHTS

An express statement of a right of Metro under this Agreement is without prejudice to any other right of Metro expressly stated in this Agreement or arising at law.

21. INCONSISTENCY

If something in a schedule or an attachment to this Agreement is inconsistent with a clause of this Agreement, then the latter prevails.

22. GOODS AND SERVICES TAX

22.1. GST Exclusive

Unless otherwise stated in this Agreement, all amounts payable by one party to another party under this Agreement are exclusive of GST.

22.2. Liability for GST

Subject to any other provision of this Agreement expressing a contrary intention, if GST is imposed on a supply made under it, then the party paying for the supply must pay the amount of the GST to the party making the supply, at the same time as, and in addition to, the amount payable for the supply.

22.3. Tax invoice

A party making a taxable supply under this Agreement must give the recipient a tax invoice for the taxable supply when that supply is made.

23. ENTIRE AGREEMENT

23.1. Entire agreement

The covenants, warranties, agreements and provisions contained in this Agreement comprise the entire agreement between the parties about its subject matter.

23.2. Nothing to be implied

No other covenant, warranty, disclaimer, agreement or provision is to be implied into this Agreement or to arise between the parties as a collateral or other agreement because of a promise, representation, warranty or undertaking given or made by or on behalf of one party to another before or after it was signed. All parties expressly deny and disclaim the existence of any such implication, or collateral or other agreement.

23.3. Contractor's terms

The Contractor's standard or usual terms and conditions of supply are expressly excluded with the effect that this Agreement exclusively applies and constitutes the entire agreement between the parties.

24. CONTINUING OBLIGATIONS

The termination or expiration of this Agreement does not act to extinguish a debt, obligation or liability of either of the parties which has accrued under this Agreement and in particular the provisions, rights and obligations described in the following clauses will survive and continue to apply:

- (a) 7 (Indemnities),
- (b) 10 (Confidentiality),
- (c) 13 (Termination),
- (d) 16 (Resolution of disputes), and
- (e) 22 (Goods and Services Tax).

25. COUNTERPARTS

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts will be taken to constitute one agreement.
- (c) The parties agree that if necessary, they may exchange faxed copies of counterparts, and those faxed copies will be taken to constitute one agreement. The parties must exchange executed originals as soon as possible afterwards.

26. PERSONAL INFORMATION PROTECTION

26.1. Application of clause

This clause 26 applies only if the Contractor deals with Personal Information in the course of delivering the Services.

26.2. Personal Information Custodian

If the Contractor is a Personal Information Custodian then the Contractor must:

- (a) notify Metro immediately if the Contractor becomes aware of a breach, or possible breach, of the *Personal Information Protection Act 2004* (Tas)

("PIP Act"); and

- (b) ensure that the Contractor's employees, agents and sub-contractors who are required to deal with Personal Information in the course of delivering the Services are aware of, and comply with, the Contractor's obligations under this clause.

26.3. Breach of PIP Act

A breach of the PIP Act by the Contractor is a breach of this Agreement that entitles Metro to terminate it under clause 13.3 (Default).

26.4. Terms defined in PIP Act

In this clause, "Personal Information" and "Personal Information Custodian" have the same meanings as in the PIP Act.

DRAFT

SIGNING PAGE

EXECUTED as an Agreement

EXECUTED for and on behalf of

METRO TASMANIA PTY LTD (ACN 081 467 281)

by (a duly authorised person)

in the presence of:

.....
Signature of witness

.....
Name of witness (block letters)

.....
Address of witness

.....
Occupation

EXECUTED by **[CONTRACTOR]** (ACN **[ACN]**) pursuant)

to section 127 of the Corporations Act 2001 by:)

.....
Sole Director/Secretary Signature

.....
Sole Director/Secretary Full Name (print)

SCHEDULE 1: Items

Item 1	<u>COMMENCEMENT DATE</u> Clauses 1.1 (Definitions) and 2 (Term)	1 January 2019
Item 2	<u>COMPLETION DATE</u> Clauses 1.1 (Definitions) and 2 (Term)	31 December 2021
Item 3	<u>SPECIFIED PERSONNEL</u> Clauses 1.1 (Definitions) and 5.1 (Specified Personnel)	[insert]
Item 4	<u>PUBLIC LIABILITY INSURANCE</u> Clause 11)(c) (Contractor to insure)	TWENTY MILLION DOLLARS (\$20,000,000) for each individual claim or series of claims arising out of a single occurrence, or for such other sum as Metro reasonably determines and notifies to the Contractor in writing.
Item 5	CPI ADJUSTMENT DATE Clause 4.4 (CPI Adjustment)	31 December 2019; and 31 December 2020. If the option to extend this Agreement is exercised under clause 2.2 (Further Term) then the following CPI Adjustment Dates will apply for the duration of the Further Term – 31 December 2021; and 31 December 2022.

SCHEDULE 2: Services

[subject to negotiation with the successful Tenderer]:

The Services to be provided by the Contractor are as follows

1) Overview

The Contractor will primarily be required to perform *Core Maintenance Services* (as defined in clause 3(a) of Schedule 2) and repairs to bus bodies including seat and upholstery repairs, which are the day-to-day repairs required to maintain Metro bus bodies in a safe serviceable and presentable condition. These repairs must be undertaken as a priority in order to keep the bus fleet available for service.

Minor repairs (e.g. seat or water leak repairs) are to be undertaken in Metro's existing body repair workshop facilities within the Leased Premises [negotiable].

All repairs deemed major repairs (e.g. body damage repairs and repairs requiring spray painting) must be done off-site at a suitable facility approved by Metro that meets all relevant standards.

2) Objectives

The objectives of the Contract are:

- to minimise the downtime of buses, and under normal circumstances, aim to have no more buses than the Unavailable Buses Limit under repair at any one time;
- to create an environment and incentives for the Contractor to introduce innovative changes that will provide significant gains in productivity and reductions in the cost of body repairs and maintenance;
- to ensure that the safety and presentation of all buses are maintained at the current required standards, or as determined from time to time in accordance with industry best practice or Metro requirements;
- to undertake the works in such a manner that performance, safety and compliance with statutory regulations and requirements is not compromised; and
- to maximise the service quality and comfort levels afforded to bus passengers, consistent with technical requirements.

3) Requirements

(a) Core Maintenance Services

The Contractor is to ensure there is a sufficient supply of labour and materials on hand to complete the core maintenance services. The core maintenance and repair of bus bodies includes, but is not limited to:

- Accident repairs, deemed by the Metro Representative to be of a value less than \$5,000 (excluding GST);
- Ongoing inspection of buses in the fleet to identify abnormal deterioration or other problems to enable planned core repair and maintenance;

- Procedures to facilitate necessary work to remove/replace panels and to change glazing on site;
- Procedures to ensure maximum life is attained from body finishes including paintwork, panel repair, body frame and glazing;
- Procedures to ensure correct matching of paintwork, panel repair, glazing finish materials, and livery;
- All seat and upholstery repairs.
- Procedures to record all work including materials used from Metro supply, both on and off buses for invoicing purposes and maintenance records;
- Procedures to ensure repair/ rectification is within reasonable time from fault detection;
- Provision of roadside service during normal hours and after hours;
- Other maintenance, repair and record keeping as determined by Metro from time-to-time.

The Contractor will provide core maintenance services consistent with elements of Metro's established workplace procedures such as:

- Undertake accident repairs less than \$5,000 in value within 30 working days of confirmation being received from the Metro Representative or their nominated delegate that the accident damage warrants immediate repair, subject to parts being available;
- Buses undergoing repairs are to be suitably identified as being unavailable for service as per Metro procedures;
- Buses are not to be left unattended with keys in place;
- Metro is to be notified when a bus becomes available for service after any work is complete;
- The Contractor must comply with all relevant safe working practices including those nominated by Metro;
- All equipment to perform the Services must be maintained in a safe condition;
- Buses are to be cleaned and inspected before returning to Metro service;
- Buses with mechanical maintenance issues are to be identified so that remedial action may be programmed as soon as practicable;
- The number of buses not available for peak service is to be minimised and should be no greater than the Unavailable Buses Limit at any time;
- Buses may be returned into operational service prior to completion of work, provided the buses are safe, roadworthy and accepted by Metro;
- Maintain an appropriate supply and adequate stock of parts and consumables;
- Liaise with the Metro Representative or his nominated delegate before removing buses from service or returning buses to service; and
- Undertake the changeover and repairs of seats and upholstery.

4) Lease of Metro Premises [\[negotiable\]](#)

The Contractor will enter into a lease of the Leased Premises on the terms and conditions of that lease provided at Appendix 1 (Lease of Metro Premises).

5) Conduct of the Works

As far as practical the works are to be undertaken at the Leased Premises [negotiable]. There may be occasions where the works or part of it needs to be performed off-site. Any such work is to be undertaken in a safe manner causing the least possible disruption to depot operation, or surrounding residential areas and other road users. Where the Services are required to be performed on other premises owned or occupied by Metro, Metro will grant (or procure a grant of) access for the Contractor to those premises on terms acceptable to Metro.

Works undertaken at the Leased Premises and at Metro's bus body repair workshop located at 30 Strahan Street, Burnie must be confined to minor works or running repairs (e.g. windscreen replacement or water leak repair). All major repairs (e.g. body damage repairs and repairs requiring spray painting) must be done offsite at one of the facilities detailed in Schedule 6 (Off-Site Facilities) or at another suitable facility previously approved by Metro that meets all relevant standards.

6) Parts and Consumables

All parts relating to the repair of Metro bus bodies will be held by the Contractor.

The Contractor will apply the percentage mark-up for parts as detailed in Schedule 4.

All parts must be held at the Contractor's cost.

The Contractor will be responsible for all freight costs.

The Contractor must purchase all stock held by the incumbent contractor excluding consumables prior the Commencement Date at cost price (an estimated value of this stock is provided in Schedule 5 (Stock Value)).

7) Programming and Coordination of Works

The Contractor has overall responsibility for planning the manner in which the Services should be undertaken and programming of the Services to meet Metro's requirements. However, it is anticipated that the Contractor will develop a sound working relationship with Metro, which will enable the Contractor to maximise performance through cooperative arrangements to ensure each party's needs are addressed.

8) Depot Operating Times

As at 1 July 2013, the normal opening times of Metro's depots are (in accordance with Council noise restrictions):

Hobart:

Monday to Thursday:	4.45am to 12:00am
Friday:	4.45am to 12:00am
Saturday:	6:15am to 1:45am
Sunday:	7.20am to 10:45pm

Launceston:

Monday to Friday:	5.30am to 11:30pm
Saturday:	7:15am to 11:30pm

Sunday: 8.30am to 7:30pm

Burnie:

Monday to Friday: 5.45am to 7:30pm

Saturday: 8:00am to 6:00pm

Sunday: Closed

The Services are to be undertaken within Metro depot operating hours but not outside the hours of 6:00 a.m. and 11.30 p.m. on any day of the week. Generally, work on specific buses can be arranged in advance by liaison with Metro depot staff. The following further comments are made in respect to the programming of work:

- Metro requires that adequate buses are always available to meet peak operating requirements. As at July 2018, the current peak operating times are Monday to Friday, 6.45 a.m. to 9.15 a.m. and 3.15 p.m. to 6.00 p.m. These 'peak' times may vary slightly between depots or when service demands change;
- Buses will not be generally available for the Services during Metro peak operating times unless special arrangements are made with the Metro Representative, or in his absence, the Operations Supervisors. However, it is acknowledged that the Contractor may have up to three buses in Hobart, one bus in Launceston and one bus in Burnie off the road for core repair and maintenance; and
- Bus availability is significantly improved on weekends, particularly Sundays (excluding Burnie depot which is closed on Sundays). The depot and satellite yards are accessible on weekends by arrangement with the Metro Representative, or in his absence, the Operations Supervisors.

9) Reporting and Record Keeping

Metro requires regular feedback from the Contractor in terms of bus checks undertaken and any problems identified. The Contractor will meet regularly with Metro to discuss performance and brief Metro personnel on developments in the fleet and the industry generally.

The Contractor must maintain any records as required by Metro:

- to show the number of each bus repaired, the extent of work and its location on the bus; and
- to account for the labour hours taken and the quantity of materials and parts used to undertake the repairs on each bus. These records will form the basis for invoices raised by the Contractor for undertaking the Services.

10) Other

The Contractor should note that materials with a salvage value removed from buses during the repair process are to be returned to Metro and the disposal revenue from such materials will be to Metro's advantage.

Any costs for disposal of materials residual to the repair process will be borne, at cost, by Metro.

11) Service Deficiencies

Metro has particular time constraints, which the Contractor must work within to assist Metro in orderly management of the bus fleet and satisfy the demands of the metropolitan bus timetables. Metro will record performance in this area from its own viewpoint and log service

deficiencies, including disruption to bus availability. Serious deficiencies will be reported to the Contractor immediately they come to Metro's attention. All deficiencies will be discussed with the Contractor.

Serious deficiencies in service are defined as:

- Excessive numbers of buses held out of peak service and causing late running or cancellation of services;
- Buses involved in accidents as a consequence of the Contractor's actions or omissions; and
- Non-compliance with regulatory or safety requirements normally considered to be industry best practice or prescribed in any state or federal legislation.

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SCHEDULE 3: Prices

<i>Hourly rate item</i>	<i>price (excluding GST) per hour</i>
Rates for Services	
Core maintenance and repair services during Scheduled hours	\$ [tba]
Core maintenance and repair services outside Scheduled hours, including call backs	
- Monday to \$ [tba] - Friday \$ [tba] - Saturday and \$ [tba] - Sunday and \$ [tba] - Public Holidays.....	
Rates for Non-Core Work	
Accident repairs, greater than \$5,000 in value	
- Hours by \$ [tba] - agreement..... \$ [tba] - Other (if appropriate).....	
Special projects and non core work	
- Hours by \$ [tba] - agreement..... \$ [tba] - Other (if appropriate) 	

SCHEDULE 4: Parts and Consumables

<i>Item</i>	<i>Margin (%)</i>
Consumables supplied by the Contractor Margin to be applied to the cost of consumables, if any	[tba] %
Spare parts supplied by the Contractor Margin to be applied to the cost of spare parts, if any	[tba] %

SCHEDULE 5: Stock Value

DISCRIPTION	VALUE
ARTIC KING LONG	\$4,420
BUS TECH	\$23,023.31
B-SEATS	\$5,991.55
CB60	\$65,955.71
CB60 ARTIC	\$1,158.40
CB80	\$5,117.75
CB80 & ARTIC	\$17,975.05
E MIRROR PARTS	\$7,152.60
GENERAL	\$40,248.61
ISRI	\$14,185.43
MAN	\$5,204.60
N 12.5	\$54,591.08
SCANIA	\$50,768.44
VOLGREN	\$21,936.97
TOTAL	\$317,729.50

SCHEDULE 6: Off-Site Facilities

[insert]

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Appendix 1: LEASE OF METRO PREMISES

(attached separately)

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