

**ANNEXURE F**

**Draft Contract**

**METRO TASMANIA PTY LTD**  
**(ACN 081 467 281)**

and

**[NAME OF CONTRACTOR]**  
**(ACN [ACN])**

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**CONTRACT FOR BUS ADVERTISING SERVICES**

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## DETAILS

**Date of Agreement**    The \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
**Parties**                      **Metro and Contractor**

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### **Metro**

Name                      **Metro Tasmania Pty Ltd**  
ACN                        **081 467 281**  
Address                  **212 Main Road, Moonah in Tasmania 7009**  
Metro  
Representative        **Chris Breen**  
Fax                        **(03) 6272 8101**  
Email                     **chris.breen@metrotas.com.au**

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### **Contractor**

Name                     **[insert]**  
ACN                       **[insert]**  
Address                  **[insert]**  
Contractor  
Representative        **[insert]**  
Fax                        **[insert]**  
Email                     **[insert]**

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## 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

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## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, unless the contrary intention is expressed:

**Advertising Revenue** means the net media revenue paid to the Contractor by the Contractor's clients for displaying advertisements on the exterior and interior surfaces of the Fleet and Shelters in accordance with this Agreement and excludes any commissions or deductions retained by advertising agencies, media buying agencies or advertising selling agencies.

**Agreement** means this Agreement including all schedules and appendices.

**Burnie Depot** means Metro's bus depot located at 28 Strahan Street, Burnie in Tasmania.

**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.

**Contract Material** means all material brought, or required to be brought, into existence as part of, or for the purposes of, performing the Services, including documents, information and data stored by any means.

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

**Contractor Representative** means the representative of the Contractor as set out in the Details.

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

**CPI Adjustment Date** means the date set out in Item 3.

**Depot** means, as the context requires, each of the Burnie Depot, the Launceston Depot and the Hobart Depot or all or any combination of the Burnie Depot, the Launceston Depot and the Hobart Depot.

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

**Fleet** means all public passenger vehicles owned or operated by Metro and used in the provision of Metro's business for the duration of the Term (and as adjusted from time to time) and which as of the date of this Agreement are detailed in Schedule 2.

**Further Term** means the period of two (2) years commencing on the day after the Completion Date and expiring on the second anniversary of the Completion Date.

**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.

**Hobart Depot** means Metro's bus depot located at 212 Main Road, Moonah in Tasmania.

**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) a garnishee notice, or a notice under section 120 of the PPSA, is given to:

- (i) a debtor of that party; or
  - (ii) any other person that otherwise owes or may owe money at any time to that party,
- in connection with any money that the party is said to owe;
- (c) an application is made to a court for a provisional or final order declaring a party provisionally or finally bankrupt or insolvent;
  - (d) a special resolution is passed to wind up the party;
  - (e) 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;
  - (f) 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;
  - (g) 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;
  - (h) 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;
  - (i) the party is or states that it is unable to pay its debts when they fall due;
  - (j) 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;
  - (k) the party is the subject of an event described in section 459(C)(2)(b) of the Corporations Act; or
  - (l) 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.

**KPI** means the key performance indicators set out in Schedule 4 and any measures developed by Metro in accordance with Schedule 4.

**Launceston Depot** means Metro's bus depot located at 168 Wellington Street, Launceston in Tasmania.

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

**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 and includes any materials or documents generated or created by the Contractor pursuant to this Agreement based on templates approved or provided by Metro.

**Metro Representative** means the representative of Metro as set out in the Details.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Rates** means those rates charged by Metro to the Contractor for the licence to provide the Services as detailed in Schedule 3 (Pricing Schedule).

**Shelters** means all bus stop shelters with provision for advertising that are owned by Metro and used in the provision of Metro's business for the duration of the Term (and as adjusted from time to time) and which as of the date of this Agreement are detailed in Schedule 2.

**Services** means all or any combination of the services described in Schedule 2.

**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.

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## 2 TERM

### 2.1 Initial Term

This Agreement commences on the Commencement Date, and subject to clauses 2.2 (Further Term) and 14 (Termination), continues until the Completion Date (**the Initial Term**).

### 2.2 Further Term

- (a) Subject to clause 2.2(b), Metro may, after consideration of those matters detailed in clause 2.4 (Metro Considerations) extend the Initial Term of this Agreement for a Further Term 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 2.4 being deleted; and
  - (ii) any adjustment in respect of the Contract Fee pursuant to clause 2.3 (Adjustment of Rates).

### **2.3 Adjustment of Rates**

No later than sixty (60) days prior to the Completion Date the Contractor must notify Metro of any proposed increases to all or any in the Rates that would apply to the Further Term if Metro exercised its option to extend the Initial Term pursuant to clause 2.2 (Further Term) (**the Revised Rates**).

### **2.4 Metro Considerations**

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

- (a) the performance of the Contractor in delivering the Services during the Initial term;
- (b) any Revised Rates proposed by the Contractor in respect of the Services for the Further Term; and
- (c) such other matters as Metro, in its absolute discretion, deems relevant.

### **2.5 End of Contract Term**

The Contractor will be entitled to continue to display advertisements on Metro's Fleet beyond the termination or expiration of this Agreement provided that:

- (a) the advertisements are a consequence of an advertising contract between the Contractor and the Contractor's client or clients (Client Contract);
- (b) the Client Contract commenced prior to the termination or expiration of this Agreement;
- (c) the advertisements are removed within 14 days of the expiry of the Client Contract to which they relate;
- (d) the advertisements are removed in accordance with Schedule 2 (Services);
- (e) the Contractor continues to be bound by the terms and conditions of this Agreement until all advertisements have been removed to the reasonable satisfaction of Metro; and
- (f) the Contractor pays Metro a pro-rata amount for the advertisements calculated in accordance with the Rates (including any adjustment of the Rates made in accordance with clause 4.2 (CPI Adjustment) and 4.3 (Rates for Extension Period)).

---

### 3 THE CONTRACTOR'S OBLIGATIONS

#### 3.1 Contractor to Provide the Services

The Contractor shall 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 KPIs

- (a) The Contractor must perform its obligations under this Agreement so as to comply with the Key Performance Indicators (KPIs) and any KPI indicators set by Metro pursuant to this Agreement.
- (b) Metro may at any time conduct random checks of vehicles in the Fleet to ensure that KPIs are being adhered to and met (**the Spot Checks**).
- (c) Metro may provide feedback to the Contractor on the results of the Spot Checks as part of the Contractor's periodic performance review provided for in clause 5.2 (Performance Reviews).

### 3.3 Metro's Timetable

The Contractor must work within Metro's timetabling constraints, as provided by Metro to the Contractor from time to time, in order to assist Metro to manage the Fleet.

### 3.4 Relationship

- (a) It is anticipated by the parties that during the Term 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.
- (b) Despite clause 3.4(a) (Relationship) nothing in this Agreement shall be deemed to create a relationship of partnership or joint venture between the parties, nor to confer the status of employer and employee, or agent and principal and in so far as any presumption might arise by virtue of any law, custom or usage for the time being in force, it is hereby expressly negated.
- (c) Neither party has any authority to contract with third parties on behalf of the other party or to otherwise bind the other party without prior written agreement of the other party

### 3.5 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 3.5.
- (b) The Contractor will not be entitled to receive any payment in relation to the Non-Performed Services.

### 3.6 Supply of Materials

The Contractor will ensure that all goods, chemicals, equipment or other materials required to be supplied by the Contractor in the course of providing the Services (**Materials**) will:

- (a) be new and of premium quality and subject to the approval of the Metro

- Representative;
- (b) be supplied exercising reasonable skill, care and diligence;
  - (c) be supplied to a standard reasonably to be expected of a person both competent and experienced in providing services similar to the Services;
  - (d) 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 Government Agency; and
    - (ii) licences, approvals, authorisations and permits;
  - (e) be provided together with all documents required to transfer ownership in the Materials and the benefit of any warranties in relation to the Materials (if any), to Metro;
  - (f) comprise the best available materials suitable for the intended use of the Materials;
  - (g) be of merchantable quality and will be free from defects in design, materials and workmanship;
  - (h) operate satisfactorily and reliably under all normal operating conditions;
  - (i) 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;
  - (j) be free from all liens and encumbrances; and
  - (k) not be stored at a Depot except while work is being conducted at that Depot by the Contractor in the course of providing the Services.

### **3.7 Warranties regarding Materials**

The Contractor warrants that:

- (a) the Contractor has good title to all Materials to be supplied in the course of providing the Services;
- (b) the Contractor is legally entitled to transfer, and will transfer, ownership of those Materials to Metro;
- (c) in agreeing to supply those Materials and in supplying the Materials, the Contractor does not, and will not infringe:
  - (i) any rights which any person may have in respect of the Materials;

- or
- (ii) any Legislative Requirements which apply in respect of the Materials; and
- (d) those Materials comply with all applicable Legislative Requirements, standards, codes and any required licences, approvals, authorisations and permits.

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## 4 PRICING

### 4.1 Fee

The Contractor must pay to Metro a fee for the licence to deliver the Services calculated in accordance with the Rates (including any adjustment of the Rates made in accordance with clause 4.2 (CPI Adjustment) and clause 4.3 (Rates for Extension Period)).

### 4.2 CPI Adjustment

(a) CPI Formula

All pricing components set out in Schedule 3 (Pricing Schedule) will be reviewed and adjusted on each CPI Adjustment Date in accordance with the following formula:

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

Where:

A = the fee payable from and including the relevant CPI Adjustment Date;

B = the fee 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.
- (c) 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.

#### **4.3 Rates for Extension Period**

If Metro exercises the option to extend the Initial Term of this Agreement pursuant to clause 2.2 (Further Term) and accepts the Revised Rates proposed by the Contractor pursuant to clause 2.3 (Adjustment of Rates), then the Revised Rates will apply for those Services to which the Revised Rates relate as of and from the first day of the Further Term. All other Rates will be adjusted in accordance with clause 4.2 (CPI adjustment) as if the first day of the Further Term was a CPI Adjustment Date.

#### **4.4 Activity Statements**

- (a) The Contractor will issue Metro with an itemised description of the Services performed in the previous month (**the Activity Statement**) which must include:
  - (i) details of the Services performed or provided by the Contractor including the dates that the Services were performed for the period covered in the Activity Statement; and
  - (ii) the Advertising Revenue during the period covered in the Activity Statement.

- (b) The Contractor will issue an Activity Statement to Metro within three (3) Business Days of the end of each calendar month.

#### **4.5 Invoices**

- (a) Within three (3) Business Days of Metro receiving an Activity Statement from the Contractor, Metro must issue a valid tax invoice to the Contractor for the total cost of the licence to perform the Services in the period covered by the Activity Statement based on the Rates as may be adjusted in accordance with clauses 4.2 (CPI adjustment) and 4.3 (Rates for Extension Period).
- (b) All payments under this Agreement must be made by the Contractor in accordance with the timeframe specified in Item 4, subject to:
  - (i) the invoice being a valid tax invoice for the purposes of the GST Act;
  - (ii) the tax invoice including:
    - (A) the amount of Base Revenue charged to the Contractor as described in Schedule 3 (Pricing Schedule); and
    - (B) the amount of Percentage Based Revenue charged to the Contractor as described in Schedule 3 (Pricing Schedule); and
  - (iii) the tax invoice setting out a separate amount for GST.

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## **5 WORKPLACE HEALTH AND SAFETY**

### **5.1 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 5.2 (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; and
- (d) the Contractor must make good any damage caused to the Site by the

Contractor or its employees, agents or subcontractors.

## **5.2 Workplace health and safety obligations**

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 Legislative Requirements.

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## 6 PERFORMANCE MONITORING

### 6.1 Liaison and Reporting

- (a) The Contractor must liaise with and report to the Metro Representative as and when the Metro Representative reasonably requires during the Term;
- (b) The Contractor will provide Metro with a written report once every month (**Activity Report**) during the Term containing information relating to the previous month as described in, and in a format similar to, the example provided in Schedule 5 (Example Activity Report); and
- (c) The Contractor will provide Metro with a written report not less than once every 3 months (**Quarterly Report**) during the Term addressing and including the following:
  - (i) Advertising Revenue for the preceding six (6) month period;
  - (ii) business development, sales and marketing activity undertaken in the preceding six (6) month period;
  - (iii) planned business development, sales and marketing activity for the next six (6) month period;
  - (iv) proposed schedule of Metro bus advertising rates for the next six (6) month period; and
  - (v) any other relevant business or other issues relating to the provision of the Services.

### 6.2 Performance Reviews

- (a) The Contractor acknowledges and agrees that Metro will conduct a review of the Contractor and its performance of the Services not less than once every 3 months (**Performance Review**).
- (b) Metro will provide the Contractor with at least seven (7) days notice prior to each Performance Review.
- (c) The Contractor or the Contractor's Representative or nominee must be available to attend each Performance Review at a location agreed between the parties.
- (d) Each Performance Review will address:
  - (i) the quality and quantity of the Services provided by the Contractor in the 3 month period prior to the date of the Performance Review;
  - (ii) the Quarterly Report;

- (iii) the Contractor's performance in relation to each of the KPIs (including any KPI measures); and
  - (iv) the accuracy of Activity Statements issued under clause 4.4 (Activity Statements).
- (e) At the conclusion of each Performance Review Metro will provide the Contractor with written confirmation as to any issues it requires the Contractor to attend to together with a general comment as to whether, in the reasonable opinion of Metro, it is of the view that overall the Services are being provided by the Contractor in a satisfactory or unsatisfactory manner.
- For the avoidance of doubt, Metro will not be prejudiced or be deemed to have waived any right, remedy or claim that it might have against the Contractor merely because it advises the Contractor in any notice that overall the Services are being provided in a satisfactory manner.
- (f) If Metro has notified the Contractor after any 3 successive Performance Reviews that the Services provided by the Contractor are being provided in an unsatisfactory manner (in Metro's reasonable opinion) Metro will be entitled to terminate this Agreement under clause 14.5 (Unsatisfactory Performance Reviews).

---

## **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 Nature of indemnities**

The indemnities in clause 7.1 (Contractor indemnifies Metro):

- (a) are continuing obligations of the Contractor, 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 (and in the case of professional indemnity insurance, for the Term of this Agreement and a period of six (6) years after the Date of Completion) the following insurance policies:

- (a) public liability insurance for at least the amount specified in Item 5 (with Metro noted as an interested party);
- (b) professional indemnity insurance for at least the amount specified in Item 6 (with Metro noted as an interested party);
- (c) workers' compensation insurance as required by law; and
- (d) 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 CONTRACT MATERIAL**

### **9.1 Ownership**

- (a) Ownership of, and all Intellectual Property rights in, any Contract Material vests in Metro on creation.
- (b) The Contractor will do all acts and execute all documentation (and require its employees and contractors to do all acts and execute all documentation) required to vest title in the Contract Material in Metro.

### **9.2 Existing Material**

Clause 9.1 (Ownership) does not affect the ownership or Intellectual Property rights in any material (**Existing Material**) developed by the Contractor prior to the creation of this Agreement or independently of the performance of the Services under this Agreement.

### **9.3 Licence**

- (a) Metro grants to the Contractor a non-exclusive, royalty-free licence for the Term to use the Contract Material only for the purposes of performing its obligations under this Agreement.
- (b) The Contractor grants to Metro a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-licence) to use any Existing Material in conjunction with the Contract Material.

### **9.4 Warranty**

The Contractor warrants that:

- (a) the supply of the Services to Metro and the licence granted by the

Contractor pursuant to clause 9.3(b) (Licence) does not infringe the Intellectual Property rights (including Moral Rights) of any party; and

- (b) it is entitled, and will be entitled at all relevant times, to deal with the Intellectual Property rights as required under this clause 9.

#### **9.5 Contractor must return Contract Material**

On the expiration or earlier termination of this Agreement, the Contractor must (at the Contractor's cost) immediately deliver all Contract Material in its possession or control to Metro and if necessary, transfer any Intellectual Property forming part of that material to Metro.

---

## **10 METRO MATERIAL**

### **10.1 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.

### **10.2 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.

### **10.3 Contractor must keep Metro Material safe**

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

---

## **11 CONFIDENTIALITY**

### **11.1 Confidential Information**

Both parties undertake, in respect of any Confidential Information:

- (a) not to disclose such information to any person, subject to clause 11.2 (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.

## **11.2 Disclosure**

Each party may, notwithstanding clause 11.1 (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.

## **11.3 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.

## **11.4 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 11.

## **11.5 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).

## **11.6 Survival**

This clause 11 survives the termination (for any reason) or expiry of this Agreement.

---

## **12 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.

---

## **13 NEGATION OF EMPLOYMENT AND AGENCY**

### **13.1 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.

### **13.2 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.

---

## **14 TERMINATION**

### **14.1 Suspension**

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

- (a) the Contractor has failed to complete any Services within the timeframes specified by Metro to the Contractor during the course of the Agreement; or
- (b) 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 14.1 are without prejudice to Metro's rights to take action under clause 14.3 (Default).

#### **14.2 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 14.1 (Suspension).

#### **14.3 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 fourteen (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.

#### **14.4 Indemnity**

If this Agreement is terminated under clause 14.3 (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.

#### **14.5 Unsatisfactory Performance Reviews**

Metro may by notice terminate this Agreement if the outcome of any 3 successive Performance Reviews conducted under clause 5.2 (Performance Reviews) has been reasonably identified as unsatisfactory.

#### **14.6 Reimbursement**

Where, before termination of this Agreement under clause 14.3 (Default), 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.

## 14.7 Rights not prejudiced

If this Agreement is terminated under clause 14.3 (Default):

- (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.

---

## 15 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.

---

## 16 GOVERNING LAW AND JURISDICTION

### 16.1 Law of Tasmania

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

### 16.2 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.

---

## 17 RESOLUTION OF DISPUTES

### 17.1 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 20 (Notices). The Notifying Party must ensure that the notice contains specific detail identifying the nature of the dispute or complaint.

## 17.2 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.

## 17.3 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.

## 17.4 Exceptions

Nothing in this clause 17 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 14 (Termination).

### **17.5 Continuing obligations**

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

### **17.6 Survival**

This clause 17 survives the expiry or termination (for any reason) of this Agreement.

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## **18 SUB-CONTRACTING AND ASSIGNMENT**

### **18.1 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.

### **18.2 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.

### **18.3 Sub-contractors must have insurance**

If Metro gives written consent under clause 18.1 (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).

### **18.4 No further sub-contracting**

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

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## **19 CONFLICT OF INTEREST**

The Contractor warrants that as at the date of this Agreement, no conflict, or risk of conflict, of interest exists, or is likely to arise, in the performance of the Services and that if, during the Term, a conflict, or risk of conflict, of interest arises, then the Contractor will notify Metro immediately in writing of that conflict, or risk of conflict, of interest.

---

## 20 NOTICES

### 20.1 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.

### 20.2 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 twelve (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.

### 20.3 Sufficiency of notice

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.

## **20.4 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.

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## **21 SEVERANCE**

### **21.1 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.

### **21.2 Altering the basic nature of this Agreement**

Clause 21.1 (Reading down, severance) has no effect if the severance alters the basic nature of this Agreement, or is contrary to public policy.

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## **22 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.

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## **23 INCONSISTENCY**

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

---

## **24 GOODS AND SERVICES TAX**

### **24.1 GST Exclusive**

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

### **24.2 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.

### **24.3 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.

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## **25 ENTIRE AGREEMENT**

### **25.1 Entire agreement**

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

### **25.2 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.

### **25.3 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.

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## **26 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) 6 (Indemnities),
- (b) 8 (Insurance) (to the extent that it relates to professional indemnity cover),
- (c) 11 (Confidentiality),
- (d) 14 (Termination),
- (e) 17 (Resolution of disputes),

- (f) 19 (Conflict of interest), and
- (g) 24 (Goods and Services Tax).

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## **27 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.

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## **28 PERSONAL INFORMATION PROTECTION**

### **28.1 Application of clause**

This clause 28 applies only if the Contractor deals with Personal Information in the course of delivering the Services.

### **28.2 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.

### **28.3 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 14.3 (Default).

### **28.4 Terms defined in PIP Act**

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

# SIGNING PAGE

No legally binding relationship will exist between Metro and the Contractor unless and until this Agreement has been executed between the parties.

**EXECUTED** as an Agreement

**EXECUTED** by **METRO TASMANIA PTY LTD** )  
**(ACN 081 467 281)** pursuant to section 127 of the )  
Corporations Act 2001 by:

.....  
Director Signature

.....  
Director Full Name (print)

.....  
\*Director/\*Secretary Signature

.....  
\*Director/\*Secretary Full Name (print)

(\* please strike out inapplicable \*if Sole Director/Secretary write 'Sole')

**EXECUTED** by **[CONTRACTOR] (ACN [ACN])** pursuant )  
to section 127 of the Corporations Act 2001 by: )

.....  
Director Signature

.....  
Director Full Name (print)

.....  
\*Director/\*Secretary Signature

.....  
\*Director/\*Secretary Full Name (print)

(\* please strike out inapplicable \*if Sole Director/Secretary write 'Sole')

**SCHEDULE 1**

Item 1	<u>COMMENCEMENT DATE</u>  Clauses 1.1 (Definitions) and 2 (Term)	1 February 2019
Item 2	<u>COMPLETION DATE</u>  Clauses 1.1 (Definitions) and 2 (Term)	31 January 2022
Item 3	<u>CPI ADJUSTMENT DATE</u>  Clause 4.2 (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 (to the extent that the Contract Fee has not been adjusted pursuant to clause 2.3 (Fee for Further Term); and  31 December 2022.
Item 4	<u>TIMEFRAME FOR PAYMENT</u>  <u>Clause 4.5 (Invoices)</u>	Thirty (30) days after the receipt by Metro of a valid tax invoice for payment in accordance with clause 4.5 (Invoices).
Item 5	<u>PUBLIC LIABILITY INSURANCE</u>  Clause 8.1(a) (Contractor to insure)	TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) 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 6	<u>PROFESSIONAL INDEMNITY INSURANCE</u>  Clause 8.1(b) (Contractor to insure)	TEN MILLION DOLLARS (\$10,000,000.00) for any one 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.

## SCHEDULE 2

### Services

The Services to be provided by the Contractor are as follows:

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#### 1 RIGHTS TO DISPLAY

The Contractor shall have exclusive rights to display advertisements on the exterior and interior surfaces of buses operated by Metro and passenger shelters owned by Metro for the term of the Contract.

Metro reserves the right:

- a) to display on or in any passenger shelter or bus, including 'all-over' buses, notices and advertisements relating to its own activities, whether in its own right or in association with another organisation or individual, or under an in contra or sponsorship agreement with a third party. In this regard, Metro will pay for the production, installation and removal of the advertisements but will not pay for the media buy;
- b) to display notices and advertisements on or in any bus whilst it is being used on any hiring or charter service;
- c) to display on or in any passenger shelter or bus notices and advertisements, which may include 'all over' advertisements, which in the opinion of Metro's Chief Executive Officer or their delegate, are legitimate community notices related to the activities of community-oriented organisations; and
- d) to independently sell advertising space not covered by this agreement.

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#### 2 FLEET BACKGROUND

As at 14 September 2018 Metro's bus fleet comprises 220 buses. The number of buses may vary throughout the course of the Contract.

All buses within Metro's bus fleet will be available to the Contractor to display advertisements in accordance with the Contract. However, Metro at its absolute discretion may determine that a particular bus, within Metro's bus fleet, is to remain clean of advertisements.

The following table reflects the Metro bus fleet as at 14 September 2018:

<b>Metro's Fleet (14 September 2018)</b>		Hobart	Launceston	Burnie	<b>Total</b>
SCANIA	12.5 Customs CB80	8			<b>8</b>
SCANIA	Artic Customs CB80	11			<b>11</b>
SCANIA	12.5 Customs CB60	29	8		<b>37</b>
SCANIA	Artic Customs CB60	4			<b>4</b>
SCANIA	14.5 metre Northcoast	1			<b>1</b>
SCANIA	14.5 metre Volgren	3			<b>3</b>
SCANIA	12.5 metre Northcoast	25	12	3	<b>40</b>
SCANIA	11 metre Ansair Orana	35	4	4	<b>43</b>
SCANIA	11.9 metre Volgren	2		9	<b>11</b>
SCANIA	11 metre Ansair VOV2	22	24		<b>46</b>
MAN	King Long Artic	5			<b>5</b>
Bustech	12.5 XDI	11			<b>11</b>
<b>Total Fleet</b>		<b>156</b>	<b>48</b>	<b>16</b>	<b>220</b>

Metro in its absolute discretion reserves the right at any time and from time to time to alter or amend any decisions relating to the withdrawal of its buses or the introduction of new buses.

### **3 PASSENGER SHELTERS**

As at 14 September 2018 Metro owns four (4) passenger shelters that have an advertising panel measuring 970mm wide by 1490mm high. The number of shelters may vary throughout the course of the Contract. All shelters will be available to the Contractor to display advertisements in accordance with the Contract. However, Metro at its absolute discretion may determine that a particular shelter is to remain clean of advertisements.

The following table provides the location of the shelters, as at 21 September 2018:

<b>Stop Number</b>	<b>Route Direction</b>	<b>Location</b>
Stop 14	Inwards	330 East Derwent Highway, Geilston Bay
Stop 4	Inwards	Rosny Hill Road, adjacent to Charles Hand Park
Stop 12	Inwards	Opposite 114 Clarence Street, Bellerive
Stop 13	Outwards	164 Clarence Street, Bellerive

Installation and removal of advertising material at passenger shelters is to be undertaken in a safe manner causing the least possible disruption to pedestrians, passengers, surrounding residential areas and road users.

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## **4 REMOVAL AND AVAILABILITY OF BUSES**

Metro will make buses available to the Contractor for the purposes of affixing, repairing or removing exterior advertisements in such numbers and at such time as may be convenient to Metro and the Contractor shall complete all work to be performed on the day on which the bus is made available, unless determined otherwise by Metro.

Advertisements shall be affixed, placed, repaired or removed in or upon premises, which shall be provided by Metro and at Metro's convenience. The Contractor shall indemnify Metro against any and all risks or injury or death to any person or damage to any property arising from the work being performed upon such premise, irrespective of how it is caused.

Metro undertakes to use all buses covered by the Contract in such a manner as is necessary to maintain such services as may be operated from time to time by Metro, save that the right is reserved to remove any bus from service at any time for cleaning, repair, maintenance or any other like purpose. Where buses are removed from service, pursuant to this clause, no rebate, allowance or concession will be granted to the Contractor.

Buses will not be reserved for use on any one route or in any one area of Tasmania. Buses may be transferred from one route or area to another without notice. Advertisers can request that their advertisements be positioned on buses located in a specific region i.e. Hobart, Launceston or Burnie.

If at any time during the period of the Contract an authority shall in the lawful exercise of its powers require Metro to remove from any bus the whole for any part of any advertisement Metro may remove such advertisement or part thereof at the Contractor's cost. The Contractor shall not have or make any claim for compensation for or arising out of such removal.

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## **5 WORK ON METRO'S PREMISES**

The Contractor must provide reasonable notice to Metro when they are planning to come and work on Metro's premises.

The Contractor will ensure that all of their employees and sub-contractors used in the provision of the Services complete a site-specific induction approved by Metro prior to commencing work on Metro's premises. Any visitors to Metro's premises will also be required to complete an induction.

Work can only be conducted on Metro premises during Metro premises operating hours, and is to be undertaken in a safe manner causing the least possible disruption to depot

operation.

The Services are to be undertaken within Metro's depot operating hours but not outside the hours of 6:00 am to 11.30 pm on any day of the week. Metro's depot operating hours are as follows:

**Hobart:**

Monday to 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

Metro has a zero-tolerance policy towards drugs and alcohol. All personnel working on Metro's premises will be subject to random drug and alcohol tests.

The Contractor will be responsible for supplying all materials, chemicals and equipment necessary for providing the Services.

The Contractor must not store any materials, chemicals or equipment on Metro's premises except when affixing, placing, repairing or removing advertisements on Metro's premises.

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## **6 ADVERTISING MATERIAL**

Advertisements must be legal, meet the advertising standards and must not represent, portray or promote:

- a) a contravention of any Act of Parliament or regulation made under any Act;
- b) a political campaign, candidate, party or cause;
- c) tobacco or tobacco products;
- d) a message that demeans or discourages the use of public transport;



- e) a message that promotes unacceptable behaviour to or on the public transport vehicle;
- f) a message that demeans public transport users;
- g) a message that poses either a danger or confusion to traffic, or a risk to the health or safety of the public generally;
- h) a message that can be deemed offensive or demeaning to specific community groups (i.e. religious, ethnic, women etc); and/or
- i) other matters which may be determined by the Metro delegate from time to time and notified to the Contractor in writing.

Advertisements of and/or in relation to the products and matters that are listed will not be acceptable to Metro and Metro retains the right of veto over any specific advertisement that it considers violates the above. If the Contractor is in any doubt as to whether a specific advertisement complies with the above, the advertising material is to be submitted to the Metro nominated delegate for approval prior to display.

The content and method of presentation of any advertising material must not be likely to offend against community taste and standards. In this regard a specific right of exclusion and supervision is held and will be retained by the Metro delegate.

If in the opinion of the Metro delegate any advertisement does not comply with the requirements of the specification, the advertisements shall be removed by the Contractor and will not have, or make, any claims for compensation for or arising out of such removal.

Advertising must comply with the Code of Ethics defined by the Australian Association of National Advertisers as administered by Ad Standards. The Contractor will report all complaints received in relation to advertising within twenty four (24) hours of receipt.

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## **7 CONTRACTOR REPRESENTATIVE**

At all times that the Services are being performed, the Contractor shall have on the site in charge of the work, a responsible representative who can ensure compliance by the Contractor's subcontractors and employees.

The Contractor or their representative will ensure that a minimum of electricity is used during operations and that all electric lights and appliances are turned off after use.

The Contractor or their representative will also ensure that water taps are turned off after use.

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## 8 GUIDELINES FOR ADVERTISING ON METRO BUSES

- a) The Contractor will keep records of all buses and passenger shelters carrying advertisements.
- b) Records will include position (on bus), date-on date-off, client number, size of advertisement and bus registered number.
- c) The Contractor will advise Metro of all variation to records of advertisements in a monthly report.
- d) Generally, advertisements will be removed within fourteen (14) days of the expiration of an advertising agreement. However the Contractor may at their discretion defer the removal of an advertisement for a limited time. The Contractor will advise Metro of advertisements which are remaining beyond the advertising agreement.
- e) Advertisements featuring dates of events etc. will be removed from buses and passenger shelters within forty-eight (48) hours of the expiry of the advertised date or removed on reasonable request from Metro after the featured date has expired.
- f) The overall artwork presentation of buses and passenger shelters must be maintained, with due regard to repairing artwork after accident damage, with general maintenance of artwork and safety requirements, an ongoing concern.
- g) It is required that all buses remain in a fit for service condition, therefore any advertising must not interfere with any of Metro's identification, air intake grilles, or any fittings required under the current legislative requirements, Australian Design Rules and related standards, regarding light, reflectors, number plates or otherwise as determine by Metro.
- h) Any advertising which does not comply with the legislation, Australian Design Rules and related standards, will be rectified by the Contractor within twenty four (24) hours of notification by Metro.
- i) Where the breach is related to legal requirements of Passenger Transport Regulations or air intake grille, the offending portion will be removed by Metro at the Contractor's expense.
- j) Advertisements for display on the exterior or interior surfaces of Metro's buses shall be produced on high quality transit grade vinyl with pressure sensitive self-adhesive, which can be removed easily without causing damage to the painted surfaces.
- k) Advertising shall be fitted in accordance with Metro's 'Fitting of Advertising over Emergency Exits, Front Passenger Doors and Front Near Side Window' procedure.

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## **9 PANELS AVAILABLE FOR ADVERTISING**

Bus panel location and size is subject to negotiation with Metro.

Advertising must not be affixed to the panel below the forward-most left hand side passenger window, or to any panel located below the driver's right hand side window.

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## **10 EXTERIOR ADVERTISING**

The prepared advertisements shall be carefully designed and affixed to the exterior of the bus so that they are properly related to the lines and features of the bus and the whole area of each advertisement is securely affixed to the painted panel.

The Contractor shall be responsible for the maintenance of advertisements on the exterior surfaces of buses. Advertisements shall be maintained to the satisfaction of Metro and any damaged or defaced signs shall be removed or replaced within forty eight (48) hours of notification to the satisfaction of Metro.

Panel advertising shall be of appropriate size, taking into account the position of doors, windows, wheel arches, body panel shapes, rub rails, reflective stripes, and required Metro identification on the make of bus on which they are to be placed.

Damage caused to the pane or panel, by the removal of exterior advertisements will be repaired or replaced within forty eight (48) hours, at the Contractor's expense, by whatever means necessary to restore the pane or panel to its original condition and/or to the satisfaction of Metro.

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## **11 "ALL-OVER" ADVERTISING**

All artwork specifically for "all-over" bus advertisements must be presented and submitted on a scale drawing of the bus to which the advertisement will be affixed. The drawings must indicate the body detail that must be considered when designing the final art work presentation.

The scale drawings templates will be made available to the Contractor through contact with Metro and completed artwork/drawings must be presented to Metro at least three (3) weeks before a campaign commencement date.

Metro will make available an allocation of six (6) buses at any one time or such other quantity as shall be agreed from time to time, for "all-over" advertising. Buses will be released and remain on Metro's premises for a maximum of one (1) day for affixing vinyls and sign writing. A maximum of one bus per depot will be released at any one time for the purposes of affixing or removing advertising. Buses are to be restored to

fleet livery by the Contractor at the reasonable request of Metro. Restoration work shall be to a standard acceptable to Metro using paints approved by Metro. The work is to be carried out on site at a Metro depot.

All over wrapping of buses will be conducted during school holiday periods or on weekends, or by negotiation with Metro. While Metro will make buses available for installation of advertisements, Metro reserves the right to put buses back into service for operational reasons.

All materials provided by and used by the Contractor and the workmanship employed in the Contractor shall be of a quality approved by Metro. They shall withstand the exposure to the weather incidental to their display on the buses and bus washing as it is performed at Metro depots without significant loss of quality through the period of their display.

The Contractor shall produce accurate colour art work to Metro for the appropriate bus, showing both sides, front and rear views of the bus, and submit it to Metro for approval at least three (3) weeks prior to any work commencing on the bus.

Artwork shall not encroach on the reflective tapes, bus numbering, warning signs, advisory signs, glazing, door rubbers, fuel spill protection panel, badges, lights, anodised and/or rubber identification mouldings, protective skirt panels, or bumper bars, however it may extend over the aluminium waist rail where fitted. Covering of Metro logos should be avoided where possible.

Artwork shall not encroach onto the panel below the forward-most left hand side passenger window, or onto any panel located below the driver's right hand side window.

Artwork designs should take into consideration the reflective tape placed continuously along each side of the bus body (except across the wheel arches and door glazing). Where advertising covers the side of the bus, reflective tape or self adhesive reflectors shall be located to comply with ADR design rules. Reflective signage on the rear and sides of buses must not be covered.

Buses shall retain Metro livery, unless otherwise approved by the Metro delegate. Advertisements shall be placed in such a way to not cause damage to the painted surface. Metro must approve any changes to painted surfaces.

Bus equipment such as tyres and wheels that Metro requires to interchange with other vehicles shall not be painted. All exterior service/warning/advisory signs will be maintained in the correct positions as specified by Metro and background colour will contrast to ensure their visibility.

Advertising covering windows should not impede the vision from any window and the

material should be perforated.

As a guide:

- a) artwork shall contrast with the background colour and be positioned so that it cannot blend with colours, which commonly occur in the roads or roadside environment in Tasmania. Such colours should not be used for backgrounds; and
- b) where the desired artwork utilises darker colours, there shall always be adequate illustration and sign writing in visible colours strategically placed to ensure good recognition at all times by day or night.

Completed advertising is subject to final approval before a bus shall enter route service. Approval will be based on the advertisement complying with the previously agreed artwork.

The bus shall be stationed at a Metro depot and shall travel on routes as per the operational requirements of Metro.

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## **12 ADVERTISING ON THE SIDES AND REAR OF BUSES**

The conditions applicable to “all-over” advertising also apply to this category except that artwork shall be affixed to the buses by way of removable vinyl panels. Subject to consideration of the reasonable requests of the Contractor, panels may only be attached to the sides and rear of buses on the windows as long as the material does not impede the vision from any window and the material should be perforated.

Advertising can be attached below the window line and above the rub-rail and shall not cover Metro’s logos, door, air intake grilles, fuelling and maintenance hatches or reflective strips but otherwise may extend for the length of the bus, with the exception of the forward-most side panels (below the forward-most left hand side passenger window, and below the driver’s right hand side window). Advertising must not be attached to the front door or the first window immediately behind the front door.

The bus shall be stationed at a Metro depot and shall travel on routes as per the operational requirements of Metro.

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## **13 INTERIOR PANELS**

Interior displays shall also be of high quality transit grade pressure sensitive self adhesive sheeting and are to be carefully affixed to the panels so that they are properly related to the lines and features of the interior of the bus and so that the whole area of each advertisement is securely affixed to the panel.

Advertisements shall not be placed over any part of sign writing or posters in the interior of the bus.

Advertisements for display on the interior surfaces of Metro buses shall be produced on high quality vinyl with pressure sensitive self-adhesive, which can be removed easily without causing damage to the painted surfaces.

Any damage caused by the application of these interior advertisements shall be rectified at the Contractor's expense. Damage is to be repaired or replaced within forty eight (48) hours and to the satisfaction of Metro.

The Contractor shall be responsible for the maintenance of advertisements on the interior surfaces of buses. Advertisements shall be maintained to the satisfaction of Metro and any damage or defaced signs shall be replaced within forty eight (48) hours of notification.

Damage caused to the paint or panel, by the removal of interior advertisements will be repaired or replaced within forty eight (48) hours, at the Contractor's expense, by whatever means necessary to restore the paint or panel to its original condition and/or to the satisfaction of Metro.

The bus shall be stationed at a Metro depot and shall travel on routes as per the operational requirements of Metro.

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## **14 REMOVAL OF ADVERTISING**

At the request from Metro, the Contractor shall, upon removal of any advertisement, including existing advertising, on or in a bus or passenger shelter, remove all adhesive residues and restore the condition of any paint work affected to a standard acceptable to Metro. Arrangements may be made for Metro workshops to restore paintwork on a cost recovery basis should the Contractor not clean or restore vehicles in a reasonable time or to a reasonable standard. The Contractor shall not have or make any claim for compensation arising out of such removal.

Metro shall instruct the Contractor to remove any advertisement, which does not comply with these specifications, and the Contractor shall not have or make any claim for compensation arising out of such removal.

The Contractor shall remove existing advertising from Metro's buses as directed by Metro.

If the Contractor fails to remove any advertising and make good any bus as required by the Contract, Metro may undertake any such work without notice to the Contractor, and the Contractor shall reimburse Metro all reasonable costs and expenses of such work.

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## **15 DAMAGE TO PROPERTY**

The Contractor shall be liable for loss or damage to any Metro property (including but not limited to Metro's premises and any fixtures thereupon) caused by the Contractor, its employees or any sub-contractor in the performance of the Contract.

The Contractor shall report, in writing to Metro, all damage to Metro's premises including fixtures and to any property of Metro that is on or at Metro's premises, within twenty-four (24) hours of discovery of that damage by the Contractor or any employee.

If the Contractor fails to report any damage in accordance as required under the Contract, the Contractor shall be liable to Metro in respect of that damage as if that damage had been caused by the Contractor.

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## **16 REPORTING**

The Contractor will be required to:

- a) provide Metro with effective, timely and comprehensive written reports on a monthly basis; and
- b) report at quarterly meetings with the Metro.

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## **17 TRANSITION FROM THE INCUMBENT CONTRACTOR**

The incumbent contractor is entitled to continue to display advertisements on buses provided that:

- a) the advertisements are a consequence of an advertising contract between the incumbent contractor and their client or clients (Client Contract);
- b) the Client Contract commenced prior to the commencement of the new Contract between Metro and the new Contractor; and
- c) the advertisements are removed within 14 days of the expiry of the Client Contract to which they relate.

**SCHEDULE 3**  
**Pricing Schedule**

The pricing consists of two (2) components: Minimum Base Revenue and Percentage Based Revenue.

**a) *Minimum Base Revenue***

This amount is the guaranteed revenue the Contractor will pay to Metro for the advertising licence rights.

The amount is presented as a flat amount per month.

**Base revenue (guaranteed) \$ \_\_\_\_\_ /per month (exclusive of GST)**

**AND**

**b) *Percentage Based Revenue***

This is the percentage of Advertising Revenue that will be shared with Metro by the Contractor.

**Metro's share of revenue (%) \_\_\_\_\_**



## **SCHEDULE 4**

### **The KPIs**

The primary indicator of performance is identified as the Advertising Revenue as defined in clause 1.1 (Definitions) generated by the Contractor in the course of providing the Services.

The KPIs include:

- Advertising Revenue;
- Results detailed in Activity Reports as described in clause 6.1(b);
- Adherence to Metro's workplace health and safety policies and procedures;
- Adherence to Metro's advertising design and installation standards as described in Schedule 2;
- Adherence to Metro's advertising removal and bus restoration standards as described in Schedule 2; and
- Adherence to Metro's bus removal and availability policies as described in Schedule 2.

These KPIs along with any other issues will be reviewed at least monthly between the Contractor's Representative and the Metro Representative.

Targets for these KPIs and the identification of further KPIs will be developed in response to issues that may be identified through the ongoing review process.

Additional third party audits may be initiated by the Contractor to gather feedback and create summary reports that will be made available to Metro.

**SCHEDULE 5**  
**Example Activity Report**

<b>Bus Advertising Activity Report</b>		
<b>Month:</b>		
<b>Item</b>	<b>Target</b>	<b>Actual</b>
Total revenue for month	<b>\$x</b>	\$ <span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Total revenue year to date	<b>\$x</b>	\$ <span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Rear advertisements currently contracted	n/a	<span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Side advertisements currently contracted	n/a	<span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Interior advertisements currently contracted	n/a	<span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Number of prospect interactions	n/a	<span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Number of new customer contracts signed	n/a	<span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Total revenue signed this month	n/a	\$ <span style="background-color: yellow; display: inline-block; width: 50px; height: 15px;"></span>
Promotional activity <list>		

