



*CONTRACT FOR PROVISION OF  
SCHOOL BUS SERVICE*

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***Composite Rate Model (CRM) Contract***

***Recompiled Version (February 2013)***

**SERVICE NAME**

**CONTRACT NUMBER**

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## VARIATIONS NOTED IN THIS VERSION

Schedule 3 Part 2 Garaging is amended to include an annual amount of \$2000 for garaging vehicles offsite and \$1000 for wheelchair buses where the Contractor is required to store seats offsite subject to the Contractor providing evidence of payment of the costs of such storage.

This variation was a Determination made by the 2011 CRM Review Panel (Decision 2011/2). Effective from Term 1, 2013.

Schedule 3 Part 2 Air Conditioning is amended to reduce the payment in respect to the component of air Conditioning for Class A buses as maintenance for this item had already been provided for under the R&M Cost Schedule. Costs per Kilometre rate for Class A buses is reduced from 9.7 cents per kilometre to 6.9 cents per kilometre.

This variation was a Determination made by the 2011 CRM Review Panel (Decision 2011/4). Effective from Term 1, 2013.

# CONTRACT FOR THE PROVISION OF SCHOOL BUS SERVICES

## Parties

**THE PUBLIC TRANSPORT AUTHORITY OF WESTERN AUSTRALIA**, a body corporate established under section 5 of the *Public Transport Authority Act 2003* ("**Authority**")

and

**THE PERSON OR PERSONS NAMED IN ITEM 1 SCHEDULE 12 ("Contractor")**

## 1 GENERAL PROVISIONS

### 1.1 Definitions and Interpretation

The definitions and interpretation provisions set out in Schedule 1 apply to this Contract.

### 1.2 Provision of evidence prior to payment by Authority

Where, under the terms of this Contract, the Authority is obliged to pay, or reimburse the Contractor for, any costs or expenses incurred by the Contractor, the Authority is not so obliged to pay, or reimburse the Contractor for, any amount unless and until the Contractor has provided to the Authority such written evidence (including, without limitation, a quotation, an invoice or a receipt) as the Authority reasonably requires in order to verify the amount claimed by the Contractor.

## 2 EXISTING CONTRACT

- (a) The Contractor and the Authority agree that, on and from the Effective Date, subject to clause 2(c):
  - (i) each is bound by, and will comply with, the terms of this Contract; and
  - (ii) the Existing Contract is terminated and:
    - (A) the Authority releases the Contractor from all obligation and liability under or in connection with the Existing Contract and any action, claim or demand the State Body has, or but for this clause 2 would have had, against the Contractor under or in connection with the Existing Contract; and
    - (B) the Contractor releases the State Body from all obligation and liability under or in connection with the Existing Contract and any action, claim or demand the Contractor has, or but for this clause 2 would have had, against the State Body under or in connection with the Existing Contract.
- (b) The releases given under clause 2(a) are given regardless of:
  - (i) whether the obligation, liability, action, claim or demand arises or arose at law, in equity or otherwise;
  - (ii) when the obligation, liability, action, claim or demand arises or arose; and

- (iii) whether or not the State Body or the Contractor (as the case may be) is now or in the future aware of the facts and circumstances relevant to the obligation, liability, action, claim or demand,

and survive termination or expiry of this Contract.

- (c) Nothing in this clause 2 operates to release:

- (i) the State Body; or

- (ii) the Contractor,

from any:

- (iii) obligation under the Existing Contract to pay money which has become due for payment by the Effective Date; or

- (iv) liability it has or has incurred for a negligent act or omission resulting in death of or injury to any person.

### **3 SERVICE**

#### **3.1 Provision of the Service**

In consideration of payment by the Authority of the Service Charge, the Contractor agrees with the Authority to provide the Service during the Contract Term in accordance with the provisions of this Contract.

#### **3.2 Service**

- (a) Except as otherwise provided in this Contract, and subject to clause 3.2(b) and 3.2(c), the Contractor must ensure that on each School Day during the Contract Term, the Driver:

- (i) prior to the commencement of school on the School Day:

- (A) drives the School Bus over the Morning Route;

- (B) picks up Nominated Students waiting at their respective Pick-up Locations;

- (C) stops at each Approved School on the Morning Route to drop off the relevant Nominated Students not less than 10 minutes before the time that classes at the Approved School are scheduled to begin, or at such other time as is approved by the Authority; and

- (D) drops off all other Nominated Students (if any) at their respective Drop-Off Locations;

- (ii) at the end of school on the School Day:

- (A) drives the School Bus over the Afternoon Route;

- (B) reports to the first Approved School on the Afternoon Route at the time school is scheduled to finish, picks up the relevant Nominated Students and departs from the Approved School within 10 minutes;

- (C) picks up the other Nominated Students (if any) waiting at their respective Pick-up Locations, in a timely manner; and

- (D) drops off all Nominated Students at their respective Drop-off Locations; and

- (iii) complies with the Timetable in undertaking the activities referred to in clauses 3.2(a)(i) and (ii).

- (b) If the Contractor fails to comply strictly with clause 3.2(a), the Authority will not treat that failure as a breach of this Contract if the Authority (acting reasonably) is satisfied that:



- (i) the failure to comply was due to an act, circumstance or thing beyond the reasonable control of the Contractor and the Contractor used its best endeavours to comply with clause 3.2(a); or
  - (ii) it was otherwise reasonable in the circumstances for the Contractor to fail to comply.
- (c) The Contractor must ensure that:
- (i) on each School Day, the Driver does not drive the School Bus over a portion of the Approved Route to pick up or drop off a Student who the Driver knows is not or will not be travelling on the School Bus on that School Day, if the Driver would not otherwise need to drive over that portion of the Approved Route; and
  - (ii) the Driver does not drive the School Bus over a portion of the Approved Route where to do so would result in a breach of clause 3.3.

### **3.3 Service Standards**

Except as otherwise provided in this Contract, the Contractor must perform the Service and the Contractor's Obligations:

- (a) safely, so as to ensure:
  - (i) the safe carriage, protection and security of passengers, employees and others using the Service; and
  - (ii) the safety of the general public;
- (b) in compliance, in all respects, with the provisions of this Contract; and
- (c) entirely at the Contractor's own risk.

For the avoidance of doubt, where this Contract obliges the Contractor to do or omit to do any thing and the Contractor's compliance with that obligation will result in breach by the Contractor of an Act or a Legislative Requirement, the Contractor is not obliged to do or omit to do that thing, but only to the extent that, and for so long as, such breach will arise.

### **3.4 Related Requirements in respect of the Service**

The Authority and the Contractor must comply with the provisions of Schedule 6.

### **3.5 Governmental Authorisations and Legislative Requirements**

The Contractor must:

- (a) obtain and maintain all Governmental Authorisations which the Authority notifies to the Contractor from time to time; and
- (b) in performing the Service and the Contractor's Obligations, comply with all Legislative Requirements which the Authority notifies to the Contractor from time to time,

at and from the time specified in the Authority's notice in respect of the relevant Governmental Authorisation or Legislative Requirement. The Authority will only give notice under this clause in respect of Governmental Authorisations and Legislative Requirements which affect or apply to the Service or the Contractor's Obligations.

## **4 VARIATIONS TO SERVICE**

### **4.1 Variations by Authority by advance written notice**

- (a) The Authority may at any time, by notice in writing to the Contractor, vary any one or more of:
  - (i) the matters which must be covered by the Emergency Plan;
  - (ii) the Bus Aide Duties;
  - (iii) the School Bus Drivers' Instructions;

- (iv) the School Bus Specifications;
  - (v) the Wheel Chair Specifications; and
  - (vi) the matters which must be covered by the Safety Management Plan.
- (b) Subject to clause 4.3(a), a variation under clause 4.1(a) may be either permanent or for a particular period, as specified by the Authority in its notice given in respect of the variation, and will take effect in accordance with that notice.
- (c) The Contractor must comply with, and give effect to, any variation made under this clause 4.1 as soon as reasonably practicable after the Authority's notice is given, and for so long as the Authority requires it.
- (d) The Authority must pay, or reimburse the Contractor for, the Contractor's reasonable costs incurred in complying with any variation made under clause 4.1(a).

#### **4.2 Variations by Authority without advance written notice**

- (a) The Authority or the Co-ordinator may at any time, by notice to the Contractor, vary any one or more of:
- (i) the Approved Route (varying either or both of the Morning Route and the Afternoon Route), the Route Map, the Standard Daily Kilometres or any component of it, or the Car Running Kilometres;
  - (ii) the Approved Depot (but only if the Approved Depot, as varied, is at the same location as the Depot);
  - (iii) the Schools, the Nominated Students, and the Pick-Up Locations, Drop-Off Locations or any other part of the Student Details for any Nominated Students (and where the Authority makes a variation pursuant to this clause 4.2(a)(iii), item 4 of Schedule 6 applies),
- and may specify that the Contractor must give immediate effect to the variation or must give effect to the variation at or from a particular time.
- (b) A notice given under clause 4.2(a) may be given verbally, provided that the Authority:
- (i) gives a brief written confirmation of the making of the variation to the Contractor as soon as possible after the verbal notice is given; and
  - (ii) confirms the details of the variation by written notice to the Contractor within 10 Business Days after the verbal notice is given.
- (c) Subject to clause 4.3(a), a variation made under this clause 4.2 may be either permanent or for a particular period, as specified by the Authority in its notice given in respect of the variation, and will take effect in accordance with that notice.
- (d) The Contractor must comply with, and give effect to, any variation made under this clause 4.2 immediately or as otherwise required by the Authority, and for so long as the Authority requires it.

#### **4.3 Permanent Variations and Service Charge**

- (a) If a variation which the Authority makes:
- (i) is expressed to apply for 30 days or longer; or
  - (ii) will result in an increase or a decrease in the Service Charge by more than 10% of the amount of the Service Charge payable immediately before the variation is made,
- the variation will be a Permanent Variation.

- (b) The making of a Permanent Variation under clause 4.2 is a Recalculation Event.

#### **4.4 Contractor to notify particular variations**

Where the Contractor knows, other than by way of notice from the Authority, that:

- (a) a Nominated Student will no longer require the School Bus; or
- (b) for any other reason, in the opinion of the Contractor, the Approved Route is no longer appropriate,

the Contractor must, as soon as reasonably practicable after the Contractor comes to know, notify the Authority, providing details of the relevant circumstance and of any variation to the Approved Route which the Contractor considers is necessary. The Authority may, but need not, make a variation under clause 4.2 in respect of a Contractor's notice given under this clause 4.4, but must act reasonably in considering whether to do so.

#### **4.5 Variations Under Minister's or Authority's Statutory Power**

Where the Minister or the Authority gives the Contractor a direction in order to comply with any obligation imposed on the Minister or the Authority by any Act or Legislative Requirement, and which direction has the effect of varying any of the Contractor's Obligations:

- (a) the Contractor must comply with that direction as soon as reasonably practicable after it is given; and
- (b) this Contract is varied to the extent that, and for so long as, the direction is inconsistent with its terms.

The Authority must pay, or reimburse the Contractor for, the Contractor's reasonable costs incurred in complying with any direction issued by the Minister or the Authority under this clause.

#### **4.6 Termination on reduction of Standard Daily Kilometres**

If the Authority makes a Permanent Variation:

- (a) which has the effect of varying the Standard Daily Kilometres; and
- (b) as a result of it, the number of kilometres in the Standard Daily Kilometres is 50% or less than the number of kilometres in the Standard Daily Kilometres as it was at the Effective Date,

the Contractor may, at any time while the circumstance described in clause 4.6(b) exists, terminate this Contract by giving prior notice to the Authority of at least 6 months, or such lesser period of notice as the Authority reasonably agrees based on a consideration of the likely financial return which the Contractor will receive under this Contract during the period commencing at the time the Contractor gives notice of termination and ending at the time termination will take effect. If the Contractor terminates this Contract under this clause 4.6, clause 17.7 will apply.

#### **4.7 Metropolitan Fringe Contract**

Without otherwise limiting the rights of the Authority under this clause 4, if item 6 of Schedule 12 specifies that this Contract is a Metropolitan Fringe Contract:

- (a) subject to clause 4.7(b), the Authority may, under clause 4.2(a)(i), vary the Approved Route by specifying an entirely different route as the Morning Route and/or the Afternoon Route; but
- (b) the first Pick-Up Location for the first Nominated Student to be picked up on a new route specified under clause 4.7(a) cannot, unless the Contractor otherwise agrees, be more than 50 kilometres from the Actual Depot.

If the Authority varies the Approved Route under this clause 4.7, the Contractor may, at any time during the period of 30 days after the Authority's notice of the variation is

given, notify the Authority that the Contractor wishes to terminate this Contract. If the Contractor does so:

- (c) the Authority will notify the Contractor of the time at which this Contract will terminate (which time must be not later than 90 days after the Contractor's notice is given) and this Contract will terminate at that time; and
- (d) clause 17.7 will apply as if:
  - (i) the time at which the Authority's notice of the variation was given were the "Relevant Termination Date" for the purposes of that clause; and
  - (ii) the end of the Minimum Term were the "Termination Date" for the purposes of that clause.

#### **4.8 Road Conditions**

The Contractor must advise the Authority as soon as reasonably practicable after any road on the Approved Route, or any road on which the School Bus ordinarily travels before and after travelling over the Approved Route, is unsealed and becomes sealed, or vice versa.

## **5 SCHOOL BUS**

### **5.1 School Bus**

- (a) The Contractor must only perform the Service using the Specified School Bus.
- (b) The Contractor will be deemed to comply with this clause 5.1(a) where the Contractor uses a vehicle other than the Specified School Bus to perform the Service:
  - (i) under clause 5.2; or
  - (ii) with the prior written consent of the Authority (which consent must not be unreasonably withheld),but only for so long as the Authority consents to the Contractor using that other vehicle.
- (c) The Authority and the Contractor must comply with the provisions of Schedule 9 in relation to the Specified School Bus. Where the Contractor is at any time using a vehicle other than the Specified School Bus to perform the Service, the Authority and the Contractor must comply with so much of Schedule 9 as is reasonably practicable.

### **5.2 Alternative vehicle**

If the Specified School Bus does not comply with any provision of this Contract or any requirement of the Authority issued under it, or for any other reason the Contractor is unable to use it to perform the Service, the Contractor must, at the Contractor's sole cost and expense:

- (a) with the prior consent of the Authority, use an alternative vehicle to provide the Service; or
- (b) make other arrangements approved by the Authority for the performance of the Contractor's Obligations; or
- (c) in an emergency, use an alternative vehicle to provide the Service without the Authority's prior approval of that vehicle, provided that the Contractor:
  - (i) informs the Authority that it is using the vehicle as soon as possible after the vehicle is first used to provide the Service, and in any event within 2 Business Days of that emergency occurring; and
  - (ii) ceases to use the vehicle if notified by the Authority to do so, provided that the Authority may only require that the Contractor cease using the vehicle on grounds of safety or on other reasonable grounds.

### **5.3 Size of the School Bus**

- (a) The Authority may notify the Contractor that it requires the Contractor to use a vehicle to perform the Service which has the seating capacity specified by the Authority ("**Specified Seating Capacity**").
- (b) The Contractor must comply with a notice issued under clause 5.3(a) as soon as reasonably practicable.
- (c) The Contractor will be deemed to comply with a notice issued under clause 5.3(a) if the Contractor uses a vehicle to perform the Service which has a seating capacity equal to or greater than the Specified Seating Capacity.

### **5.4 New School Bus**

- (a) Unless the Parties otherwise agree, and subject to clause 5.3 and 5.4(b), the Contractor will:
  - (i) use the Specified School Bus to perform the Service for the duration of its Service Life; and
  - (ii) replace the Specified School Bus at the end of its Service Life with a vehicle with a seating capacity specified by the Authority.
- (b) The Authority may by written notice require the Contractor to replace the Specified School Bus prior to the end of its Service Life:
  - (i) on grounds of safety; and
  - (ii) with a vehicle with a seating capacity specified by the Authority.

The Contractor must comply with any notice issued under this clause 5.4(b) as soon as reasonably practicable. The Contractor will be deemed to comply with a notice issued under this clause 5.4(b) if the Contractor uses a vehicle to perform the Service which has a seating capacity equal to or greater than the seating capacity specified by the Authority in its notice.

### **5.5 Recalculation Event**

Compliance by the Contractor with a notice issued under clause 5.3 or clause 5.4 is a Recalculation Event but, for the purposes of the recalculation and subsequent calculation of the Service Charge, the new vehicle which the Contractor uses in complying with clause 5.3 or 5.4 (as the case may be) will be taken to have the seating capacity specified by the Authority in its notice given under clause 5.3 or 5.4 (as the case may be), regardless of the actual seating capacity of the new vehicle.

## **6 DRIVERS AND BUS AIDES**

### **6.1 Supply of Drivers**

Unless otherwise agreed by the Authority the Contractor must:

- (a) employ and be solely responsible for, so far as permitted by law, all Drivers necessary for the Contractor to fully and properly perform the Service;
- (b) keep the Authority advised of the names of all Drivers; and
- (c) comply with the provisions of Schedule 7.
- (d)

### **6.2 Supply of Bus Aides**

- (a) If the Authority so directs, the Contractor must, at the Contractor's expense, engage suitable persons to carry out the Bus Aide Duties on the School Bus in respect of Students.
- (b) If the Contractor has engaged a person to carry out the Bus Aide Duties on the School Bus and there is at any time no longer a need for the person to carry out those duties, the Contractor:
  - (i) may cease using the Bus Aide with the prior approval of the Authority; or

- (ii) must cease using the Bus Aide if the Authority so directs.
- (c) Each of the issue of a direction by the Authority under clause 6.2(a), and of an approval or a direction by the Authority under clause 6.2(b), is a Recalculation Event.
- (d) The Contractor must:
  - (i) keep the Authority advised of the names of all Bus Aides; and
  - (ii) comply with the provisions of Schedule 8.

### **6.3 Removal of Driver or Bus Aide**

- (a) The Authority may, at any time or times, by notice to the Contractor require the Contractor to remove any Driver from performing any part of the Service, or any Bus Aide from performing any part of the Bus Aide Duties, if:
  - (i) the Authority reasonably believes that the continued performance by the Driver or the Bus Aide constitutes a risk to the safety or well-being of the Students or employees of the Contractor or any other person; and
  - (ii) at the same time as or prior to notifying the Contractor, the Authority:
    - (A) provides written reasons why it wishes the Driver or the Bus Aide to be removed; or
    - (B) notifies the Contractor that it will not provide written reasons to the Contractor on the grounds that to do so would be detrimental to the interests of any or all of the Driver or Bus Aide, a Student and an employee of the Contractor.
- (b) Subject to clause 18.5(a)(ii), where the Authority gives notice that it requires the Contractor to remove a person as a Driver or a Bus Aide, the Contractor must not, from the time that the Contractor receives or is taken to receive the Authority's notice, without the Authority's prior written consent:
  - (i) if the Driver or Bus Aide is the Contractor, perform; or
  - (ii) if the Driver or Bus Aide is a person other than the Contractor, employ or engage that person in any capacity in connection with,
 

the Service, or any service similar to the Service which the Contractor provides to the Authority.
- (c) Subject to clause 6.3(d), if a Driver or a Bus Aide makes or brings a Claim against the Contractor in respect of the Contractor's compliance with a notice given by the Authority under clause 6.3(a), the Authority will indemnify the Contractor for any amount:
  - (i) the Contractor agrees to pay to the Driver or Bus Aide in order to settle the Claim; or
  - (ii) a court requires the Contractor to pay by way of compensation in favour of the Driver or Bus Aide in respect of that Claim.
- (d) The indemnity in clause 6.3(c) will not apply unless the Contractor:
  - (i) notifies the Authority as soon as the Contractor receives notice of the Claim;
  - (ii) provides the Authority with all such documents, information and assistance as the Authority reasonably requests in connection with the Claim;
  - (iii) uses reasonable endeavours in good faith to defend the Claim; and
  - (iv) does not offer or agree to settle or compromise the Claim without the prior consent of the Authority.

## 7 EQUIPMENT AND TRAINING

### 7.1 Office Equipment

The Contractor must:

- (a) supply and take all reasonable steps to maintain in good working order, repair and condition during the Contract Term such office or communication equipment, software or other requirement as is reasonably specified by the Authority from time to time; and
- (b) keep the Authority advised of the current number, address or other contact details for that equipment or requirement.

It is deemed to be reasonable for the Authority to specify under this clause 7.1 that the Contractor must supply and maintain equipment, software or a requirement:

- (c) where the equipment, software or requirement is specified in item 10 of Schedule 12; or
- (d) where the Authority makes, or is bound to make, any payment or reimbursement to the Contractor in respect of the equipment, software or requirement under this Contract.

### 7.2 Training

The Authority may from time to time notify the Contractor that it requires any or all of the Contractor, Drivers and Bus Aides to undergo particular training related to the performance of the Service. If the Authority issues a notice under this clause 7.2:

- (a) the Contractor must attend, and (if the Authority requires it) ensure that all Drivers and Bus Aides attend, all training referred to in the Authority's notice, but a person will not be required to attend training:
  - (i) on a day which is not a School Day, unless the person otherwise agrees (but for the avoidance of doubt a person can be required to attend training in the evening on a School Day); or
  - (ii) where that person has a reasonable explanation for not doing so; and
- (b) the Authority will:
  - (i) pay, or reimburse the Contractor for, the reasonable cost incurred by the Contractor, a Driver or a Bus Aide in attending training in compliance with the Authority's notice, including reasonable travel, accommodation and living expenses directly incurred by them as a result of attending training; and
  - (ii) pay to the Contractor:
    - (A) a rate per hour of the dollar value at that time of the variable "R" in the Driver's Wages Component of Part 2 of Schedule 3 in respect of each hour during which a Driver, and (if the Contractor is not a Driver) each hour during which the Contractor, attends training (and the amount paid for the training session is the "**D Payment**"),  
*plus*  
an amount for superannuation calculated as x% of the D Payment (where x has the same meaning as in the Superannuation Component of Part 2 of Schedule 3)  
*plus*  
an amount for workers' compensation calculated as x% of the D Payment (where x has the same meaning as in the Workers' Compensation Component of Part 2 of Schedule 3); and

- (B) a rate per hour of the dollar value at that time of the variable "R" in the Bus Aide's Wages Component of Part 2 of Schedule 3 in respect of each hour during which a Bus Aide attends training, (and the amount paid for the training session is the "**BA Payment**"),

*plus*

an amount for superannuation calculated as x% of the BA Payment (where x has the same meaning as in the Superannuation Component of Part 2 of Schedule 3)

*plus*

an amount for workers' compensation calculated as x% of the BA Payment (where x has the same meaning as in the Workers' Compensation Component of Part 2 of Schedule 3),

if the Contractor, Driver or Bus Aide (as the case may be) attends training in compliance with the Authority's notice. Where the Authority pays a D Payment or a BA Payment to the Contractor under this clause 7.2 in respect of training attended by a Driver or a Bus Aide, the Contractor must pay the amount of that payment to the Driver or Bus Aide (as the case may be).

The Authority will use reasonable endeavours to provide the Contractor with as much advance notice as possible of any requirement for training which is to be the subject of a notice under this clause 7.2 and, in any event, must provide at least 28 days' advance notice of any requirement for training.

### **7.3 No obligation to provide training**

For the avoidance of doubt, nothing in clause 7.2:

- (a) obliges the Authority to provide training; or
- (b) obliges the Authority to pay for training undertaken by the Contractor, Drivers or Bus Aides (notwithstanding that the training is undertaken in connection with the Services or the Contract),

other than training the subject of a notice given under clause 7.2(a).

## **8 PAYMENT FOR THE SERVICE**

### **8.1 Service Charge**

The Authority will pay to the Contractor the Service Charge in accordance with clause 8.2, as adjusted in accordance with clauses 8.3 and 8.4.

### **8.2 Payment of Service Charge**

- (a) The Authority will pay to the Contractor the Service Charge for each School Day on which the Contractor performs the Service in accordance with this Contract.
- (b) The Authority will pay the Service Charge to the Contractor fortnightly in arrears by direct bank transfer to such bank account as is from time to time notified by the Contractor to the Authority, or at such other time and in such other manner as the Authority reasonably determines.

### **8.3 Adjustment at the end of School Term**

- (a) The Contractor must, for each School Day on which the Service is performed, record such information as the Authority specifies for the purposes of this clause 8.3(a) in connection with:
  - (i) the route or number of kilometres driven by the School Bus in performing, or in connection with performing, the Service;
  - (ii) if there is a Bus Aide, the extent to which the Bus Aide travels on the School Bus; and



- (iii) any other matter reasonably specified by the Authority.
- (b) Not later than 5 Business Days after the end of each School Term, the Contractor may submit to the Authority a statement, in the form specified from time to time by the Authority, of:
- (i) the Total Standard Daily Kilometres for the School Term;
  - (ii) a total figure for the School Term representing the aggregate of the following for each School Day during the School Term:
    - the Payable Kilometres
    - plus*
    - where the School Bus was returned to the Depot after picking up and dropping off Students prior to the commencement of school on that School Day, the Morning Unloaded Kilometres
    - plus*
    - where the School Bus was returned to the Depot after picking up and dropping off Students at the end of school on that School Day, the Afternoon Unloaded Kilometres,
    - or such other summary information in respect of the number of kilometres driven by the School Bus in performing, or in connection with performing, the Service as the Authority reasonably specifies; and
  - (iii) if this Contract is a Bus Aide Contract, the total number of School Days during the School Term when the Bus Aide did not travel on the School Bus.
- (c) If the Contractor lodges a statement pursuant to clause 8.3(b), the Authority will, on the basis of the Contractor's statement, calculate the Adjustment Amount for the School Term in accordance with Part 4 of Schedule 3 and:
- (i) if the Contractor was Underpaid during the School Term, the Authority will pay the Adjustment Amount to the Contractor in the manner specified in clause 8.2(b) no later than the time at which the third subsequent fortnightly payment of the Service Charge is due after the Contractor lodges its statement pursuant to clause 8.3(b); and
  - (ii) if the Contractor was Overpaid during the School Term, the Authority may deduct the Adjustment Amount from subsequent Service Charge payments to the Contractor in such amounts and over such period of time as the Authority determines (provided that the Authority must act reasonably in determining the instalment amounts to be deducted and the time at which those amounts will be deducted),
- but if the Authority cannot comply with clause 8.3(c)(i) or (ii) because there are no further payments of the Service Charge to be made to the Contractor, the Authority must notify the Contractor of the Adjustment Amount as soon as reasonably practicable after it determines it, and:
- (iii) where clause 8.3(c)(i) applies, the Authority must pay the Adjustment Amount to the Contractor; and
  - (iv) where clause 8.3(c)(ii) applies, the Contractor must pay the Adjustment Amount to the Authority,
- not later than the time at which the Authority notifies the Contractor the Adjustment Amount must be paid (and the Authority must act reasonably in determining the time at which the Adjustment Amount must be paid).

- (d) If:
  - (i) the Contractor lodges a statement for a School Term pursuant to clause 8.3(b), the Contractor will be taken to warrant to the Authority that the contents of that statement are accurate and complete; or
  - (ii) the Contractor does not lodge a statement for a School Term in accordance with clause 8.3(b):
    - (A) the Contractor will be taken to warrant to the Authority that the Contractor was not Overpaid during the School Term and, if this Contract is a Bus Aide Contract, that a Bus Aide travelled on the School Bus each School Day; and
    - (B) the Authority is not at any time obliged to make any payment to the Contractor pursuant to clause 8.3(c) for that School Term.

The Authority acknowledges and agrees that the only consequences of a warranty made under this clause 8.3(d) being untrue when made or taken to be made by the Contractor are as provided for in clause 8.4.

#### **8.4 Adjustment to correct error or misclaim**

Where the Authority at any time reasonably determines that a warranty made by the Contractor pursuant to clause 8.3(d) for a School Term was untrue when made or taken to be made and:

- (a) that the Contractor knew that the warranty was untrue:
  - (i) the Authority may calculate or recalculate the Adjustment Amount for that School Term using any information which the Authority has and notify the Contractor of the amount of any Overpayment, and the Contractor must repay that Overpayment to the Authority within such time as the Authority specifies (and for the avoidance of doubt, the Authority may do this whether or not the Contractor lodged a statement for the School Term); and
  - (ii) a Default will be deemed to have occurred; or
- (b) clause 8.4(a) does not apply, the Authority may exercise its rights under clause 8.4(a)(i) if the end of the School Term in question was no longer than 3 years prior to the time at which the Authority determines the Contractor's warranty was untrue.

#### **8.5 Occasional Amounts**

The Authority will pay to the Contractor the amounts specified in Part 3 of Schedule 3 at the times referred to in Part 3 of Schedule 3.

#### **8.6 Recalculation of Service Charge**

The Service Charge is to be recalculated:

- (a) each time a Recalculation Event occurs, in accordance with Part 1 of Schedule 4; and
- (b) at the times specified in Part 2 of Schedule 4, in accordance with Part 2 of Schedule 4.

When the Service Charge is recalculated, the recalculated amount will become the Service Charge from the time specified in Schedule 4 in respect of that recalculation, and will be the Service Charge until the next recalculation occurs in accordance with this clause 8.6.

#### **8.7 Periodic Review of Composite Rate Model Components**

The Authority and the Contractor must comply with Schedule 5.

## **8.8 Contractor Payments**

The Contractor will pay to the Authority the amounts specified in Part 5 of Schedule 3 at the times referred to in Part 5 of Schedule 3.

## **8.9 No Right to Additional Payment**

Except where this Contract expressly provides to the contrary, the Contractor:

- (a) must bear all costs and expenses of providing the Service and otherwise performing the Contractor's Obligations; and
- (b) will not be entitled to any other fee or payment, other than the Service Charge, for providing the Service and otherwise performing the Contractor's Obligations.

## **8.10 Failure to Adjust**

If the Authority fails to make any adjustment to or deduction from any payment in respect of the Service Charge due to the Contractor at any time, the Authority may make that adjustment or deduction at any later time, provided that:

- (a) the Authority gives to the Contractor not less than two weeks' prior notice that the Authority is to make the adjustment or deduction; and
- (b) when it gives notice, the Authority provides details to the Contractor as to the reason for the adjustment or deduction.

The Authority will act reasonably in determining the period of time over which any adjustments or deductions are made.

## **8.11 Overpayment**

If the Authority makes an overpayment to the Contractor, the Contractor must, as soon as the Contractor becomes aware of it:

- (a) immediately notify the Authority in writing of the overpayment; and
- (b) repay to the Authority the full amount of any overpayment in those amounts and at those times as the Authority may determine. The Authority will act reasonably in determining the period of time over which, the Contractor is to repay any overpayments.

## **8.12 Set-off**

If the Contractor fails to pay any amount due to the Authority including:

- (a) any amount due under any contract, agreement or deed entered into between the Authority and the Contractor, other than this Contract; or
- (b) any amount for damages (liquidated or otherwise),

the Authority may:

- (c) deduct the relevant amount from any money due to the Contractor by the Authority, including the Service Charge, provided that the Authority gives at least 10 Business Days' prior notice to the Contractor of its intention to do so; and
- (d) if there is still a deficiency, recover that deficiency as a debt due to the Authority by the Contractor.

The Authority will act reasonably in determining the time at which it will effect the set-off.

## **8.13 Pass-through of Wages**

- (a) The Contractor acknowledges that part of the Service Charge represents compensation to the Contractor for remuneration it provides to Drivers and Bus Aides in connection with the Service (that part referred to in this clause as the "**Remuneration**"). The Contractor agrees that it will remunerate Drivers and Bus Aides based on the amount of Remuneration it receives, to the intent that

the Contractor will not make any windfall or profit in respect of the Remuneration.

- (b) Without limiting clause 8.13(a), where the Contractor pays:
- (i) to each Driver, an amount per hour worked by the Driver of at least the amount of the base rate per hour (plus, where applicable, an appropriate amount for each of sick leave, annual leave, long service leave, leave loading and public holiday pay) which the Authority from time to time notifies the Contractor it applies for the purposes of determining the variable "R" in the Drivers' Wages Component of Part 2 of Schedule 3; and
  - (ii) to each Bus Aide, an amount per hour worked by the Bus Aide of at least the amount of the base rate per hour (plus, where applicable, an appropriate amount for sick leave, annual leave, long service leave, leave loading and public holiday pay) which the Authority from time to time notifies the Contractor it applies for the purposes of determining the variable "R" in the Bus Aide's Wages Component of Part 2 of Schedule 3,

the Contractor will be deemed to be complying with clause 8.13(a).

## **9 GST**

### **9.1 Exclusive of GST**

Unless expressly included, the consideration for any Supply does not include GST.

### **9.2 Adjustment for GST**

To the extent that any Supply is a Taxable Supply, the consideration for that Supply is to be increased by the amount of GST payable in respect of that Supply.

### **9.3 Registration For GST**

- (a) The Contractor acknowledges that it is registered for GST under the GST Law and will advise the Authority if it ceases to be so registered.
- (b) The Authority acknowledges that it is registered for GST under the GST Law and will advise the Contractor if it ceases to be so registered.

### **9.4 Recipient Created Tax Invoices**

- (a) Unless otherwise requested in writing by the Contractor, and subject to:
  - (i) the Contractor being registered for GST under the GST Law; and
  - (ii) the Contractor and the Authority entering into a recipient created tax invoice agreement with the Authority in form and content reasonably specified by the Authority,the Authority will produce Recipient Created Tax Invoices in respect of Taxable Supplies made by the Contractor under this Contract.
- (b) Where the Authority produces Recipient Created Tax Invoices for a Supply under clause 9.5(a), the Contractor must not produce a Tax Invoice in respect of that Supply.

### **9.5 Time for Payment**

- (a) The other Party must pay or reimburse the Party who makes a Supply which is a Taxable Supply ("**Supplying Party**") for GST at the same time as satisfying the payment obligation for the Supply to which the GST relates, provided that the Supplying Party has first provided a Tax Invoice in respect of that Supply, except where a Recipient Created Tax Invoice has been produced for the Supply. If the time for satisfying the payment obligation for the Supply to which

the GST relates cannot be determined, then the reimbursement for GST must be paid on demand.

- (b) Despite any other provision of this Contract, the Supplying Party is not entitled to recover from the other Party any amount of GST the Supplying Party has paid or is liable to pay in relation to or in connection with any outgoing, expense or cost paid or payable by it, if it is entitled to receive a credit for that GST.

## **10 FARES**

### **10.1 Fare Paying Students**

- (a) Subject to clause 10.1(b), the Authority may from time to time notify the Contractor of which Students are required to pay a fare for conveyance on the School Bus ("**Fare Paying Students**").
- (b) The Authority may:
  - (i) only give a notice under clause 10.1(a) in respect of a Student whose Pick-up Location is in an area which the Authority determines is a public transport area; and
  - (ii) not give a notice under clause 10.1(a) if this Contract is an Education Support Contract.
- (c) The Driver must not carry Fare Paying Students on the School Bus unless those Students have paid such fares as are specified in writing by the Authority from time to time.
- (d) Each of the following is a Recalculation Event:
  - (i) the circumstance where the Contractor is not required to collect fares and then becomes required to collect fares; and
  - (ii) the circumstance where the Contractor is required to collect fares and then is no longer required to collect fares.

### **10.2 Fare Collection Equipment**

The Authority will provide any equipment necessary for the collection and ticketing of the fares referred to in clause 10.1 to the Contractor and item 5 of Schedule 9 will apply in respect of that equipment.

### **10.3 Collecting of Fares**

The fares referred to in clause 10.1 must be collected by the Driver and held by the Contractor on trust for the Authority until paid, or accounted for, to the Authority in the manner and at the times specified in writing by the Authority from time to time.

### **10.4 Fares to be authorised**

The Contractor must ensure that the Driver does not collect fares, or otherwise require payment from Students, unless those Students are Fare Paying Students.

## **11 DEALING WITH CONTRACT**

### **11.1 Contractor May Not Deal With Contract**

- (a) Without the Authority's prior written consent, such consent not to be unreasonably withheld, the Contractor may not Deal With this Contract or any right, interest or obligation of the Contractor under it.
- (b) Where:
  - (i) the Contractor is a corporation, any change in the beneficial shareholding of the issued shares of the Contractor; and
  - (ii) the Contractor is the trustee of a unit trust, any change in the beneficial ownership of the issued units of the trust (other than for the purpose of reconstruction of the trust),

shall be deemed an assignment of this Contract and will require the written consent of the Authority pursuant to clause 11.1(a).

## 11.2 Death or incapacity of Contractor

- (a) If the Contractor is one natural person, the Contractor may, from time to time, notify the Authority of the name and contact details of either one person, or two or more natural persons together, to be a Substitute Person for the purposes of this clause (and that person is, or those persons together are, referred to in this clause as the "**Nominated Person**").
- (b) Subject to clause 11.2(c), if the Contractor is one natural person and:
  - (i) the Contractor dies, or is unable to perform the Contractor's Obligations because the Contractor becomes subject to any Legislative Requirements relating to mental health or physical or mental incapacity or becomes permanently disabled by accident, physical or mental illness, or infirmity (and any such event is referred to in this clause as an "**Event**"); and
  - (ii) either:
    - (A) at the time the Event occurs:
      - (i) there is a Nominated Person; and
      - (ii) the Nominated Person exists; or
    - (B) if clause 11.2(b)(ii)(A) does not apply, within 90 days after the Event occurs, a person who has been granted probate or administration in respect of the Contractor notifies the Authority of a person, or two or more natural persons together, to be a Substitute Person for the purposes of this clause,  
  
(the Nominated Person or the person or persons notified pursuant to clause 11.2(b)(ii)(B) being the "**Substitute Person**"), the Authority will, at some time during the period of 6 months after the Event occurs, offer to enter into a contract with the Substitute Person on the same terms and conditions as this Contract for a term equal to the balance of the Contract Term. The Contractor agrees that the Authority need not check whether any person claiming to be an executor or administrator of the Contractor's estate has authority to represent or act for the Contractor or deal with the Contractor's property or rights and releases the Authority from all Claims, demands and liability in connection with the Authority taking action on the basis of a notification made under clause 11.2(b)(ii)(B).
- (c) The Authority is not obliged to comply with clause 11.2(b) unless:
  - (i) the Authority (acting reasonably) is satisfied that, if the Contractor wished to assign its rights and obligations under this Contract to the Substitute Person, the Authority would consent to such assignment; and
  - (ii) the Substitute Person provides to the Authority such information and assistance as the Authority requests in order to be so satisfied.
- (d) Any offer made by the Authority under clause 11.2(b) may not be expressed to expire, or revoked, until at least 10 Business Days after it is made.
- (e) If the Authority makes an offer under clause 11.2(b) and that offer is accepted, this Contract will terminate at the time the new contract formed by acceptance of the Authority's offer takes effect.
- (f) It is a Default if any of the following occurs in relation to an Event:
  - (i) the Authority makes an offer under clause 11.2(d) which is not accepted prior to its expiry or revocation; or

- (ii) there is no Nominated Person in existence at the time the Event occurs and no person is subsequently notified in accordance with clause 11.2(b)(ii)(B); or
  - (iii) there is a person nominated as a Substitute Person but the Authority is not obliged to comply with clause 11.2(b) because of clause 11.2(c).
- (g) The Authority may, at any time after an Event occurs:
- (i) issue any direction concerning the performance of the Contractor's Obligations to the Contractor or any other person involved in performing the Contractor's Obligations; or
  - (ii) perform the Service.

## 12 RECORDS, REPORTING, INSPECTION AND PERFORMANCE REVIEW

### 12.1 Records

The Contractor must:

- (a) keep; and
- (b) provide,
- (c) the written records referred to in Schedule 10 in accordance with the requirements set out in Schedule 10.

### 12.2 Inspection and Interview

- (a) Without limiting any other obligation of the Contractor under this Contract to make records available, the Contractor must, upon 5 Business Days' notice from the Authority, make available, for audit or inspection by any person nominated by the Authority:
  - (i) all Records; and
  - (ii) any other records which the Contractor from time to time holds or maintains in connection with the provision of the Service.
- (b) The Contractor must, within the period of time specified in a notice given by the Authority under this clause (which period may not be less than 1 Business Day), make available, for inquiry or interview by the Authority, all Drivers and Bus Aides.
- (c) The Authority must give the Contractor 1 Business Day's prior notice of any meeting between the Authority and a Driver or Bus Aide in relation to this Contract.
- (d) The Contractor has the right to be present, or to have a representative present, at any meeting between the Authority and a Driver or Bus Aide in relation to this Contract.
- (e) The Contractor must take all reasonable steps to ensure that all Drivers and Bus Aides cooperate with and provide to the Authority all information that the Authority may require.

### 12.3 Observation of Contractor's operations

- (a) Any person nominated by the Authority (this person being the "**Observer**") may, at any time the School Bus is being used to provide the Service, board and ride on the School Bus in order to observe the Contractor's operations, provided that the Authority:
  - (i) has given to the Contractor reasonable prior notice of the observation; and
  - (ii) has advised the Contractor of the primary reason for the observation.
- (b) Where an Observer is to observe or assess the manner in which the Driver drives the School Bus, the Observer must possess at least appropriate

qualifications to drive a vehicle of a kind similar to the School Bus in circumstances similar to the circumstances in which the Driver drives the School Bus.

- (c) Where the Authority exercises its rights under clause 12.3(a) in order to investigate or consider whether the Contractor is properly performing the Contractor's Obligations and the Observer provides a written report or notes to the Authority in respect of the observation, subject to clause 12.3(c), the Authority will not take any action on the basis of the report or notes unless it has:
- (i) provided a copy of the report or notes to the Contractor (but the Authority must provide a copy of the report or notes to the Contractor within 48 hours of receiving it from the Observer, in any event); and
  - (ii) provided to the Contractor a reasonable opportunity to respond to the report or notes (and for the purposes of this clause, the Contractor will have a "reasonable opportunity" if it is asked to provide a verbal response to the Authority).

For the avoidance of doubt, the Authority will not be taken to be investigating or considering whether the Contractor is properly performing the Contractor's Obligations if the Observer boards the School Bus merely to apprise himself or herself as to the nature of the Services.

#### **12.4 General Information**

The Contractor must create or provide all such documents, records, information and assistance (including, without limitation, completing written or verbal surveys) as the Authority from time to time reasonably requires in order to enable the Authority to:

- (a) accurately determine the nature and extent of costs involved in providing a service of the same kind as the Service at any time; and
- (b) manage and plan for the current and future provision of the Service and provision of school bus services in the State.

In requiring the Contractor to do anything under this clause, the Authority must take into account the administrative and net cost burden which is to be imposed on the Contractor as a result of the requirement.

#### **12.5 Acknowledgment**

The Contractor acknowledges and agrees that:

- (a) this Contract; and
- (b) information compiled under or held in relation to this Contract or to the Services, are subject to the *Freedom of Information Act 1992*.

### **13 COMPLIANCE AND WARRANTIES**

#### **13.1 Contractor's Representations and Warranties**

The Contractor represents and warrants to the Authority that:

- (a) **authority:** the Contractor has full power and authority to enter into this Contract and to perform the Contractor's Obligations;
- (b) **authorisations:** the Contractor and each other relevant person has taken all necessary action to authorise the execution, delivery and performance of this Contract in accordance with its provisions;
- (c) **binding obligations:** this Contract constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its provisions, subject to laws generally affecting creditors' rights, and to principles of equity;



- (d) **no trustee:** except as expressly disclosed in writing to the Authority, the Contractor is not entering this Contract as the trustee of any trust or for and on behalf of any other person; and
- (e) **transaction permitted:** the execution, delivery and performance by the Contractor of this Contract do not and will not violate any encumbrance or document that is binding on the Contractor or any of the Contractor's assets.

The Contractor acknowledges that the Authority has entered into this Contract on the basis of each of the Contractor's representations and warranties contained in this Contract, including those in this clause 13.1.

### **13.2 Survival of Contractor's Representations and Warranties**

The Contractor acknowledges that all representations and warranties given by the Contractor:

- (a) survive the execution, termination or completion of this Contract;
- (b) are regarded as repeated on each day during the Contract Term with respect to the facts and circumstances then subsisting; and
- (c) are independent, and are not limited by reference to any other warranties in any relevant conditions or otherwise in this Contract.

### **13.3 No Other Representations or Warranties by Authority**

Except for:

- (a) the express warranties and representations set out in this Contract; and
- (b) those implied provisions or warranties that are imposed by any Act that are mandatory and cannot be excluded,

the Authority gives no warranties regarding this Contract, or anything in connection with it or contemplated by it and the Authority will not be liable, and the Contractor will have no Claim against the Authority, in respect of any information obtained by the Contractor in respect of the Service.

### **13.4 Contractor has made its own enquiries**

The Contractor acknowledges and agrees that it has obtained and examined all information relevant to the risks, contingencies and other circumstances that could affect the Contractor's Obligations, the cost of complying with the Contractor's Obligations or the financial return to be derived from the Service, and that it has not, in entering into this Contract, relied on any express or implied statement, representation, undertaking, assurance, covenant or agreement made by the Minister, or the Authority or any other person on their behalf (whether oral, written or otherwise and whenever alleged to be made or given) (each of these being an "**Assurance**") other than those set out in this Contract. The Authority may not rely on this clause in respect of an Assurance given or made in circumstances where the Authority knew that:

- (a) the relevant Assurance was not true when made or given; and
- (b) the Contractor relied on the Assurance in entering into the Contract.

## **14 RISK AND INDEMNITIES BY CONTRACTOR**

### **14.1 Indemnity by Contractor**

Except to the extent caused or contributed to by:

- (a) the Authority;
- (b) any defect in the design, manufacture, condition or installation of any equipment installed in the School Bus by the Authority pursuant to item 5(a) of Schedule 9; or
- (c) any defect in the design, manufacture or condition of any wheelchair or similar mobility device used by a Student on the School Bus,

the Contractor must, at all times, indemnify and keep the Authority indemnified from and against all and every Claim and Loss arising from any one or more of the following:

- (d) any injury to, or the death of, any person, other than a person who suffers injury or death whilst exercising rights of the Authority under item 6 or item 7 of Schedule 9;
- (e) any damage to, or destruction or loss of the property of any person;
- (f) any Default;
- (g) any default of a Driver or a Bus Aide;
- (h) an event or circumstance arising from the Contractor's providing the Service, including Claims by any person against the Authority in respect of personal loss, damage, injury, or death and loss of or damage to any property;
- (i) any dangerous circumstance created or contributed too directly by the Contractor, a Driver or Bus Aide;
- (j) the use of, or failure of, any defective School Bus;
- (k) the unauthorised or unlawful use by any Driver or Bus Aide of any Confidential Information; and
- (l) any breach of any of the Contractor's representations and warranties contained in this Contract.

## **15 INSURANCES**

### **15.1 Contractor to Effect and Maintain Insurances**

The Contractor must effect and maintain during the Contract Term and for such time as the Contractor provides the Service, the following insurances:

- (a) insurance required under the Workers Compensation and Rehabilitation Act 1981; and
- (b) comprehensive motor vehicle insurance for the School Bus for at least the written-down value which is accorded to it for the purposes of calculating the Service Charge or, if no written-down value is accorded to it, then its current market value.

### **15.2 Evidence of Insurance**

Upon request, the Contractor must provide to the Authority:

- (a) a copy of each policy of insurance, including any varied or replacement policy, taken out by the Contractor, under this clause 15; and
- (b) written proof that each policy of insurance referred to in clause 15.2(a) is current.

### **15.3 Default**

If the Contractor fails to take out or maintain any insurance required under this clause 15, the Authority may:

- (a) take out and maintain that insurance, in which case the amount of any premiums paid by the Authority will be a debt due to the Authority from the Contractor and the Authority may deduct any premiums from any money due to the Contractor; and
- (b) treat that failure to insure, or failure to maintain insurance, as an event of Default.

## **16 CONFIDENTIAL INFORMATION**

### **16.1 Contractor to Keep Confidential**

The Contractor must keep the Confidential Information confidential, and must not without the Authority's prior consent:

- (a) disclose the Confidential Information to any person, other than:
  - (i) those of the Drivers and Bus Aides requiring the Confidential Information for the purposes of this Contract or complying with any Act or Legislative Requirement; or
  - (ii) to the extent necessary to provide a potential permitted assignee of the Contractor's Obligations with information in connection with the Contractor's Obligations; or
  - (iii) to employees, legal advisers, accountants and other consultants of the Contractor who require the information in order to advise the Contractor, provided that the Contractor must only disclose Confidential Information in accordance with this clause if the person to whom the Confidential Information is to be disclosed agrees to keep it confidential; or
- (b) use or permit any Driver or Bus Aide to use any of the Confidential Information for any purpose other than in relation to the performance of the Contractor's Obligations.

**16.2 No Obligation to Keep Confidential**

Clause 16.1 does not apply where:

- (a) Confidential Information is made public other than by the Contractor, a Driver or a Bus Aide; or
- (b) the Contractor, a Driver or a Bus Aide is required at law to disclose the Confidential Information.

**17 DEFAULT AND TERMINATION**

**17.1 Early Termination by the Authority**

- (a) Subject to clause 17.6, the Authority may, at any time, terminate this Contract by giving not less than 3 months' notice to the Contractor if the Authority, in the Authority's absolute discretion, determines that the performance of the Service by the Contractor is no longer required.
- (b) Without otherwise limiting the Authority's discretion under clause 17.1(a) or the Authority's rights under the remainder of this clause 17:
  - (i) the Authority may not terminate this Contract under clause 17.1(a) for reason only that the Authority does not wish the Contractor to continue to perform the Service for reasons associated with the Contractor personally and it would in those circumstances be unreasonable for the Authority to terminate this Contract; and
  - (ii) the Authority may terminate this Contract under that clause for reason that the Authority proposes to merge or consolidate the Approved Route with one or more other routes over which a service of a kind similar to the Service is currently provided.

**17.2 Early Termination by the Contractor**

The Contractor may, on giving not less than 6 months' notice to the Authority, terminate this Contract.

**17.3 Default**

It is a Default if any of the following occurs:

- (a) any material representation or warranty given by the Contractor under this Contract is false or misleading when made or taken to be made; or
- (b) any failure by the Contractor to maintain the School Bus, or carry out any repairs to the School Bus when reasonably directed to do so; or
- (c) the provision of any Records, documents or other information by the Contractor to the Authority that are false, inaccurate or misleading in a material way; or

- (d) any Governmental Authorisation required to provide the Service ceases to be effective; or
- (e) the occurrence of an Insolvency Event in respect of the Contractor; or
- (f) the occurrence of an event described in clause 11.2(f); or
- (g) the occurrence of an event described in clause 8.4; or
- (h) any breach or default by the Contractor of the Contractor's Obligations which is not of a kind otherwise referred to in this clause 17.3.

#### **17.4 Termination by the Authority on Default**

The Authority may terminate this Contract by serving on the Contractor a notice to that effect where:

- (a) a Default has occurred and the Authority reasonably determines that there is an immediate risk to the safety or well-being of Students; or
- (b) other than a Default of the kind referred to in clause 17.4(a), the Contractor has committed, or permitted to occur, a Default, and where that Default can be remedied, has failed to remedy that Default to the reasonable satisfaction of the Authority within 7 Business Days of receipt of a written notice from the Authority (or such longer period specified in the Authority's notice) identifying the Default and requesting that it be remedied; or
- (c) the Contractor has been issued with more than 2 notices of Default in accordance with clause 17.4(b) in any 12 month period, whether or not the Defaults the subject of those notices were subsequently remedied by the Contractor (but a notice of Default which the Referee determines pursuant to clause 18.4 was not appropriately issued is not to be taken into account for the purposes of this clause 17.4(c)); or
- (d) for any reason, the Contractor withdraws or refuses to perform the Service in circumstances where this Contract requires it to perform the Service.

Termination of this Contract pursuant to the Authority's notice will take effect at and from the time specified in the Authority's notice but, in the case of a notice which may be the subject of an Appeal under clause 18, termination will not take effect until:

- (e) if the Contractor does not commence an Appeal in accordance with clause 18.2 in respect of the Authority's notice, the expiry of that period allowed under clause 18.2(a) for commencement of an Appeal; or
- (f) if the Contractor commences an Appeal in accordance with clause 18.2 in respect of the Authority's notice, the date on which the Referee makes a determination under clause 18.5 pursuant to the Appeal or, if the Appeal is withdrawn prior to the Referee making a determination, the date of withdrawal of the Appeal.

#### **17.5 Powers of the Authority on Default or Failure to comply with Legislative Requirement**

- (a) If at any time a Default has occurred, which Default has not been waived by the Authority or remedied by the Contractor to the satisfaction of the Authority, and:
  - (i) the Authority has issued a notice under clause 17.4; or
  - (ii) the Contractor is not complying with the whole or any part of the Contractor's Obligations,
 the Authority may, without limiting any other rights of the Authority under this Contract, at law, in equity or otherwise, do any one or more of the following:
  - (iii) suspend any payment to the Contractor;
  - (iv) suspend the provision of the Service by the Contractor; and

- (v) undertake the Service, and, if the Authority undertakes the Service the Contractor must pay to the Authority on demand, the difference between:
  - (A) the cost of the Authority undertaking the Service; and
  - (B) the amount that the Authority would have had to pay to the Contractor had the Contractor completed the Service.

(b) If at any time:

- (i) the Contractor, a Driver or a Bus Aide is failing to comply with a Legislative Requirement or fails to obtain or maintain a Governmental Authorisation (whether or not the Authority has given notice under clause 3.5, Schedule 7 or Schedule 8 in respect of the Legislative Requirement or Governmental Authorisation);
- (ii) the Legislative Requirement or Governmental Authorisation is of a kind which could be the subject of a notice under clause 3.5, Schedule 7 or Schedule 8; and
- (iii) in the reasonable opinion of the Authority there is a risk to the safety or well being of Students or others travelling on the School Bus,

the Authority may suspend the provision of the Service by the Contractor and undertake the Service. For the avoidance of doubt, the Authority may not exercise any other rights under clause 17.5(a) in this circumstance, but suspension of the provision of the Service by the Contractor may, at the Authority's discretion, be a Recalculation Event.

#### 17.6 Metropolitan Fringe Contract

If item 6 of Schedule 12 specifies that this Contract is a Metropolitan Fringe Contract:

- (a) the Authority may not exercise rights under clause 17.1 in respect of this Contract during the Minimum Term; and
- (b) except to the extent provided for in clause 4.7, clause 17.7 does not apply.

#### 17.7 Payment on certain early termination

If the Contractor terminates this Contract in accordance with clause 4.6, or the Authority terminates this Contract pursuant to clause 17.1(a), the Authority must, subject to clause 17.6 and 17.8, pay to the Contractor, as soon as is reasonably practicable after the termination takes effect, an amount calculated in accordance with the following formula:

$$PT \times (ROI + DW)$$

where:

- PT =
- if the time between the date on which the relevant notice of termination was issued ("**Relevant Termination Date**") and the Termination Date is 10 years or more, 1
  - if the time between the Relevant Termination Date and the Termination Date is at least 5 years but is less than 10 years, 0.75
  - if the time between the Relevant Termination Date and the Termination Date is at least 6 months but is less than 5 years, 0.5
  - if the time between the Relevant Termination Date and the Termination Date is less than 6 months, 0

ROI The dollar value at that time of the annual figure for the

Return on Investment Component of Part 2 of  
Schedule 3

DW The dollar value per day at that time of the Drivers' Wages Component of Part 2 of Schedule 3, multiplied by the number of School Days in the year in which the termination occurs

The Contractor will not be entitled to any compensation, payment or claim by or against the Authority in respect of any termination by the Authority under this clause other than the payment referred to in this clause 17.7.

**17.8 Contractor and Related Parties not to provide further services**

If:

- (a) the Authority or the Contractor terminates this Contract and clause 17.7 applies (whether by virtue of clause 4.7(d) or clause 17.7); and
- (b) at any time within the period of 12 months after the Relevant Termination Date, the Contractor or any Related Party of the Contractor is in any manner engaged by or on behalf of the Authority to provide services of a kind similar to the Service in respect of an area which is the same as, or which incorporates, the Approved Route as it was at the date the Contractor or the Authority (as the case may be) gave notice of the termination,

then:

- (c) if the Authority has not, at that time, made a payment to the Contractor under clause 4.7(d) or 17.7, then the Authority is no longer obliged to make it; and
- (d) if the Authority has already made a payment to the Contractor under clause 4.7(d) or 17.7, the Contractor must pay to the Authority, not later than 30 days after the engagement referred to in clause 17.8(b), without set-off, deduction or counter claim, an amount equal to the amount of the payment.

**18 APPEALS**

**18.1 Referee**

The parties acknowledge that the Minister will from time to time appoint, in such manner and on such terms and conditions as the Minister considers appropriate, a person to be a referee for the purposes of this clause. Such person may not be an employee or officer of:

- (a) the Authority; or
- (b) any other department or statutory authority, the administration of which is for the time being committed to the Minister.

The Authority will notify the Contractor of the name and contact details of the person who is from time to time appointed as a referee under this clause. For the avoidance of doubt, the Minister may appoint as a referee a tribunal or decision-making body established under an Act in Western Australia.

**18.2 Appeal**

- (a) If the Authority issues:
  - (i) a Default Notice; or
  - (ii) a Removal Notice; or
  - (iii) a Testing Notice,(and any of these notices is referred to in this clause 18 as a "**Notice**"), and the Contractor disputes:
  - (iv) in the case of a Default Notice, the existence or nature of the default described in the Default Notice; or

- (v) in the case of a Removal Notice, that it is reasonable for the Authority to believe that the continued performance by the Driver or the Bus Aide the subject of the Removal Notice constitutes a risk to the safety or well-being of the Students or employees of the Contractor or any other person; or
- (vi) in the case of a Testing Notice, that it is reasonably necessary for the tests the subject of the Testing Notice to be carried out in order to ensure the safety or well-being of Students,

then the Contractor may, not later than 14 days after the date on which the Contractor receives or is taken to receive the Notice, commence an appeal against the Notice by notifying the Referee.

- (b) The Contractor must, in a notice issued by it under clause 18.2(a):
  - (i) specify details of, or append a copy of, the relevant Notice; and
  - (ii) set out reasons why the Contractor:
    - (A) in the case of an Appeal concerning a Default Notice, disputes the existence or nature of the default described in the Default Notice; or
    - (B) in the case of an Appeal concerning a Removal Notice, disputes that it is reasonable for the Authority to believe that the continued performance by the Driver or the Bus Aide the subject of the Removal Notice constitutes a risk to the safety or well-being of the Students or employees of the Contractor or any other person; or
    - (C) in the case of an Appeal concerning a Testing Notice, disputes that it is reasonably necessary for the tests the subject of the Testing Notice to be carried out in order to ensure the safety or well-being of Students,

and must give a copy of the Contractor's notice to the Authority at the same time as it gives its notice to the Referee.

### **18.3 Effect of Appeal**

Subject to clause 18.5:

- (a) any Default Notice or Removal Notice issued by the Authority will take effect in accordance with its terms and the provisions of this Contract despite; and
- (b) the rights, powers and remedies of the Authority under this Contract will not be affected by,

any Appeal undertaken by the Contractor. Any Testing Notice the subject of an Appeal will only take effect in accordance with item 2(b) of Schedule 7 and item 2(b) of Schedule 8.

### **18.4 Procedure for Appeal**

- (a) Subject to clause 18.5, the Referee may determine the procedure which the Referee will follow in considering an Appeal and making his or her determination pursuant to it.
- (b) Without limiting clause 18.4(a), the Referee may seek written or oral evidence from either or both of the Contractor and the Authority, or from any other person, in respect of any matter in connection with the Notice the subject of the Appeal. Each Party will take all reasonable measures to assist the Referee with the Referee's consideration of an Appeal.

### **18.5 Determination of Referee**

- (a) The Referee must determine pursuant to an Appeal that the Notice the subject of the Appeal was, by reference to considerations of reasonableness, either:

- (i) appropriately issued, in which case the Notice will take effect (in the case of a Testing Notice), or continue to take effect (in the case of a Default Notice or a Removal Notice), in accordance with its terms; or
- (ii) not appropriately issued, in which case:
  - (A) in the case of a Default Notice, the default referred to in the Default Notice will be deemed to have been waived by the Authority with effect from the date of the Referee's determination;
  - (B) in the case of a Removal Notice or a Testing Notice, the Notice will be deemed to have been withdrawn by the Authority with effect from the date of the Referee's determination; and
  - (C) the Referee may make a specification of the kind referred to in clause 18.5(b),

and any determination issued by the Referee other than a determination of the kind referred to in clauses 18.5(a)(i) and (ii), will be of no effect.

- (b) The Referee may, if the Referee makes a determination of the kind referred to in clause 18.5(a)(ii) in relation to a Default Notice or a Removal Notice, specify as part of that determination an amount of money payable by the Authority to the Contractor as fair compensation for the issue by the Authority of the relevant Default Notice or Removal Notice, taking into account the circumstances and actions of the Authority and the Contractor. The amount specified must:
  - (i) be, subject to clause 18.5(b)(ii), that amount which the Referee considers is the amount of compensation necessary to put the Contractor in the position which the Contractor would have been in, had the Default Notice or Removal Notice the subject of the Appeal never been issued by the Authority; but
  - (ii) not be more than the total amount paid by the Authority or which, but for any suspension or reduction of payment under clause 17.5 would have been paid by the Authority, as payments of the Service Charge under clause 8.2 to the Contractor from the time of issue of the Default Notice or Removal Notice until the making of the Referee's determination under clause 18.5(a)(ii).

The Authority must pay any amount specified by the Referee in accordance with this clause 18.5(b) to the Contractor within 30 days of the making of the Referee's determination under clause 18.5(a)(ii).

- (c) The Referee must:
  - (i) make any determination in writing;
  - (ii) sign the determination;
  - (iii) provide a statement of the reasons for making the determination; and
  - (iv) provide a copy of the determination and the statement of reasons to all parties as soon as possible after making the determination.
- (d) Subject to clause 18.7, a determination of the Referee made under, and which complies with, clause 18.5(a) is final and binding on the Parties and takes effect as specified in clause 18.5(a), except where any question or error of law arises out of a decision or determination, or its making.

## **18.6 Costs of Appeal**

- (a) Subject to clause 18.5(b), the Authority must pay any fees charged by the Referee for hearing and determining an Appeal.
- (b) Where the Contractor commences an Appeal and the Referee makes a determination in accordance with clause 18.5(a)(i) that the Notice the subject of



the Appeal was appropriately issued, the Contractor must pay to the Authority on demand an amount claimed by the Authority as its costs of the Appeal (which amount may not be more than the Appeal Maximum).

### **18.7 Status of appeals process**

For the avoidance of doubt, the Parties confirm that:

- (a) any determination made by the Referee under this clause 18 is factual rather than legal;
- (b) this clause 18 does not constitute an arbitration agreement within the meaning of the *Commercial Arbitration Act* 1985, and the process for Appeals described in this clause 18 is not an arbitration within the meaning of that Act; and
- (c) the rights and obligations of the Parties under this clause 18 do not limit any other Powers, obligations or liability of the Parties at law, in equity or otherwise.

## **19 EXTENSION OF CONTRACT TERM BY AUTHORITY**

The Authority may, not later than 7 months before the end of the Contract Term, give the Contractor notice that the Authority wishes to extend the Contract Term by a specified period (which period must be not more than 2 years). If the Authority gives notice to the Contractor in accordance with this clause 19, the Contract Term will be extended for the period specified in the notice. For the avoidance of doubt, the Contractor may exercise the Contractor's right under clause 17.2 after the Authority has given a notice under this clause.

## **20 CONTRACTOR'S RELATIONSHIP WITH THE AUTHORITY**

- (a) The Parties acknowledge and agree that nothing in this Contract may be construed to make either of them a partner, agent, employee or joint venturer of the other.
- (b) The relationship between the Authority and the Contractor is that of principal and independent contractor, and the Contractor acknowledges that:
  - (i) nothing in this Contract is to be taken as constituting the Contractor and its Drivers or Bus Aides to be employees or agents of the Authority;
  - (ii) the Contractor must, unless otherwise provided by the Contract, exercise independent control, management and supervision in the performance of the Service; and
  - (iii) neither the Contractor, nor any Driver or Bus Aide has any right or authority to assume nor create any obligations of any kind, nor to make any representations or warranties on behalf of the Authority or to bind the Authority in any respect.

## **21 GENERAL**

### **21.1 Act by Agents**

Anything to be done or performed by the Authority may be done and performed by:

- (a) any of the Authority's officers or employees or any consultants engaged by the Authority; or
- (b) any persons or class of persons from time to time notified by the Authority to the Contractor for the purposes of this clause 21.1.

### **21.2 Ensure Compliance by Others**

Where a provision of this Contract requires, or prohibits, the Contractor to do a thing, the Contractor must ensure that all Drivers, Bus Aides and other persons within the control of the Contractor comply with that provision.

### **21.3 Effect of Execution**

The provisions of this Contract will bind each person who signs it notwithstanding:

- (a) the failure of any other person named as a party to sign it; or
- (b) the avoidance or unenforceability of any part of this Contract.

#### **21.4 Exercise of Powers**

- (a) A Party may exercise a Power at that Party's discretion, and separately or concurrently with any other Power.
- (b) A single exercise of a Power by a Party does not prevent a further exercise of that, or of any other Power, by that Party.
- (c) If a Party fails to exercise, or delays in exercising, a Power, that does not prevent its exercise.

#### **21.5 Further Assurances**

Each Party will promptly, at that Party's expense, do anything that the other Party reasonably requires to effect, perfect or complete the provisions of this Contract and any transaction contemplated by it.

#### **21.6 Legal Costs**

Subject to any express provision in this Contract to the contrary, each Party will bear its own legal and other costs and expenses relating to this Contract, but the Authority will pay any stamp duty which is payable on this Contract if it has agreed in writing that it will do so.

#### **21.7 Powers Cumulative**

Subject to any express provision in this Contract, the powers of a Party under this Contract are cumulative, and are in addition to any other Powers of that Party.

#### **21.8 Service of Notices**

Every Notice (other than directions to be given by the Authority to the Contractor that may be oral):

- (a) must be given in legible writing and in English addressed as shown below:

- (i) if to the Authority, to the following address:

**Chief Executive Officer**  
Public Transport Authority  
Public Transport Centre  
West Parade  
Perth WA 6000  
**Fax (61 8) 9326 2781**

- (ii) if to the Contractor, to the Contractor's address for service, e-mail address and/or facsimile number as set out in Item 4 of Schedule 12, but if the Contractor comprises more than one person, the Authority is only required to send one Notice to those persons,

or as specified to the sender by any Party by notice;

- (b) must be signed by:

- (i) the Party, and where more than one person comprises a Party, by all persons comprising that Party;

- (ii) a duly authorised attorney of that Party; or

- (iii) in the case of a Party which is a corporation - a director or secretary or under the common seal of the corporation; or

- (iv) in the case of the Authority - by any representative of the Authority; or

- (v) by a solicitor on behalf of that Party; and

- (c) will be treated as having been given by the sender and received by or served on the addressee:
  - (i) if by delivery in person when delivered to the addressee;
  - (ii) on the day which is the third Business Day after the date of posting - where posted by registered post within Australia to an address within Australia;
  - (iii) on the day which is the eighth Business Day after the date of posting - where posted by air mail registered post from a place within Australia to an address outside Australia or posted from a place outside Australia to an address within Australia;
  - (iv) if by facsimile transmission, on the date of transmission where a transmission report is produced by the facsimile machine by which the facsimile message was transmitted which indicates that the facsimile message was transmitted in its entirety to the facsimile number of the recipient;
  - (v) but if the transmission (in the case of facsimile) is on a day that is not a Business Day or is after 4.00 pm (addressee's time) it will be treated as having been duly given on the succeeding Business Day; and
  - (vi) if by e-mail transmission, on the date of transmission where a return receipt is issued to the sender's information system which indicates that the e-mail was received by the recipient.

## **21.9 Statutory Powers**

Nothing contained in or implied by this Contract has the effect of constraining, or placing any fetter on, any person, in exercising any Statutory Power.

## **21.10 Survival**

Nothing will release the Contractor from any of the Contractor's Obligations that, by their nature, survive completion of the Service, or the termination of this Contract, including all warranties, representations or undertakings and obligations of indemnity or confidentiality.

## **21.11 Taxes**

Except as otherwise expressly provided in this Contract, the Contractor must:

- (a) pay any Tax in respect of:
  - (i) the execution, delivery, performance, release, discharge, amendment, enforcement or attempted enforcement or otherwise in respect of the following:
    - (A) this Contract (except stamp duty which the Authority is obliged to pay under clause 21.6);
    - (B) a document entered into or signed under this Contract; or
    - (C) a transaction contemplated under this Contract;
  - (ii) any payment made or to be made, or other act, matter or thing, done or to be done, under, arising out of or in any way connected with this Contract or any document or transaction referred to in the preceding paragraph; or
  - (iii) any money payable by the Contractor to the Authority;
- (b) pay fines, penalties or other costs in respect of a failure to pay a Tax described in the preceding sub-clause except to the extent that a fine, penalty or other cost is caused by the Authority's negligence; and
- (c) indemnify and keep indemnified and save harmless the Authority from and against an amount so payable.

### **21.12 Variation**

Except for variations provided for under this Contract; a provision of, or right created under, this Contract may not be:

- (a) waived except in writing signed by the Party granting the waiver; or
- (b) varied except by an instrument in writing signed by the Parties.

### **21.13 Waiver**

The waiver by a Party of a breach by another Party of any provision of this Contract does not operate as a waiver of another or continuing breach by that Party of the same, or any other, provision of this Contract.

Some contracts that were assigned or novated after January 2006 were varied to grant the Authority an option to purchase the vehicles used as school buses and to use depots and vehicle storage facilities. The option can be exercised by the Authority if the contractor becomes insolvent or the contract is terminated by either party to the contract. The variations were achieved through the incorporation of three new clauses into the individual contracts – the text of the new clauses is included in the endnotes.

Contractors should contact their Transport Liaison and Administration Officer (TLAO) if they have any questions regarding the option and whether it is relevant to their contract.

**EXECUTED** as a deed.

## SCHEDULE 1 – DEFINITIONS AND INTERPRETATION

### 1. Definitions

Words which have a defined meaning in Schedule 3 have the same meaning when used in the remainder of this Contract, unless the context otherwise requires.

**Accident** means any event:

- (a) involving the death of or injury to any person;
- (b) involving the loss of or damage to any property of any person (including to the School Bus or any property of the Contractor),

arising out of or in connection with, or relating to the performance of, the Contractor's Obligations.

**Accident Report** means a written report detailing, in respect of an Accident:

- (a) the names of those involved in the Accident and any injuries which they sustained;
- (b) the nature of the Accident;
- (c) the name of the school attended by any Students involved in the Accident;
- (d) the date and time of the Accident;
- (e) any damage or loss to property arising from the Accident and the names of the persons who owned that property at the time;
- (f) any action taken by the Contractor, Driver or Bus Aide at the time of the Accident.

**Act** means every Act of the Parliament of the Commonwealth, and of the State, and includes every rule, regulation, by-law, proclamation, code of practice or order made under or pursuant to an Act or regulation, now in existence, or which comes into existence.

**Actual Kilometres** has the meaning set out in Part 4 of Schedule 3.

**Additional School** means a school, not being on the Approved Route, which has pupils who travel along all or part of the Approved Route to and from that school, and as advised in writing by the Authority to the Contractor from time to time.

**Adjustment Amount** has the meaning set out in Part 4 of Schedule 3.

**ADR** means a design rule in the Australian Design Rules for motor vehicles issued by the Commonwealth Department of Transport and Regional Services or equivalent Commonwealth government department.

**Afternoon Route** means, on any day, the route marked on the relevant Route Map as the "afternoon run" for that day, as varied from time to time by the Authority under clause 4.

**Appeal** means an appeal commenced by the Contractor in accordance with clause 18.2.

**Appeal Maximum** means:

- (a) from the Effective Date to the first anniversary of the Effective Date, \$500;
- (b) from the first anniversary of the Effective Date until the next anniversary of the Effective Date, \$500 indexed in accordance with change in CPI; and
- (c) from each subsequent anniversary of the Effective Date until the next anniversary of the Effective Date, the amount as previously indexed, indexed in accordance with change in CPI.

**Approved Depot** means the depot referred to in item 7 of Schedule 12, as varied by the Authority from time to time under clause 4 or as otherwise agreed by the Authority and the Contractor.

**Approved Route** means, on any day, the Morning Route for that day together with the Afternoon Route for that day, as varied from time to time by the Authority under clause 4.

**Approved Route Distance** has the meaning set out in Schedule 3.

**Approved School** means any school, being on the Approved Route, which is marked and named on the Route Map.

**atf** has the meaning set out in clause 5 of this Schedule.

**Australian Business Number** has the same meaning as under the GST Law.

**Bus Aide** means a person engaged to perform the Bus Aide Duties under clause 6.2.

**Bus Aide Duties** means those duties set out in Part 2 of Schedule 8, as varied from time to time by the Authority under clause 4.

**Bus Aide Contract** has the meaning set out in Schedule 3.

**Business Day** means a day other than Saturday, Sunday or public holiday in Western Australia.

**CEO** means, at any time, the person who is, or is acting in the position of, the chief executive officer of the Authority (whether or not the position which that person occupies is referred to as "chief executive officer").

**Claim** means any claim or cause of action in contract, tort, under any Act, or otherwise.

**Class** has the meaning set out in Schedule 3.

**Confidential Information** means all knowledge, information, documents, reports, notes, memoranda, material or knowledge stored in writing, in electronic or machine readable form or otherwise, relating to Students or the Student Details.

**Contact Log** means a written record of all communications between the Contractor, a Driver or a Bus Aide on the one hand, and any person (other than the Authority) on the other hand, in relation to the Service detailing:

- (a) the date and time of the communication;
- (b) the name of the communicant;
- (c) the substance of the communication; and
- (d) the response of the Contractor, the Driver or the Bus Aide (as the case may be) to the communication.

**Contract** means this contract.

**Contractor** means the person named in Item 1 of Schedule 12.

**Contractor's Obligations** means the covenants, agreements and obligations contained in the Contract (including without limitation the obligation to provide the Service) or imposed under any Act to be observed or performed by the Contractor.

**Contract Term** means:

- (a) the period commencing on the Effective Date and expiring on the Termination Date;
- (b) any extension or renewal of it; and
- (c) any shorter term if this Contract is terminated before the Termination Date.

**Co-ordinator** means:

- (a) the person; or
- (b) the person holding the position,

from time to time notified by the Authority to the Contractor as the co-ordinator for the purposes of this Contract. The Authority may, if it wishes, appoint as the Co-ordinator

the principal of an Approved School or another person whom the Authority considers has local knowledge of the community in which the Service is to be provided.

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

**CPI** has the meaning set out in Schedule 3.

**Deal With** a thing includes:

- (a) sell, novate, assign, transfer and encumber;
- (b) grant any option, lease or licence in respect of; and
- (c) in any manner subcontract, alienate, dispose of, or part with possession of, or declare oneself trustee of or in relation to,

that thing.

**Default** has the meaning given in clause 17.3.

**Default Notice** means a notice issued under clause 17.4(a) or 17.4(b) in relation to a Default involving a breach by the Contractor of its obligations under clause 3.

**Depot** means, at any time, the location at which the School Bus is usually kept while not being used to perform the Service, as notified by the Contractor to the Authority under item 10 of Schedule 9, at that time.

**Driver** means any person (including the Contractor) driving or otherwise in control of the School Bus whilst performing the Service.

**Drop-off Location** means, in respect of a Nominated Student:

- (a) the drop-off location specified in the Student Details for that Nominated Student; or
- (b) any alternative drop-off location notified to the Contractor by the legal guardian of the Nominated Student which is, at the time the notice is given, a Pick-Up Location or Drop-Off Location for at least one Nominated Student other than the Nominated Student for whom notice is given.

**Education Support Contract** has the meaning set out in item 2.

**Education Support Bus** has the meaning set out in item 2.

**Effective Date** means the date specified in item 5 of Schedule 12.

**Emergency** means the occurrence of, or imminent risk of occurrence of, any Accident including, without limitation, the occurrence of a medical emergency involving a passenger on the School Bus.

**Emergency Plan** means the plan prepared by the Contractor in accordance with item 7(a)(ii) of Schedule 6 from time to time.

**Existing Contract** means:

- (a) each contract or document specified in item 8 of Schedule 12; and
- (b) any other contract, document, arrangement, binding obligation or undertaking (whether express, implied, arising by operation of law or otherwise and whether at law, in equity or otherwise) in connection with a document referred to in paragraph (a).

**Governmental Agency** means any government or any governmental, semi-governmental, local or municipal, public, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, person (including any Minister) or other entity (State or Federal).

**Governmental Authorisation** includes:

- (a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption under any Act or Legislative Requirements, or by or with a Governmental Agency; and

- (b) any consent or authorisation regarded as given by a Governmental Agency due to the expiration of the period specified by a statute within which the Governmental Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply.

**GST Act** means the A New Tax System (Goods and Service Tax) Act 1999 (Clth).

**GST Law** has the same meaning as in the GST Act.

**indexed in accordance with change in CPI** has the meaning set out in Schedule 3.

**Insolvency Event** means the happening of any of these events in respect of the Contractor:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent on terms approved by the Authority, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Authority or is otherwise wound up or dissolved; or
- (e) a body corporate is or states that it is insolvent; or
- (f) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate is or makes a statement from which it may be reasonably deduced by the Authority that the body corporate is, the subject of an event described in section 459C(2)(B) or section 585 of the Corporations Act; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) a person becomes insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (j) anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Insurer** means any insurer which has provided a policy of insurance referred to in clause 15.2.

**Legislative Requirement** includes:

- (a) the requirements of every Act; and
- (b) every certificate, licence, consent, permit and requirement of any Governmental Agency.

**Loss** means any loss, damage, cost, expense or liability.

**Minimum Term** means the period from the Effective Date until 30 June 2012.

**Minister** means the Minister of the State to whom the administration of the Public Transport Authority Act 2003 is for the time being committed by the Governor of the



State and, where the context permits, includes any person acting with or under the authority of the Minister, whether express or implied.

**Morning Route** means, on any day, the route marked on the relevant Route Map as the "morning run" for that day, as varied from time to time by the Authority under clause 4.

**Nominated Student** means a Student nominated under item 2 of Schedule 6, as varied from time to time by the Authority under clause 4.

**Notice** means any notice, request, demand, consent, direction, or approval.

**Overpaid** has the meaning set out in Part 4 of Schedule 3 and **Overpayment** has a corresponding meaning.

**Parties** means each of the parties to this Contract and **Party** means any of the Parties.

**Permanent Variation** is a variation by the Authority under clause 4 which:

- (a) is a Permanent Variation by virtue of clause 4.3(a); or
- (b) the Authority specifies is permanent in the notice it gives under clause 4.1 or clause 4.2 (as the case may be) in respect of that variation.

**Pick-up Location** means, in respect of a Nominated Student:

- (a) the pick-up location specified in the Student Details for that Nominated Student; or
- (b) any alternative pick-up location notified to the Contractor by the legal guardian of the Nominated Student which is at the time the notice is given, a Pick-Up Location or Drop-Off Location for at least one Nominated Student other than the Nominated Student for whom the notice is given.

**Power** means a right, power, remedy or authority under this Contract, or otherwise at law or in equity and includes any Statutory Power.

**Recalculation Event** means an event which gives rise to a recalculation and variation of the Service Charge in accordance with Schedule 4.

**Recipient Created Tax Invoice** has the same meaning as in the GST Act.

**Records** means the records required to be kept and maintained by the Contractor under clause 12.1.

**Referee** means the person appointed from time to time by the Minister under clause 18.1.

**Related Party** of a person means:

- (a) if the person is a company:
  - (i) a related body corporate of that company (as that term is defined in section 50 of the Corporations Act);
  - (ii) a director, secretary or shareholder of that company or a company referred to in paragraph (a), or a Related Party of that director, secretary or shareholder;
  - (iii) a person who controls (as that term is defined in section 50AA of the Corporations Act) that company or a company referred to in paragraph (a), and a Related Party of that person; and
  - (iv) a partner of that company or a person who is trustee of a trust in relation to which the company benefits, or is capable of benefiting; and
- (b) if the person is a natural person:
  - (i) any company in respect of which that person would be a Related Party, a related body corporate of that company (as that term is defined in

section 50 of the Corporations Act) and a Related Party of either of those companies;

- (ii) a parent, child, sibling, spouse or de facto spouse of that person and any company in respect of which any of those persons would be a Related Party; and
- (iii) a partner of that person or a person who is a trustee of a trust in relation to which the person benefits, or is capable of benefiting.

**Relevant Termination Date** has the meaning set out in clause 17.7.

**Removal Notice** means a notice issued under clause 6.3(a).

**Route Map** means the map or maps:

- (a) set out in Schedule 13; or
- (b) as signed for identification purposes by the Parties,

as varied from time to time by the Authority under clause 4 and replaced with a map or maps which the Authority issues as the replacement Route Map.

**Safety Management Plan** means the safety management plan prepared by the Contractor in accordance with item 7(a)(i) of Schedule 6 from time to time.

**School** means an Approved School or an Additional School.

**School Bus** means the Specified School Bus and any other vehicle which the Contractor uses to provide the Service.

**School Bus Contract** has the meaning set out in Schedule 3.

**School Bus Drivers' Instructions** means those instructions to Drivers that are set out in Part 2 of Schedule 7, as varied from time to time by the Authority under clause 4.

**School Bus Specifications** means those specifications for School Buses set out in Part 2 of Schedule 9, as varied from time to time by the Authority under clause 4, and any other reasonable requirements of the Authority regarding the School Bus as are notified to the Contractor from time to time.

**School Day** means any day on which an Approved School or an Additional School is open for attendance of Students.

**School Term** means a school term of an Approved School or an Additional School and, where there is more than one Approved School or Additional School and their school terms do not start on the same date and finish on the same date, the School Term commences on the day the first School's school term starts and ends on the day the last School's school term ends.

**Service** means the service as specified in clause 3.2, as varied from time to time by the Authority under clause 4.

**Service Charge** means the daily payment amount calculated in accordance with Schedule 3, and varied in accordance with Schedule 4, from time to time.

**Service Life** means:

- (a) in respect of the vehicle which is the Specified School Bus at the Effective Date, if the vehicle:
  - (i) is a Class A, D or E vehicle, the period of 10 years commencing on the date the vehicle first went into service, or such longer period of years as is agreed between the Authority and the Contractor; or
  - (ii) is a Class B or C vehicle, the period of 15 years commencing on the date the vehicle first went into service, or such longer period of years as is agreed between the Authority and the Contractor; and

- (b) in respect of any other vehicle which is the Specified School Bus, the service life (whether measured in kilometres travelled, years or otherwise) which the Authority from time to time specifies for that vehicle.

**Specified School Bus** means the vehicle or vehicles described in item 3 of Schedule 12, any vehicle that the Contractor uses in complying with clause 5.3 or 5.4, or any vehicle which the Authority agrees is the "Specified School Bus".

**Standard Daily Kilometres** has the meaning set out in Schedule 3.

**State** means the State of Western Australia.

**State Body** means the Authority, the Transport Co-ordination Ministerial Body established under section 6 of the *Transport Co-ordination Act 1966*, the State of Western Australia and each agency, authority and instrumentality of the State of Western Australia.

**Statutory Power** of an entity means any right, power, discretion, authority, duty or function exercisable by the entity or any other person, vested in them by any Act or Legislative Requirement.

**Student** means a pupil of an Approved School or an Additional School.

**Student Details** means the following in respect of a Student:

- (a) name;
- (b) street and mail addresses;
- (c) date of birth;
- (d) telephone number;
- (e) legal guardians' names;
- (f) medical and behavioural conditions;
- (g) Pick-Up Location and Drop-Off Location; and
- (h) the days of the week on which that Student is scheduled to travel on the School Bus,

as varied by the Authority under clause 4 from time to time.

**Student Incident Report** means a written report prepared in accordance with item 5(b) of Schedule 6.

**Substitute Person** has the meaning set out in clause 11.2(b).

**Supply** means any supply of any goods, services or other things under or in connection with this Contract.

**Tax** means:

- (a) a tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or
- (b) income, stamp or transaction duty, tax or charge,

other than GST, that is or may be at any time assessed, levied, imposed or collected by a Governmental Agency and includes interest, fines, penalties, charges, fees or other amounts imposed on or in respect of any of the above.

**Tax Invoice** has the same meaning as in the GST Act.

**Taxable Supply** has the same meaning as in the GST Act.

**Termination Date** means the date specified in item 2 of Schedule 12.

**Testing Notice** means a notice issued by the Authority under item 2(a) of Schedule 7 or item 2(a) of Schedule 8.

**Timetable** means, at any time the most recent timetable prepared by the Contractor pursuant to item 3 of Schedule 6.

**Total Actual Kilometres** is the sum of the Actual Kilometres for each School Day during the School Term.

**Total Standard Daily Kilometres** is the sum of the Standard Daily Kilometres for each School Day during the School Term.

**Underpaid** has the meaning set out in Part 4 of Schedule 3 and **Underpayment** has a corresponding meaning.

**Unloaded Kilometres** has the meaning set out in Schedule 3.

**Wheel Chair Specifications** means those specifications for a School Bus which is equipped to carry wheel chairs and occupants, as set out in Schedule 11, as varied from time to time by the Authority under clause 4.

## 2. **Education Support**

If item 6 of Schedule 12 specifies that this Contract is an Education Support Contract, then:

- (a) this Contract is an "**Education Support Contract**"; and
- (b) the School Bus is an "**Education Support Bus**".

## 3. **Approvals, Consents, Determinations or Waivers**

Subject to any express provision of this Contract, where any agreement, approval, consent, determination or waiver is required from or to be made by the Authority:

- (a) the Contractor must obtain that agreement, approval, consent, determination or waiver in writing;
- (b) the Authority may:
  - (i) grant or refuse that approval or consent, or make that determination or waiver, in the Authority's sole and absolute discretion, without giving any reason for that grant, refusal or making; and
  - (ii) grant that approval or consent, or make that determination or waiver, subject to any conditions the Authority may, in the Authority's sole and absolute discretion, impose.

#### **4. Requirement to act reasonably**

Where this Contract requires the Contractor to act reasonably, any question of whether the Contractor has done so or is doing so in any particular circumstance is to be considered by reference to, among other things, a contractor in similar financial circumstances to the Contractor.

#### **5. Trustee**

In item 1 of Schedule 12, a reference to a Contractor "atf" (as trustee for) a named trust or fund is a reference to the Contractor in its personal capacity and in its capacity as trustee for that named trust or fund. If the Contractor is referred to in this manner, it enters into this contract in its personal capacity and in its capacity as trustee for the named trust or fund.

#### **6. Interpretation**

In the Contract:

- (a) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate, Governmental Agency or other legal entity;
- (b) the expression:
  - "comply with" includes observe and perform;
  - "permit" includes suffer or cause including by way of omission;
  - "provision" includes term, provision, condition, obligation, requirement, agreement, representation, warranty, covenant, stipulation, obligation and undertaking; and
  - "including" and similar expressions are not words of limitation;
- (c) a reference to:
  - (i) any Act, Legislative Requirement, statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (ii) anything (including to any right or to the Service) includes:
    - (A) any act, omission, deed, matter or thing, including any document; and
    - (B) a part of that thing;
  - (iii) a condition or clause includes its sub-conditions or sub-clauses;
  - (iv) a document, including this Contract, includes:
    - (A) all amendments or supplements to or replacements or novations of that document; and
    - (B) any deed, agreement in writing, or any certificate, notice, instrument or other document of any kind;
  - (v) the Contractor includes the Contractor's officers, employees, agents and subcontractors and all, each and every or any of them;
  - (vi) doing anything includes, making, executing, doing or signing anything;
  - (vii) any gender includes every other gender;

- (viii) a month means a calendar month;
- (ix) the Minister or the Authority includes the Minister's or the Authority's (as the case may be) officers, employees, agents and subcontractors and all, each and every or any of them;
- (x) a part, condition, sub-condition, clause, annexure, exhibit or schedule is a reference to a part clause, annexure, exhibit or schedule to this Contract and a reference to this Contract includes any annexure, exhibit and schedule;
- (xi) a party to a document includes that party's permitted successors and assigns;
- (xii) a person includes a natural person, firm, corporation, body, institute, association, authority, tribunal, the trustee of any trust or settlement, or any other entity;
- (xiii) a person, other than a party to this Contract, whether statutory or not:
  - (A) that ceases to exist; or
  - (B) whose powers or functions are transferred to another person or body,
    - is a reference to the person that replaces it, or that substantially succeeds to its powers or functions;
- (xiv) liquidation includes official management, appointment of an administrator or provisional administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any person, or death;
- (xv) termination of this Contract includes the expiry of this Contract Term; and
- (xvi) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (d) no provision of this Contract will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this Contract or that provision;
- (e) headings and underlining are for convenience only, and do not affect the interpretation of this Contract; and
- (f) a reference to an item is to the item in the Schedule in which it appears.

## **SCHEDULE 2 – EMERGENCY PLAN**

The Emergency Plan must contain the following:

1. Descriptions of, and contact details for the arrangement of, alternative vehicles for the School Bus.
2. Names and contact details of substitute Drivers and Bus Aides.
3. A description of contingency plans for the provision of the Service.
4. Contact details for emergency services.
5. Business and after hours contact details for Schools and the Coordinator.
6. Responsibilities of Drivers and Bus Aides, including that in the event of an emergency, Drivers and Bus Aides must ensure that all passengers are safe and, if necessary, render first aid and call emergency services.
7. Procedures to be followed in the event of an emergency, including fires on the School Bus, the School Bus being involved in a traffic accident and medical emergencies involving passengers on the School Bus

## SCHEDULE 3 – COMPOSITE RATE MODEL

### PART 1

#### DEFINED TERMS AND CONCEPTS

The following terms and concepts are used in this Schedule and in Schedule 4.

##### **"Age"**

The number of whole years which have elapsed since the School Bus was purchased new, whether by the Contractor or another person.

##### **"Average"**

The "average" of any two or more figures or amounts means the sum of those figures or amounts, divided by the number of figures or amounts.

##### **"Average Weekly Earnings"**

The rate specified as *Average Weekly Earnings; States & territories; Full-time adult ordinary earnings; Western Australia* published by the Australian Bureau of Statistics. A reference to any amount being "**indexed in accordance with change in Average Weekly Earnings**" over a particular period ("**Period**") is a reference to that amount being increased or decreased (as the case may be) by the same proportion as the Average Weekly Earnings last published before the end of the Period increased or decreased from the Average Weekly Earnings last published before the start of the Period.

##### **"Bus Aide Contract"**

This Contract is a "**Bus Aide Contract**" if the Authority has notified the Contractor pursuant to clause 6.2(a) that it requires a Bus Aide to be on the School Bus and will continue to be a Bus Aide Contract until the Authority gives an approval or a direction in accordance with clause 6.2(b).

##### **"Car Running Kilometres"**

The number of kilometres (if any) specified in item 9 of Schedule 12. Each of the Car Running Component, and that part of the Drivers' Wages Component which relates to Car Running, will apply unless and until the Authority determines they are to no longer apply, in which case each will no longer form part of the calculation of the Service Charge.

##### **"Class"**

The class of vehicle into which the School Bus falls, as determined in accordance with the following criteria:

- a Class A School Bus is a vehicle with a maximum seating capacity of 24 adults and up to 27 primary students;
- a Class B School Bus is a vehicle with a seating capacity of 43 adults;
- a Class C School Bus is a vehicle with a seating capacity of 57 adults and a maximum of 83 primary students;
- a Class D School Bus is a vehicle with a maximum passenger seating capacity of 15 adults; and
- a Class E School Bus is a vehicle with a maximum passenger seating capacity of 7 primary students or 7 adults,

##### **(4 Wheel Drive Vehicles)**

- a Class F School Bus is a vehicle with a seating capacity of 17 adults and a maximum seating capacity of 21 primary students,



- a Class G School Bus is a vehicle with a seating capacity of 24 adults and a maximum seating capacity of 32 primary students,
- a Class H School Bus is a vehicle with a seating capacity of 34 adults and a maximum seating capacity of 49 primary students,

or as otherwise determined from time to time by the Authority. Where the Authority requires the Contractor to use a vehicle with a certain passenger seating capacity in accordance with clause 5.3 or 5.4, for the purposes of calculation of the Service Charge, the capacity of the School Bus or the Class into which it falls will be determined on the passenger seating capacity required by the Authority under clause 5.3 or 5.4, regardless of the actual passenger seating capacity of the vehicle.

**"Class Bus Price"**

At any time, what the Authority has determined as at that time is the Average of the School Bus Prices for each of the models of vehicles which are approved by the Authority for inclusion in the Class into which the School Bus falls.

**"Component"**

A component specified in column 1 of either Section A or Section B of Part 2.

**"Country Contract"**

See "Metropolitan Contract".

**"CPI"**

The Consumer Price Index (All Groups Index) (Perth). A reference to any amount being "**indexed in accordance with change in CPI**", or any component of CPI, over a particular period ("**Period**") is a reference to that amount being increased or decreased (as the case may be) by the same proportion as the CPI (or that component) last published before the end of the Period increased or decreased from the CPI (or that component) last published before the start of the Period.

**"Daily Tasks (DT)"**

Pre-engine checks and refuelling of a School Bus.

**"Depreciation"**

Straight line depreciation over the Service Life of the School Bus, applying a residual value of 10% for A Class and D Class School Buses and 5% for B Class and C Class School Buses and "**Depreciated**" has a corresponding meaning.

**"Education Support Contract"**

A School Bus Contract which is expressed in item 6 of its Schedule 12 to be an Education Support Contract.

**"Mainstream Contract"**

A School Bus Contract which is not an Education Support Contract.

**"Metropolitan Contract"**

This Contract is a "**Metropolitan Contract**" if the Approved Depot is in the Metropolitan Area. This Contract is a "**Country Contract**" if it is not a "**Metropolitan Contract**". The "**Metropolitan Area**" is that area within either or both of the Peel Region (as referred to in Schedule 1 of the *Regional Development Commissions Act 1993*) and the "metropolitan region" (within the meaning of the *Metropolitan Region Town Planning Scheme Act 1959*).

**"Minor Service Contract"**

A School Bus Contract is a "Minor Service Contract" if and for so long as the Authority specifies that it is, based on whether there are 7 or less Nominated Students at any time. If this Contract is a Minor Service Contract, any increase beyond 7 Nominated Students means that the Contract is not, from the day specified by the Authority, a "Minor Service Contract".

**"Model"**

The model of the School Bus.

### **"Operating Region"**

The "**Operating Region**" is the region (being either the Metropolitan Area or a "region" as described in the *Regional Development Commissions Act 1993*) which the Authority from time to time determines is the Operating Region for this Contract.

### **"Payable Kilometres"**

"Payable Kilometres" has the meaning set out in Part 4.

### **"School Bus"**

The Specified School Bus.

### **"School Bus Contract"**

"School Bus Contract" means this Contract, together with each other contract (if any):

- which is expressed to be a School Bus Contract (whether by containing this definition or otherwise); or
- which the Authority otherwise notifies the Contractor is a School Bus Contract.

### **"School Bus Price"**

At any time, what the Authority has determined as at that time is the new purchase price quoted by a supplier for a Standard vehicle of the same model as the School Bus.

### **"Standard"**

"Standard", in relation to a vehicle, means the standard model of the vehicle, fitted as necessary to comply with the School Bus Specifications and (if relevant) the Wheel Chair Specifications.

### **"Standard Daily Kilometres"**

This is the sum of the "**Approved Route Distance**" and the "**Unloaded Kilometres**".

The "**Approved Route Distance**" will be different depending on whether this Contract is a Mainstream Contract or an Education Support Contract.

- If this Contract is a **Mainstream Contract**, the "Approved Route Distance" is the number of kilometres per School Day which the Authority determines the Driver must drive over the Approved Route.
- If this Contract is an **Education Support Contract**, the "Approved Route Distance" is:
  - from the Effective Date until the first day of the School Term immediately following the Effective Date, the number of kilometres specified in item 11 of Schedule 12; and
  - from the first day of each School Term following the Effective Date (in each case, the "**Relevant School Term**") until the first day of the next following School Term, the number of kilometres which the Authority determines is the Average number of Payable Kilometres per School Day for the School Term immediately prior to the Relevant School Term.

The "**Unloaded Kilometres**" are set distances which are intended to broadly represent the distance which the School Bus travels prior to, and after, being used to perform the Service each School Day. The unloaded routes for a day are shown as the "**Morning Unloaded**" and the "**Afternoon Unloaded**" on the relevant Route Map and are, generally, the route between the Approved Depot and the start of the Approved Route, and the route between the end of the Approved Route and the Approved Depot. The Unloaded Kilometres comprise the "**Morning Unloaded Kilometres**" and the "**Afternoon Unloaded Kilometres**".

"**Morning Unloaded Kilometres**" is, for any day:

- (a) the number of kilometres which the Authority determines is in the Morning Unloaded; or
- (b) the number of kilometres otherwise determined by the Authority.

"**Afternoon Unloaded Kilometres**" is, for any day:

- (a) the number of kilometres which the Authority determines is in the Afternoon Unloaded; or

(b) the number of kilometres otherwise determined by the Authority.

**"Total School Days"**

"Total School Days" means, in a year, the number which the Authority determines as the total number of "School Days" for that year.

**"Year"**

A "year" is a calendar year.

## **PART 2**

### **CALCULATION OF THE SERVICE CHARGE (CLAUSE 8.2 AND DEFINITION OF "SERVICE CHARGE")**

The Service Charge is calculated by adding up the "\$ value per day" for each element specified in the table below.

Where, at any time and for any reason other than as a result of periodic review pursuant to Schedule 5, a Component cannot be calculated (whether because the basis for the Component no longer exists, or any other reason), the rates and prices which applied and were used to determine the \$ value per day for that Component immediately before the Component could no longer be calculated will be used to calculate the \$ value per day for that Component until the next periodic review pursuant to Schedule 5.

***Section A - applies unless this Contract is a Minor Service Contract***

***[See next page]***

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
Insurance	An amount determined by the Authority to be a figure representative of the annual comprehensive insurance premium for the School Bus based on:  the Class Bus Price, Depreciated in accordance with the Age of the School Bus  The <b>CPI – Insurance</b> which is the group, sub group and expenditure class (Financial and Insurance Services, Insurance Services) component of the Consumer Price Index published by the Australian Bureau of Statistics. The amount is calculated by comparing the indices for current June quarter to that of the preceding June quarter) to the annual comprehensive insurance premiums.	This amount divided by the Total School Days
Vehicle registration and third party	The annual vehicle registration fee and third party risk insurance charge payable on the School Bus under the <i>Road Traffic Act 1974</i> .	This amount divided by the Total School Days
Administration	The annual amount below, depending on the number of School Bus Contracts to which the Contractor, or a Related Party of the Contractor, is a party (" <b>Relevant Contracts</b> ") at that time:  <b>where there are one or more Relevant Contracts which are not Minor Service Contracts:</b> <ul style="list-style-type: none"> <li>• \$10,455 for each <b>Relevant Contract</b> which is a Mainstream Contract</li> <li>• \$13,198 for each Relevant Contract which is an Education Support Contract,</li> </ul> <b>but reduced by the following discounts:</b> <ul style="list-style-type: none"> <li>• where there are 3 Relevant Contracts, the amount payable for the third Relevant Contract is reduced by \$1,633; and</li> <li>• where there are 4 or more Relevant Contracts, the amount payable for each Relevant Contract after the first, is reduced by \$3,265</li> </ul>	This amount divided by the Total School Days  <b>plus</b>  an amount (if any) which the Authority determines the Contractor is entitled to as a result of being required to collect fares in accordance with clause 10
Return on Investment	An annual amount, being the amount which is 10.5% of the Class Bus Price at the time the amount is determined.	This amount divided by the Total School Days
Depreciation	The annual amount of Depreciation payable in the particular year on the basis that the School Bus Price of the School Bus is Depreciated	This amount divided by the Total School Days

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
Garaging	<p>(1) <del>An annual amount of \$553, if the Authority determines the Contractor falls into any of the categories specified below:</del></p> <ul style="list-style-type: none"> <li>• <del>the Contractor keeps the School Bus in a garage which provides full or partial shelter</del></li> <li>• <del>the Contractor provides the Service from a depot.</del></li> </ul> <p>(2) <del>Where the Contractor is required by law to park the School Bus elsewhere than the Contractor's residential address then an annual amount up to a maximum \$1,107, per School Bus but subject to the Contractor providing evidence of payment of the cost of such parking.</del></p> <p>1 An annual amount of \$553, if the Authority determines the Contractor keeps the School Bus in a garage which provides full or partial shelter.</p> <p>2 An annual amount of \$2000,</p> <ul style="list-style-type: none"> <li>i. if the Authority determines the Contractor provides the service from a depot; or</li> <li>ii. Is required by law to park the School Bus elsewhere than the Contractor's residential address subject to the Contractor providing evidence of payment of the cost of such parking.</li> </ul> <p>3 An annual amount of \$1000 in respect to wheelchair buses where the Contractor is required to store seats offsite subject to the Contractor providing evidence of payment of the cost of such storage.</p>	This amount divided by the Total School Days
Communications	<p><b>Part A - applies irrespective of whether this Contract is a Mainstream Contract or an Education Support Contract</b></p> <p>If:</p> <ul style="list-style-type: none"> <li>• this Contract is a Metropolitan Contract, the annual amount of \$150; and</li> <li>• this Contract is a Country Contract, the annual amount of \$220,</li> </ul> <p>as a mobile telephone service allowance (which does not cover any call costs)</p> <p><b>Part B - applies if this Contract is an Education Support Contract</b></p> <p>If this Contract is an Education Support Contract, an annual amount of \$120, as an allowance for mobile telephone calls.</p>	This amount divided by the Total School Days
Driver's wages	<p>A daily figure calculated as follows:</p> <p><b>the amount determined in accordance with the following formula</b></p> <p>IF <math>(M + DT \leq 4)</math> , <math>M (R + LA)</math></p> <p>else</p> <p><math>M ( R + LA)</math></p>	This daily amount

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
	<p>where:</p> <p><b>M</b> is the minimum number of driving hours for which the Authority will pay, which is 4</p> <p><b>R</b> is:</p> <ul style="list-style-type: none"> <li>• where the Authority determines that the School Bus has less than 25 seats, \$33.98; and</li> <li>• where the Authority determines that the School Bus has 25 seats or more, \$34.84</li> </ul> <p><b>LA</b> is the rate (if any), expressed in dollars, which the Authority determines is to apply to the Operating Region of this Contract</p> <p><b>plus the amount determined in accordance with the following formula</b></p> $\left\{ \frac{\left\{ \left( \frac{\text{SDK} + \text{CRK}}{\text{AK}} \right) - \text{MK} \right\} + \text{DT}}{\text{AK}} \right\} \times (\text{R} + \text{LA})$ <p>where:</p> <p><b>SDK</b> is the Standard Daily Kilometres.</p> <p><b>CRK</b> is the Car Running Kilometres (if any)</p> <p><b>MK</b> is, until determination by the Authority as set out below, the number of kilometres which the Driver is deemed to drive in the minimum number of hours specified for the purposes of the variable <b>M</b> described above and:</p> <ul style="list-style-type: none"> <li>• in the case of Mainstream Contracts, for an A Class vehicle, is 205.6 with effect from Term 2, 2007 and 240.8 with effect from Term 1, 2008. For a B class vehicle is 192.4 with effect from Term 2, 2007 and 214.8 with effect from Term 1, 2008. For a C class vehicle 182.0 with effect from Term 2, 2007 and 194.0 with effect from Term 1, 2008. For D Class vehicle is 219.6 with effect from Term 2, 2007 and 268.8 with effect from Term 1, 2008;</li> <li>• in the case of Education Support Contracts (Non wheelchair), for an A, B and D Class vehicle, is 128 with effect from Term 2, 2007. and</li> <li>• in the case of Education Support Contracts (Wheelchair), for an A Class vehicle, is 126.8 with effect from Term 2, 2007. For a B class vehicle is 126.8 with effect from Term 2, 2007. For a C class vehicle, 126.8 with effect from Term 2, 2007.</li> </ul> <p><b>AK</b> is the number of kilometres per hour which the Driver is deemed to drive per hour, and:</p> <ul style="list-style-type: none"> <li>• in the case of Mainstream Contracts, for an A Class vehicle, is 51.4 with effect from Term 2, 2007 and 60.2 with effect from Term 1, 2008. For a B class vehicle is 48.1 with effect from Term 2, 2007 and 53.7 with effect from Term 1, 2008. For a C class vehicle, 45.5 with effect from Term 2, 2007 and 48.5 with effect from Term 1, 2008. For D Class vehicle, is 54.9 with effect from Term 2, 2007</li> </ul>	

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
	<p>and 67.2 with effect from Term 1, 2008;</p> <ul style="list-style-type: none"> <li>• in the case of Education Support Contracts (Non wheelchair), for an A, B and D class vehicle is 32 with effect from Term 2, 2007. and</li> <li>• in the case of Education Support Contracts (Wheelchair), for an A class vehicle is 31.7 with effect from Term 1, 2007. For a B class vehicle is 31.7 with effect from Term 1, 2004.</li> </ul> <p><b>DT</b> is, until determination by the Authority as set out below, the number of minutes payable to the Driver for undertaking Daily Tasks:</p> <ul style="list-style-type: none"> <li>• in the case of Mainstream Contracts, is 10 minutes;</li> <li>• in the case of Education Support Contracts, 10 minutes</li> </ul> <p>The amount determined in accordance with the following formula</p> <p><b>DT</b> = ( 10 ÷ 60 )</p> <p><b>R</b> and <b>LA</b> have the same meaning as they have for the purposes of the formula above</p>	
Bus Aide's Wages	<p>This amount is payable only if this Contract is a Bus Aide Contract.</p> <p>A daily figure calculated in accordance with the formula set out above (<b>DT</b> is not applicable to this formula) for the Driver's Wages Component, with the exception that <b>R</b> is \$31.46.</p>	This daily amount
Superannuation	<p>A daily amount, being:</p> <p>x% of the Driver's Wages Component daily figure</p> <p><b>plus</b></p> <p>if this Contract is a Bus Aide Contract, x% of the Bus Aide's Wages Component daily figure,</p> <p>where <b>x</b> is the charge contribution set under the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth).</p>	This daily amount
Workers' compensation	<p>A daily amount, being:</p> <p>x% of the Driver's Wages Component daily figure</p> <p><b>plus</b></p> <p>while stamp duty is payable at law on workers' compensation policies, 3% of that Driver's Wages percentage amount, multiplied by 2 (being an amount representing stamp duty payable under the <i>Stamp Act 1921</i> and the "HIH levy" which is provided for in section 14(2) of the <i>Employees' Indemnity Supplementation Fund Act 1980</i>)</p> <p><b>plus</b></p> <p>if this Contract is a Bus Aide Contract, x% of the Bus Aide's Wages daily figure</p>	This daily amount



Component	Description	\$ value per day
	<p><b>plus</b></p> <p>while stamp duty is payable at law on workers' compensation policies, 3% of that Bus Aide's Wages percentage amount, multiplied by 2 (being an amount representing stamp duty payable under the <i>Stamp Act 1921</i> and the "HIH levy" (see above)),</p> <p>where <b>x</b> is WorkCover's ANZIC rate No. 61220 (being the Short Distance Bus Transport rate set by the Premium Rates Committee established under s.147 of the <i>Workers' Compensation and Rehabilitation Act 1981</i>).</p>	
Repairs and maintenance	<p>A daily figure determined in accordance with the following formula:</p> $(\text{SDK} \times \text{KM Service Rate}) + A + \frac{A+B}{\text{Total School Days}}$ <p>where</p> <p><b>SDK</b> is the Standard Daily Kilometres.</p> <p><b>KM Service Rate</b> is the rate determined by the Authority for a vehicle:</p> <ul style="list-style-type: none"> <li>• of the same Class; and</li> <li>• of the same Upper Limit,</li> </ul> <p>as the School Bus, in accordance with the Service Rate Schedule.</p> <p><b>Service Rate Schedule</b> is the schedule for buses which are the same Class as the School Bus, which is issued by the Authority from time to time and identified as such.</p> <p><b>Upper Limit</b> is the notional kilometre life expectancy of the School Bus and:</p> <ul style="list-style-type: none"> <li>• when the Service Life of the School Bus is expressed in years, is calculated by multiplying the Standard Daily Kilometres by the number of School Days and by the Service Life of the School Bus; and</li> <li>• when the Service Life is expressed in kilometres, is that number of kilometres.</li> </ul> <p><b>A</b> is the amount (if any) which is shown in the "Fixed Rate" column of the Service Rate Schedule as applicable to a vehicle of the same Class and Upper Limit as the School Bus.</p> <p><b>B</b> is the annual amount (if any) which is shown in the fixed rate "of the Service Rate Schedule as applicable to a wheelchair vehicle of the same class as the School Bus".</p>	This daily amount
Unsealed road running	<p><b>This Component applies only if</b> the number of kilometres of gravel road in the Approved Route, together with the Morning Unloaded and the Afternoon Unloaded (together, the "<b>Gravel Run</b>"), <b>is more than 1% of the Standard Daily Kilometres</b></p>	This Component, if it applies, is to increase the Repairs and Maintenance Component

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
	<ul style="list-style-type: none"> <li>• If the Gravel Run is more than 1%, but less than 50%, of the Standard Daily Kilometres, the KM Service Rate determined for the purposes of the Repairs and Maintenance Component is to be increased by 2.5% of its value.</li> <li>• If the Gravel Run is 50% of, or more than 50% of, the Standard Daily Kilometres, the KM Service Rate determined for the purposes of the Repairs and Maintenance Component is to be increased by 5% of its value.</li> </ul>	
Tyres	<p>A daily amount calculated in accordance with the following formula:</p> $\text{SDK} \times \frac{\text{TP}}{\text{TKM}}$ <p><b>where:</b></p> <p><b>SDK</b> is the Standard Daily Kilometres</p> <p><b>TP</b> is:</p> <ul style="list-style-type: none"> <li>▪ where the School Bus has dual rear wheels, the quoted price which the Authority obtains in writing from Beurepairs as its "Statewide price" for 6.5 new tyres, inclusive of fitting and balancing;</li> <li>▪ where the School Bus does not have dual rear wheels, the quoted price which the Authority obtains in writing from Beurepairs as its "Statewide price" for 4.5 new tyres, inclusive of fitting and balancing;</li> </ul> <p>for a school bus of the same Class as the School Bus.</p> <p>The Class tyre prices requested will be based on the (manufacturer recommended) tyre size used on the majority of buses in the School Bus fleet i.e. 50% or greater, as recorded by PTA, for that Class of vehicle.</p> <p><b>TKM</b> is:</p> <ul style="list-style-type: none"> <li>• where this Contract is a Mainstream Contract and the School Bus is an A Class School Bus, 44,000;</li> <li>• where this Contract is a Mainstream Contract and the School Bus is a B Class School Bus, 50,000;</li> <li>• where this Contract is a Mainstream Contract and the School Bus is a C Class School Bus, 63,000;</li> <li>• where this Contract is a Mainstream Contract and the School Bus is a D Class School Bus, 38,000</li> <li>• where this Contract is an Education Support Contract and the School Bus is an A or D Class School Bus, 44,000 and</li> </ul>	This daily amount

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
	<ul style="list-style-type: none"> <li>where this Contract is an Education Support Contract and the School Bus is a B Class School Bus, 33,000</li> </ul>	
Fuel	<p>A daily amount calculated in accordance with the following formula:</p> <p><b>SDK x FC x RFP</b></p> <p>where:</p> <p><b>SDK</b> is the Standard Daily Kilometres</p> <p><b>FC</b> is the fuel consumption expressed in litres per kilometre and is:</p> <ul style="list-style-type: none"> <li>for a Mainstream Contract where the School Bus is an A Class School Bus, 0.1597 with effect from first payment date after 9 June 2011</li> <li>for a Mainstream Contract where the School Bus is a B Class School Bus, 0.2267 with effect from first payment date after 9 June 2011</li> <li>for a Mainstream Contract where the School Bus is a C Class School Bus, 0.3044 with effect from Term 1, 2009 first payment date after 9 June 2011</li> <li>for a Mainstream Contract where the School Bus is a D Class School Bus, 0.0994 with effect from first payment date after 9 June 2011</li> <li>For an Education Support Contract where the School Bus is an A Class School Bus, 0.1691 with effect from first payment date after 9 June 2011</li> <li>For an Education Support Contract where the School Bus is a B Class School Bus, 0.2807 with effect from first payment date after 9 June 2011.</li> <li>For an Education Support Contract where the School Bus is a D Class School Bus, 0.1597 with effect from first payment date after 9 June 2011.</li> </ul> <p>For the avoidance of doubt, the Authority need not specify a different fuel consumption for air conditioned and non-air conditioned buses</p> <p><b>RFP</b> for a region (as calculated by the Authority) will be based on the following:</p> <ul style="list-style-type: none"> <li>for School Term 1, the three month moving average FuelWatch Price for that region using the months of January, February and March of that School Year;</li> <li>for School Term 2, the three month moving average FuelWatch Price for that region using the months of April, May and June of that School Year;</li> <li>for School Term 3, the three month moving average FuelWatch Price for that region using the months of July, August and September of that School Year; and</li> <li>for School Term 4, the three month moving average FuelWatch Price for that region using the</li> </ul>	This daily amount

Component	Description	\$ value per day																		
	<p>months of October, November and December of that School Year.</p> <p>Regional Fuel Prices are to be sourced for each of the following:</p> <ul style="list-style-type: none"> <li>• Metropolitan Area</li> <li>• Peel</li> <li>• South West</li> <li>• Great Southern</li> <li>• Wheatbelt</li> <li>• Goldfields/Esperance</li> <li>• Midwest</li> <li>• Gascoyne</li> <li>• Pilbara</li> <li>• Kimberley</li> </ul>																			
Air conditioning	<p>A daily amount calculated in accordance with the following formula:</p> $\text{SDK} \times \text{ACR} \times (1 + \text{RI})$ <p><b>where:</b></p> <p><b>SDK</b> is the Standard Daily Kilometres.</p> <p><b>ACR</b> is the relevant air conditioning rate for the Class of the School Bus, as follows:</p> <ul style="list-style-type: none"> <li>• where the School Bus is an A Class School Bus, 0.069 (for fuel consumption)</li> <li>• where the School Bus is a B or C Class School Bus, 0.097 (for fuel consumption and repairs and maintenance)</li> <li>• where the School Bus is a D Class School Bus, 0.069 (for fuel consumption and repairs and maintenance)</li> </ul> <p><b>RI</b> is the regional uplift listed below, expressed as a decimal, which applies for the Operating Region of this Contract -</p> <table border="0"> <tr><td>Metropolitan Area/Peel</td><td>Nil</td></tr> <tr><td>South West</td><td>0.037</td></tr> <tr><td>Great Southern</td><td>0.051</td></tr> <tr><td>Wheatbelt</td><td>0.034</td></tr> <tr><td>Goldfields/Esperance</td><td>0.079</td></tr> <tr><td>Midwest</td><td>0.056</td></tr> <tr><td>Gascoyne</td><td>0.146</td></tr> <tr><td>Pilbara</td><td>0.096</td></tr> <tr><td>Kimberley</td><td>0.103</td></tr> </table>	Metropolitan Area/Peel	Nil	South West	0.037	Great Southern	0.051	Wheatbelt	0.034	Goldfields/Esperance	0.079	Midwest	0.056	Gascoyne	0.146	Pilbara	0.096	Kimberley	0.103	This daily amount
Metropolitan Area/Peel	Nil																			
South West	0.037																			
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Pilbara	0.096																			
Kimberley	0.103																			

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
Car running	<p>This Component applies unless and until the Authority notifies the Contractor that it will no longer apply. During any time that the Component does not apply because of a notification given by the Authority under this Schedule, the Authority will pay to the Contractor an amount calculated by multiplying the Variable Charge (as defined in Part 4 of this Schedule) by the Car Running Kilometres.</p> <p>A daily amount determined in accordance with the following formula:  <math>CRK \times RR</math></p> <p><b>where</b>  <b>CRK</b> is the Car Running Kilometres (if any)  <b>RR</b> is the rate (expressed in dollars per kilometre) published by the Royal Automobile Club of WA (Inc) in a table titled "Vehicle Reimbursement Rates" (or similar) as the average rate for a large (3 litre capacity or greater) vehicle.</p>	This daily amount

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Daily Charge

**Section B - applies if this Contract is a Minor Service Contract**

<b>Component</b>	<b>Description</b>	<b>\$ value per day</b>
Administration	An annual amount of \$4,288	This amount divided by the Total School Days
Driver's Wages	The amount which would be payable under the Driver's Wages Component in Section A if Section A applied to this Contract	This daily amount
Vehicle Costs	<p>A daily amount determined in accordance with the following formula:  <math>SDK \times RR</math></p> <p><b>where</b>  <b>SDK</b> is the Standard Daily Kilometres  <b>RR</b> is the rate (expressed in dollars per kilometre) published by the Royal Automobile Club of WA (Inc) in a table titled "Vehicle Reimbursement Rates" (or similar) as the average rate for a large (3 litre capacity or greater) vehicle.</p>	This daily amount

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Daily Charge

**PART 3**

**OCCASIONAL PAYMENTS**

<b>Component</b>	<b>Details</b>	<b>Time of payment</b>
Stamp duty	Where the Contractor obtains a new vehicle to be used as the School Bus pursuant to a requirement or direction of the Authority issued under this Contract, the Authority will, while stamp duty is payable at law on vehicle transfers pay to the Contractor an amount equal to the amount of stamp duty which the Contractor would have been liable to pay under schedule 2 of the Stamp Act 1921 on the vehicle transfer if the price of the transfer were the School Bus Price.	Not later than 30 days after the Contractor provides evidence to the Authority (in accordance with clause 1.2) in respect of the amount claimed by the Contractor
Communication	<p>Where the Contractor obtains a new vehicle to be used as the School Bus pursuant to a requirement or direction of the Authority issued under this Contract, and the Authority has agreed in writing to pay for a two-way radio on the new vehicle, the Authority will pay to the Contractor, on provision of proof that the two-way radio has been installed, an amount equal to the amount paid by the Contractor for purchase and installation of the two-way radio, to an upper limit of:</p> <ul style="list-style-type: none"> <li>• from the Effective Date until the 30 June immediately following the Effective Date, \$651;</li> <li>• from the 1 July immediately following the Effective Date until the following 30 June \$651 indexed in accordance with change in CPI; and</li> <li>• from each subsequent 1 July until the following 30 June, the amount as previously indexed, indexed in accordance with change in CPI .</li> </ul>	Not later than 30 days after the Contractor provides evidence to the Authority (in accordance with clause 1.2) in respect of the amount claimed by the Contractor
Disposal of School Bus	<p>This provision applies unless this Contract is a Minor Service Contract.</p> <p>If:</p> <ul style="list-style-type: none"> <li>• the Contractor terminates the Contract in accordance with clause 4.6 or 4.7; or</li> <li>• the Authority terminates the Contract pursuant to clause 17.1(a); or</li> <li>• the Authority requires the Contractor to use a different vehicle as the School Bus under clause 5.3 and, in order to comply with clause 5.3, the Contractor is required to obtain a new vehicle,</li> </ul> <p>and the Contractor disposes of the School Bus within 3 months after the termination takes effect or the Contractor first uses the different vehicle under clause 5.3 (as the case may be) (either date being the "<b>Reference Date</b>"), the Authority will, subject to the condition set out below, pay to the Contractor the amount by which the Notional School Bus Value exceeds the Sale Price, where:</p> <p><b>Notional School Bus Value</b> is the School Bus Price at the Reference Date minus the total amount which the Authority paid to the Contractor during the Contract Term on account of the Depreciation</p>	Not later than 30 days after the Contractor provides evidence to the Authority (in accordance with clause 1.2) in respect of the amount claimed by the Contractor

<b>Component</b>	<b>Details</b>	<b>Time of payment</b>
	<p>Component</p> <p><b>Sale Price</b> means the price for which the Authority is satisfied the Contractor sold the School Bus.</p> <p><b>Condition:</b> The Authority will not be obliged to make any payment in respect of this Disposal of School Bus Component if the Authority is not satisfied that the School Bus, when sold, was in the same condition as it was at the Reference Date.</p>	
Fuel (price portion only)	<p>The fuel component of the CRM (which applies to School Bus Classes A, B, C &amp; D) comprises two pricing elements, being an average regional fuel price and the fuel consumption rate. The use of an average regional fuel price for each Operating Region is intended to ensure that the price per litre actually paid by the Contractor does not differ by more than 3 cents from the price the Authority uses in calculating the Fuel Component.</p> <p>If, at the end of either Term 2 [first semester] or Term 4 [second semester] of a School Year, the Contractor believes that the total amount the Contractor pays for the volume of fuel used in providing the Service ("<b>Actual Fuel Cost</b>") is more than:</p> <p style="padding-left: 40px;">the amount paid by the Authority under the Fuel Component over the 6 month period covering the respective semester ("<b>Paid Fuel</b>")</p> <p style="padding-left: 40px;"><i>plus</i></p> <p style="padding-left: 40px;">the volume (in litres) of fuel used in providing the Service multiplied by 0.03 (expressed in dollars), ("<b>Allowable Margin</b>"),</p> <p>then the Contractor may submit a claim to the Authority and the Authority will pay to the Contractor the amount by which the Authority is satisfied the Actual Fuel Cost exceeds the aggregate of the Paid Fuel and the Allowable Margin. The Contractor is required to submit a detailed claim to the Authority with sufficient supporting evidence to enable the validity of the claim to be satisfied.</p>	Not later than 30 days after details have been provided by the Contractor and verified by the Authority to its satisfaction.

## PART 4

### Calculation of the Adjustment Amount

The intention of the Parties is that the Contractor will, in the end result, be paid on the basis of the number of payable kilometres over which the School Bus was actually driven in providing the Service, rather than on the basis of the Standard Daily Kilometres (although these two figures may be the same). The **Adjustment Amount** for a School Term is intended to represent the difference between the total Service Charge which the Contractor was actually paid during the School Term (which is based on the Standard Daily Kilometres), and what the Contractor should have been paid for performing the Service during the School Term (taking into account the number of kilometres in the actual trips made by the School Bus and other factors - an adjustment based on Bus Aide presence will also be made, if applicable). If there is a difference, the amount of this difference, depending on whether it demonstrates the Contractor was paid more or less than the Contractor should have been paid, will be paid by the Authority to the Contractor, or repaid by the Contractor to the Authority (as the case may be), in accordance with clause 8.

The Adjustment Amount is calculated in accordance with the following formula:

(Kilometre Difference x Variable Charge)

*with an adjustment to be made for the Bus Aide Amount*

**where:**

**Kilometre Difference** is the difference between the **Total Standard Daily Kilometres** (the sum of the Standard Daily Kilometres for every School Day during the School Term) and the **Total Actual Kilometres** (the sum of the Actual Kilometres for every School Day during the School Term). The **Actual Kilometres** for a School Day is:

- (a) the number of Payable Kilometres which the Authority determines the School Bus travelled in performing the Service on that School Day; plus
- (b) unless the Authority determines that the School Bus was not returned to the Depot after picking up and dropping off Students prior to the commencement of school on that School Day, the Morning Unloaded Kilometres; plus
- (c) unless the Authority determines that the School Bus was not returned to the Depot after picking up and dropping off Students at the end of school on that School Day, the Afternoon Unloaded Kilometres.

**Payable Kilometres** is, for a School Day, the number of kilometres over which the School Bus was driven:

- (a) between the beginning and the end of the Morning Route; and
- (b) between the beginning and the end of the Afternoon Route,

where it was reasonably necessary for those kilometres to be driven on that School Day to perform the Service in accordance with this Contract. Without otherwise limiting this definition, it is not reasonably necessary:

- (c) for the School Bus to deviate from the Approved Route, or to re-drive any part of the Approved Route, unless that deviation or re-driving is occasioned by:



- (i) a request by the Authority; or
  - (ii) matters outside of the Contractor's control and is reasonably necessary in order to provide the Service; or
- (d) for the School Bus to be driven to pick up or drop off Students who the Contractor or Driver knows are not attending at school that day or otherwise do not need to be picked up or dropped off on that day.

**Variable Charge** is the rate determined by the Authority, expressed in cents per kilometre, as the variable charge for the School Term in respect of which the adjustment is being made.

The adjustment for the **Bus Aide Amount** will be made where the School Bus is a Bus Aide Bus, and is an amount calculated by multiplying the \$ value per day for the Bus Aide's Wages Component which applied on the last day of the School Term, by the number of School Days during the School Term on which a Bus Aide did not travel on the School Bus.

Where the Total Standard Daily Kilometres is less than the Total Actual Kilometres for the School Term, the Contractor was **Underpaid** during the School Term. In this case, the **Adjustment Amount** will be the amount calculated in accordance with the formula, less the Bus Aide Amount (if any), and clause 8.3(c)(i) will apply.

Where the Total Standard Daily Kilometres is greater than the Total Actual Kilometres for the School Term, the Contractor was **Overpaid** during the School Term. In this case, the **Adjustment Amount** will be the amount calculated in accordance with the formula, plus the Bus Aide Amount (if any), and clause 8.3(c)(ii) will apply.

## SCHEDULE 4 – RECALCULATION OF SERVICE CHARGE

### PART 1

#### Recalculation as a result of a Recalculation Event

When a Recalculation Event specified in the first column occurs, the Service Charge is to be recalculated to incorporate the changed circumstance specified in the second column. The recalculated Service Charge will apply from the time specified in the third column.

Unless the context otherwise requires, terms used in this Schedule and which are defined in Schedule 3, have the same meaning when used in this Schedule.

<b><i>Recalculation Event</i></b>	<b><i>Changed circumstance or variable in Schedule 3</i></b>	<b><i>Time for recalculated Service Charge to apply</i></b>
The Standard Daily Kilometres change as a result of Permanent Variation or where the Authority determines, pursuant to the exercise of powers under clause 17.5(b), that a Recalculation Event has occurred	Standard Daily Kilometres	From the first School Day that the Service is provided with the changed Standard Daily Kilometres
Requirement by Authority that a Bus Aide be used in accordance with clause 6.2(a)	This Contract becomes a Bus Aide Contract	From the first School Day that the Bus Aide is present on the School Bus
Authority approves or directs Contractor to cease using a Bus Aide, in accordance with clause 6.2(b)	This Contract ceases to be a bus Aide Contract	From the first School Day that the Bus Aide ceases to be present on the School Bus on a permanent basis
Increase or decrease in the number of School Bus Contracts to which the Contractor or a Related Party of the Contractor is a party	Number of School Bus Contracts taken into account for the Administration Component	From the first School Day after the change in the number of School Bus Contracts
Change in vehicle which is the School Bus in accordance with the Contract (clause 5.5)	Class and other characteristics of School Bus	From the first School Day that the new vehicle which complies with the Contract is used to provide the Service
Change in garaging situation of School Bus (item 10 of Part 1 of Schedule 9)	Garaging situation of School Bus for the purposes of the Garaging Component	From the first School Day that the Service is provided with the new garaging situation

<b>Recalculation Event</b>	<b>Changed circumstance or variable in Schedule 3</b>	<b>Time for recalculated Service Charge to apply</b>
The Authority changes the Service Life of the School Bus	Service Life	If: <ul style="list-style-type: none"> <li>the Service Life is changed in conjunction with a change in the vehicle which is the School Bus, then from the first School Day that the new vehicle which complies with the Contract is used to provide the Service; or</li> <li>there is a change in the Service Life but no change in the vehicle which is the School Bus at that time (that is, the Service Life of a vehicle in service is changed), from the date specified by the Authority</li> </ul>
This Contract is not a Minor Service Contract and becomes a Minor Service Contract, or is a Minor Service Contract and ceases to be a Minor Service Contract	Whether the Service Charge is calculated in accordance with Section A, or Section B, of Part 2 of Schedule 3	From the date specified by the Authority
Where the Contractor is not obliged to collect fares and then becomes obliged to collect fares, or is obliged to collect fares and is then not obliged to collect fares (clause 10)	That part of the Administration Component representing an amount (if any) which the Authority determines the Contractor is entitled to as a result of being required to collect fares	From the first School Day on which the Contractor is obliged to collect fares, or is not obliged to collect fares (as the case may be)
Any change in any other element or variable used to calculate the Service Charge in accordance with Part 2 of Schedule 3	Various	From the date specified by the Authority

## PART 2

### Regular recalculation

#### **Section A - applies unless this Contract is a Minor Service Contract**

<b>Component</b>	<b>Updated details for Component</b>	<b>Time of effect</b>
Insurance	Reset at a new amount determined by the Authority prior to 1 July each year in accordance with the procedure specified for the Insurance Component in Schedule 3	From the first day the Service is performed after 1 July in each year
Vehicle registration and third party	Reset when there is a change to the amount of the vehicle registration fee or third party risk insurance charge applicable to the School Bus under the Road Traffic Act 1974	From the first day the Service is performed after the change to the amount of the statutory charge takes effect
Administration	Indexed as at each 1 July in accordance with change in CPI over the previous 1 July to 30 June.	From the first day the Service is performed after 1 July in each year
Return on investment	No recalculation of the percentage rate specified in Schedule 3.	Not applicable
Depreciation	No recalculation	Not applicable
Garaging	Indexed as at each 1 July in accordance with change in CPI over the previous 1 July to 30 June	From the first day the Service is performed after 1 July in each year
Communications	<p>Reset every 5 years at a new amount determined by the Authority as the annual amount to be paid to the Contractor as a mobile telephone service allowance (which does not cover any call costs), based on whether the Authority determines this Contract is a Metropolitan Contract or a Country Contract.</p> <p>If this Contract is an Education Support Contract, the annual amount to be paid to the Contractor as an allowance for mobile telephone calls will be reset at each 1 July at a new amount determined by the Authority as an annual amount to be paid to the Contractor as an allowance for mobile telephone calls.</p>	<p>From 1 July 2003 and then from 1 July every 5 years after that</p> <p>From the first day after the Service is performed after 1 July in each year</p>
Driver's Wages	Indexed as at each 1 July in accordance with change in Average Weekly Earnings over the previous 1 July to 30 June	From the first day the Service is performed after 1 July in each year
Bus Aide's Wages	Indexed as at each 1 July in accordance with change in Average Weekly Earnings over the previous 1 July to 30 June	From the first day the Service is performed after 1 July in each year

<b>Component</b>	<b>Updated details for Component</b>	<b>Time of effect</b>
Superannuation	Reset when the charge contribution set under the <i>Superannuation Guarantee (Administration) Act 1992</i> (Clth) changes	From the time the change to the charge contribution changes
Workers' compensation	Reset each 1 July in accordance with the ANZIC rate no. 61220 (being the Short Distance Bus Transport rate set by the Premium Rates Committee established under s. 147 of the <i>Worker's Compensation and Rehabilitation Act 1981</i> )	From the first day the Service is performed after 1 July in each year
Repairs and maintenance	Indexed as at each 1 January and 1 July in accordance with increases in the Transportation Group of CPI (Perth)	From the first day the Service is performed after 1 January or 1 July (as the case may be) in each year
Unsealed road running	No recalculation	Not applicable
Tyres	Indexed as at each 1 January and 1 July using what the Authority determines to be the Beaurepairs Statewide prices applying at that time	From the first day the Service is performed after 1 January or 1 July (as the case may be) in each year
Air conditioning	Indexed as at each 1 January and 1 July in accordance with increases in the Transportation Group of CPI (Perth)	From the first day the Service is performed after 1 January or 1 July (as the case may be) in each year
Fuel	<p>Reset at the commencement of each School Term using, for that particular School Term, the nominated three month moving average Fuel Watch Price for diesel for each Operating Region. For School Term 1 this will be the months of January, February and March of that School Year. For School Term 2, the months of April, May and June of that School Year. For School Term 3, the months of July, August and September of that School year. For School Term 4, the months of October, November, and December of that School Year.</p> <p>As these nominated months generally coincide with the School Term there will an inherent delay in obtaining average fuel prices for a School Term. Therefore, it will be necessary to 'carry over 'the average regional fuel prices from the School Term prior to the current School Term until the relevant average regional fuel prices for the current School Term can be determined. Once the School Term average regional fuel prices have been determined they will be applied (retrospectively) from the commencement of that School Term.</p>	From the first day the Service is performed during the School Term
Car running	Reset each 1 July in accordance with changes to the rate (expressed in dollars per kilometre) published by the Royal Automobile Club of WA (Inc) in a table titled "Vehicle Reimbursement Rates" (or similar) as the average rate for a large (3 litre capacity or greater) vehicle.	From the first day the Service is performed after 1 July in each year

**Section B - applies if this contract is a Minor Service Contract**

<b>Component</b>	<b>Updated details for Component</b>	<b>Time of effect</b>
Administration	As specified under the Administration Component in Section A	From the first day the Service is performed after 1 July in each year
Driver's Wages	As specified under the Driver's Wages Component in Section A	From the first day the Service is performed after 1 July in each year
Vehicle Costs	Contractor and the Authority will do all things reasonably necessary or appropriate to table titled "Vehicle Reimbursement Rates" (or similar) as the average rate for a large (3 litre capacity or greater) vehicle.	From the first day the Service is performed after 1 July in each year

## SCHEDULE 5 – COMPOSITE RATE COMPONENT REVIEW

### SUMMARY

This Schedule sets out the process by which the parties will have a regular opportunity to review the existence, manner of calculation and indexation of the Components. The process involves the following broad activities -

- The review activity will be undertaken each year, with groups of Components subject to review in particular years, meaning that the opportunity for review of a particular Component will arise every 3 years during the Contract Term (refer to item 3).
- The Contractor will have the chance to participate in the review through a "contractor representative" nominated by the Contractor under item 5. Those Contractors who are not represented will nevertheless have an opportunity to make written submissions in accordance with item 8(b).
- The review will involve the Authority and Contractor Representatives examining the Components to be reviewed and, based on certain criteria, identifying the need for those Components to be reviewed (refer to item 6 and the definition of "Issue").
- Where the Authority or a Contractor Representative identifies a Component it contends needs to be reviewed, the Authority and Contractor Representatives will consider each others' points of view on whether and how the Component should be changed and, if necessary, the question as to whether and how the Component should be changed will be referred to an independent review panel for determination (refer to items 6 to 10).
- When appropriate changes to the Components are agreed by the Authority and contractor representatives (subject to appeal by Contractors in accordance with item 10), or are determined by the review panel, they will take effect as variations to the Contract (refer to item 11).

The Parties agree that the above summary is set out for convenience only and does not form part of, and does not affect the interpretation of, this Contract.

### PART A - GENERAL

#### 1. Definitions

In this Schedule 5, the following words have the following meanings, unless the context otherwise requires:

**Component** has the same meaning as in Schedule 3.

**Composite Rate Model** means the manner of calculating the Service Charge by reference to the aggregate of the amounts determined from time to time for the Components in accordance with Schedule 3, and of indexing the Components in accordance with Schedule 4.

**Contractor** means, at any time, a person who is a "Contractor" within the meaning of a School Bus Contract. A reference to a person "**holding**" or who "**holds**" a School Bus Contract is a reference to the person being the "Contractor" within the meaning of the School Bus Contract.

**Contractor Representative** means a person who is determined by the Authority to qualify as a Contractor Representative in accordance with item 5(d), and any representative or nominee of that person.

**Determination** means a determination made by the Review Panel in accordance with item 9(a)(ii).

**Eligible Person** means a person who is not:

- (a) an employee as defined in section 3(1) of the Public Sector Management Act 1994;  
or

- (b) an officer or employee of the Authority; or
- (c) a Contractor or an officer or employee of a Contractor; or
- (d) a Related Party of a Contractor or any person who is or has at any time been a Contractor Representative.

**Expert Panel** means the panel of experts referred to in item 2(b).

**Governmental Agency** means any government or any governmental, semi-governmental, local or municipal, public, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, person (including any Minister) or other entity, whether of the Commonwealth or of any Australian State or Territory.

**Issue** means, in relation to a Reviewable Component, the situation where it is evident that there is a real question whether:

- (a) that portion of the Service Charge payable to Contractors which is attributable to the Reviewable Component does not appropriately reflect the actual net costs:
  - (i) incurred by Contractors; or
  - (ii) which would be incurred by a reasonable and prudent contractor in the position of a Contractor who made reasonable endeavours to achieve cost savings, for the Reviewable Component in providing school bus services under the School Bus Contracts; or
- (b) the basis for determining or indexing the Reviewable Component is inappropriate or inapplicable,

where the question of what is "appropriate" is to be determined by reference to the Review Principles and by reference to the consideration that the provisions of Schedules 3 and 4 must be applied to all Contractors; or

- (c) the manner of calculation of the Service Charge would result in a breach of, or an adverse consequence or situation in connection with, a State Agreement.

**Issue Notification** means, in respect of a Reviewable Component, a written submission that, as a result of an Issue in respect of the Reviewable Component, each School Bus Contract should be varied and which:

- (a) identifies the Reviewable Component to which it relates;
- (b) states why the party making the notification considers an Issue exists, and provides details of the nature of the Issue;
- (c) contains or refers to such evidence as is relevant or required (in accordance with the Review Principles) to support the view of the party making the notification; and
- (d) sets out variations which the party making the notification proposes be made to:
  - (i) Schedule 3;
  - (ii) Schedule 4; and
  - (iii) the remainder of the Contract,
 either as an agreement of the kind referred to in item 10(a), or as a determination of the Review Panel in accordance with item 9(a)(ii), in respect of the Issue.

**Issue Notification Period** has the meaning set out in item 4.

**Legal Panel** means the panel of legal practitioners referred to in item 2(a).

**Nomination Form** means a completed notice in the form set out in attachment 1 to this Schedule.

**Nomination Period** has the meaning set out in item 4.

**Non-Represented Contractor** means a Contractor who is not a Represented Contractor.



**Objection Notice** means a completed notice in the form set out in attachment 2 to this Schedule.

**Panel** means either or both of the Legal Panel and the Expert Panel.

**Panel Requirement Time** means, for each Review, the time at which one of the following events first occurs:

- (a) a notice is given under item 6(b)(ii); and
- (b) at the end of the Submission Period, there remain Review Issues.

**Participating Party** means, in respect of a Review, each Contractor Representative for the purposes of that Review, and the Authority.

**"Qualified Officers"** means officers or representatives of the Authority whom the Authority authorises to negotiate on its behalf.

**Represented Contractor** is a Contractor who has lodged a notice with the Authority in accordance with item 5(a) in relation to a Contractor Representative.

**Review** means, in any year, the review of Reviewable Components being or to be carried out pursuant to this Schedule 5.

**Review Issue** means:

- (a) an Issue disclosed in an Issue Notification which is accepted by each Participating Party who received the Issue Notification, as disclosing an Issue; or
- (b) an Issue which the Review Panel determines is a Review Issue.

**Review Panel** means, in respect of a Review, the panel appointed for that Review in accordance with item 7.

**Review Period** means the period in each year, commencing on 1 February and ending on the date when a Determination in respect of the last Review Issue involved in the Review is made, during which Components are scheduled to be reviewed in accordance with item 3. Review Period, in relation to a particular Component, means the period during which that Component is scheduled to be reviewed in accordance with item 3.

**Review Principles** means the principles set out in item 9(b).

**Reviewable Component** means, for a Review Period, a Component which is scheduled to be reviewed during that Review Period in accordance with item 3.

**ROI Meeting** means discussions carried out under item 14.

**School Bus Contract** has the same meaning as in Schedule 3.

**State Agreement** means any agreement or arrangement between the State of Western Australia or any Governmental Agency in Western Australia on the one hand, and one or more Governmental Agencies on the other, which is binding, or failure to comply with which could result in an adverse consequence for the State of Western Australia.

**Submission Period** has the meaning set out in item 4.

## 2. Panels to be appointed and maintained

The Parties acknowledge that, for the purposes of selecting persons to form a Review Panel in accordance with item 7, the Minister will from time to time appoint, in such manner and on such terms and conditions as the Minister considers appropriate:

- (a) at least 3 Eligible Persons each of whom is, or has at any time during the 5 years immediately prior to his or her appointment been, a certificated legal practitioner as defined in section 3 of the *Legal Practitioners Act 1893*, to be a panel of legal practitioners; and
- (b) at least 6 Eligible Persons each of whom has, in the opinion of the Minister, relevant expertise in any or all of:

- (i) the bus transport industry;
  - (ii) commerce;
  - (iii) accounting; and
  - (iv) any other field of knowledge the Minister considers relevant to the things to be done by Contractors under School Bus Contracts,
- to be a panel of experts.

**3. Reviews to be undertaken periodically**

- (a) (**General provision**) The Parties agree that, subject to item 3(b), they will have the opportunity to review the existence and manner of calculation of each Component, and the manner in which the Component is indexed in accordance with Schedule 4, in accordance with the procedures set out in Part B of this Schedule 5, during a Review Period for that Component as determined in accordance with the following table:

<b>Component</b>	<b>First Review Period commences</b>	<b>Subsequent Review Periods commence</b>
<ul style="list-style-type: none"> <li>• Administration</li> <li>• Garaging</li> <li>• Depreciation</li> <li>• Air conditioning</li> <li>• Vehicle Registration and Third party</li> <li>• Superannuation</li> <li>• Workers' Compensation</li> </ul>	1 February 2005	1 February every 3 years after 1 February 2005
<ul style="list-style-type: none"> <li>• Repairs &amp; Maintenance</li> <li>• Insurance</li> <li>• Unsealed Road Running</li> <li>• Communications</li> <li>• Car Running</li> <li>• Vehicle Costs</li> </ul>	1 February 2006	1 February every 3 years after 1 February 2006
<ul style="list-style-type: none"> <li>• Fuel</li> <li>• Tyres</li> <li>• Driver's Wages</li> <li>• Bus Aide's Wages</li> </ul>	1 February 2007	1 February every 3 years after 1 February 2007

- (b) In respect of the review of the Air Conditioning Component during the Review Period commencing 1 February 2005, the review is to be limited to potential changes in the rate ascribed to the variable "ACR". If the Review Panel determines that any change in "ACR" should occur, it must make such further determination as is necessary to practically backdate the change in the variable to 1 July 2002, to the intent that either a payment is to be made to the Contractor by the Authority as a "backpayment", or a payment is to be made to the Authority by the Contractor as a "repayment". Either payment is to represent the difference between the amount of the Service Charge which was paid to the Contractor over the period 1 July 2002 until the determination date in respect of the Air Conditioning Component, and the amount which would have been paid over the same period had the variable "ACR", as varied pursuant to the Review Panel's determination, been applied. Any payment to be made by the Contractor to the Authority is, unless the Review Panel otherwise determines, to be dealt with in accordance with clause 8.11.

#### 4. Process of Review

Each Review Period will contain a number of periods of set duration, as follows:

<b><i>Period</i></b>	<b><i>Duration</i></b>
Nomination Period	1 February until 21 February
Issue Notification Period	14 - 28 March or such period as is agreeable to the Authority and the Contractor Representatives.
Submission Period	The period of 28 days commencing on the day after the Authority gives notice to Contractor Representatives of Review Issues under item 8(a).

### **PART B - THE PROCESS OF REVIEW**

The Parties agree that the following will apply for each Review -

#### 5. Nomination of Contractor Representatives

- (a) **(Contractor to nominate)** The Contractor may, but need not, nominate a person as a contractor representative in respect of this Contract by giving the Authority during the Nomination Period a Nomination Form. The Contractor may, in respect of this Contract, only give one Nomination Form during the Nomination Period and may only nominate one person as contractor representative. A nomination will be irrevocable. For the avoidance of doubt, a person nominated may be a natural person, a body corporate or an association.
- (b) **(Contractor gives notice)** If the Contractor gives the Authority a Nomination Form, the Contractor is taken to agree with the Authority:
- (i) that the person nominated in the Nomination Form, and any representative or nominee of that person, has full authority to represent and bind the Contractor in respect of this Contract throughout the Review (and, if applicable, during the subsequent ROI Meeting) and that the Authority is entitled to rely on that agreement without being bound to make any inquiry in that regard;
  - (ii) that, unless it is aware of evidence which means it would be unreasonable for it to do so, the Authority may deal with any person who purports to be a person nominated in the Nomination Form or a representative or nominee of that person, without making any inquiry as to the person's identity; and
  - (iii) that the Contractor consents to being a Represented Contractor and acknowledges what that involves.
- (c) **(Contractor does not give notice)** If the Contractor does not give the Authority a Nomination Form during the Nomination Period, the Contractor is taken to agree that:
- (i) it will not participate in the Review (and, if applicable, during the subsequent ROI Meeting) through a Contractor Representative; and
  - (ii) the Contractor consents to being a Non-Represented Contractor and acknowledges what that involves.
- (d) **(Contractor Representatives determined)** The Authority will, as soon as practicable after the end of the Nomination Period, determine those persons who qualify as Contractor Representatives in accordance with the principles in item 5(e).
- (e) **(Test for Contractor Representative)** A person will qualify as a Contractor Representative if:

- (i) the person is nominated in Nomination Forms given by persons who hold at least 10% of the number of School Bus Contracts which were in existence at 9:00am on the first day of the Nomination Period; or
  - (ii) the Authority otherwise determines that the person should be a Contractor Representative.
- (f) **(Authority's determination final)** The Authority's decision as to whether a person qualifies as a Contractor Representative is final and binding, subject to any obvious error made by the Authority in tabulating Nomination Forms. For the avoidance of doubt, if the Authority (acting reasonably) is unable to determine the person whom a Contractor wishes to nominate as a contractor representative (whether because the Contractor does not use a Nomination Form or for some other reason), it need not take into account the Contractor's nomination.
- (g) **(Contractor Representative appointed for Review)** A person will only be a Contractor Representative for the purposes of the Review for which that person is appointed (and, if applicable, the subsequent ROI Meeting), to the intent that new Contractor Representatives must be nominated for each Review.

## 6. Issues and Issue Notifications

- (a) **(Lodgement of Issue Notification)** During the Issue Notification Period:
- (i) each Contractor Representative may lodge with the Authority an Issue Notification; and
  - (ii) the Authority may lodge with each Contractor Representative an Issue Notification,
- in respect of one or more Reviewable Components.
- (b) **(Response to Issue Notification)** Not later than 28 days after the end of the Issue Notification Period, each Participating Party will notify each other Participating Party who lodged an Issue Notification with it, that:
- (i) it considers the Issue Notification discloses an Issue; or
  - (ii) it considers the Issue Notification does not disclose an Issue,
- and, if it gives a notice in accordance with item 6(b)(ii), specify in its notice reasons for its view. A Participating Party who fails to give notice in accordance with this item in respect of an Issue Notification will be taken to consider that the Issue Notification discloses an Issue.
- (c) **(Referral of Issue Notifications)** The Authority will refer:
- (i) those Issue Notifications which any Participating Party considered did not disclose an Issue; and
  - (ii) each notice given under item 6(b)(ii),
- to the Review Panel for determination as to whether the Issue Notification discloses an Issue.

## 7. Review Panel

- (a) **(Constitution)** The Review Panel for a Review will constitute:
- (i) a presiding member, who must be selected from the Legal Panel; and
  - (ii) 2 other members, who must be selected from the Expert Panel,
- in accordance with this item.
- (b) **(Authority's selection and appointment)** As soon as practicable after the Panel Requirement Time, the Authority will appoint one Eligible Person from one of the Panels to be a member of the Review Panel for the Review and will notify each

Contractor Representative of the appointment. The person the Authority nominates may but need not be the presiding member.

- (c) (Contractor Representatives' selection) Each Contractor Representative may notify the Authority of 2 Eligible Persons from the relevant Panel or Panels whom that Contractor Representative wishes to select as the 2 remaining members of the Review Panel.
- (d) (Appointment) If, at the end of the period of 14 days after the Authority has given notice under item 7(b):
  - (i) the Authority has received one or more notices from Contractor Representatives which select persons who meet the requirements of item 7(a) and the notices:
    - A. when taken together, nominate not more than 2 persons, the Authority must appoint those persons as the remaining 2 members of the Review Panel; or
    - B. do not meet the requirements of item 7(d)(i)(A) but nevertheless nominate not more than 2 persons, at least 1 of whom is the same in each notice, the Authority must appoint that person as a member of the Review Panel; or
  - (ii) the Authority has not received any notices from Contractor Representatives or the Authority has received notices but they do not fulfil the requirements of item 7(d)(i), the Authority must appoint 1 or 2 persons (as the case requires) of its choice who meet the requirements of item 7(a) as the remaining 1 or 2 (as the case may be) members of the Review Panel.

In respect of Item 7 (d) (i), in the event of the Contractor Representatives not being able to agree on the Contractor Representative's selections of Review Panel Member(s), the Minister responsible for the Authority shall appoint the Review Panel Member(s) from a shortlist of nominees provided by the Contractor Representatives.

- (e) (**Review Panel appointed for Review**) A Review Panel will be formed for the purposes of one Review, to the intent that a new Review Panel must be selected for each Review. Subject to item 7(f), the term of appointment of a member of the Review Panel will be for at least the duration of the Review.
- (f) (**Member unable or unwilling to act**) Where a member of the Review Panel resigns or is, in the reasonable opinion of the Minister (such opinion to be formed after the Minister has sought the views of each Contractor Representative) unable or unfit to continue to act as a member of the Review Panel (the "Retiring Member"), the Minister may appoint from the relevant Panel a person who meets the requirements of item 7(a) in place of the Retiring Member. Prior to making any such appointment, the Minister will:
  - (i) if the Retiring Member was originally appointed under item 7(b), ask the Authority to select a person from the relevant Panel who meets the requirements of item 7(a) in place of the Retiring Member and will appoint that selected person to replace the Retiring Member; and
  - (ii) if the Retiring Member was originally appointed under item 7(d), ask each Contractor Representative to select a person from the relevant Panel who meets the requirements of item 7(a) in place of the Retiring Member and, if each Contractor Representative selects the same person, the Minister will appoint that selected person to replace the Retiring Member. For the avoidance of doubt, if each Contractor Representative does not select the same person, the Minister may appoint from the relevant Panel a person who meets the requirements of item 7(a) in place of the Retiring Member.

- (g) (Assistance) The Contractor and the Authority will do all things reasonably necessary or appropriate to assist the Review Panel to undertake its functions as contemplated by this Schedule 5.
- (h) **(Review Panel procedures and powers)** The Review Panel may determine its own procedures and may inform itself of any matter in any manner it sees fit. Without limiting this item, the Review Panel may:
  - (i) seek further submissions or information (whether written or oral) from any person;
  - (ii) impose limits on the time allowed for a Participating Party to provide any information to the Review Panel; and
  - (iii) decide it will not consider any submissions or information provided by a Participating Party, or decide that a Participating Party may no longer participate in the Review, where that Participating Party does not comply with time limits imposed by the Review Panel or does not do all things reasonably necessary or appropriate to assist the Review Panel to undertake its functions as contemplated by this Schedule 5. If the Review Panel decides that a Participating Party may not participate in a Review, that decision will take effect in accordance with its terms.
- (i) **(Decisions and determinations)** Subject to item 7(k), each decision and determination of the Review Panel made in accordance with this Schedule 5 will be final and binding and the Parties must give effect to it, except where any error or question of law arises out of a decision or determination, or its making.
- (j) **(Intervening events)** If any event or circumstance occurs during a Review Period which is not contemplated by this Schedule 5 and which has the effect that it is not possible for the relevant Review to be carried out in accordance with this Schedule 5 or which has the effect that, if the Review is carried out in accordance with this Schedule 5 it will cause material adverse effect to a Party, the Review Panel may issue a determination with respect to what is to be done to address that impossibility or material adverse effect so that the Review may proceed.
- (k) **(Certain Determinations not to take effect)** A Determination will not be binding, and the Authority and the Contractor will not be obliged to give effect to it, where the certain or likely effect or result of the Determination would be that:
  - (i) a breach of any written law would occur; or
  - (ii) any State Agreement would be breached or an adverse consequence or situation in connection with it would arise.
- (l) **(Review Panel independent)** The Contractor acknowledges that it is intended that the Review Panel will operate independently of the Parties and that the Authority is not responsible for the conduct or actions of the Review Panel. The Contractor releases the Minister and the Authority from all liability for the actions of the Review Panel or any matter in connection with those actions.

## 8. Notification of Issue to Contractor

- (a) **(Authority to notify Review Issues)** Once the Review Panel has issued a determination as to each Issue Notification (if any) referred to it under item 6(c), the Authority will notify the Review Issues:
  - (i) to Contractor Representatives; and
  - (ii) to Non-Represented Contractors.
- (b) **(Contractor submissions)** The Contractor may, if it is a Non-Represented Contractor, lodge with the Authority a written submission on any one or more of the Review Issues within the Submission Period.
- (c) **(Review Issues referred to Review Panel)** The Authority will forward to the Review Panel, at the end of the Submission Period:

- (i) each Issue Notification given under item 6 which discloses a Review Issue (other than Issue Notifications which it has already referred to the Review Panel under item 6);
- (ii) any written response it wishes to make in respect of an Issue Notification which has been lodged with it under item 6, and any written response it has by that time received from a Contractor Representative in respect of an Issue Notification it lodged with the Contractor Representative under item 6 (and for the avoidance of doubt, any such response may be made in addition to any notice given under item 6(b) in respect of the relevant Issue Notification); and
- (iii) any written submission it receives from a Non-Represented Contractor which complies with item 8(b).

## 9. Review

(a) (Review Panel to undertake review) The Parties acknowledge that the Review Panel will, for each Reviewable Component:

- (i) take into account Issue Notifications, responses and submissions referred to it under item 6(c) or item 8(c) (as the case may be) which relate to Review Issues; and
- (ii) on the basis of the Review Principles, make a written determination in respect of each Reviewable Component for which a Review Issue exists which sets out:
  - A. such variations to Schedule 3 and Schedule 4; and
  - B. such ancillary or consequential variations to the remainder of this Contract which are necessary as a result of variations to Schedule 3 or Schedule 4 (to the intent that a Determination is to have the primary effect of amending either or both of Schedule 3 or Schedule 4 and variations to the rest of the Contract are to be merely ancillary or consequential to that variation),

as are necessary in order to ensure that:

- C. the Reviewable Component appropriately reflects the actual net costs incurred by Contractors for the Reviewable Component in providing school bus services under the School Bus Contracts or which would be incurred by a reasonable and prudent contractor in the position of a Contractor who made reasonable endeavours to achieve cost savings; and
- D. the basis for determining or indexing the Reviewable Component is appropriate and applicable,

where the question of what is "appropriate" is to be determined by reference to the Review Principles and by reference to the consideration that the provisions of Schedules 3 and 4 must be applied to all Contractors; and

- E. the time from which those variations will take effect, which, subject to item 3(b), may not be before 1 February in the relevant Review Period.

(b) **(Review Principles)** The Review Principles are as follows:

- (i) the purpose of the Composite Rate Model, including the review procedure set out in this Schedule 5, is to balance the interests of the Authority in procuring school bus services for a commercially fair value and the interests of Contractors in receiving a commercially fair income for provision of those services in the absence of a competitive tender process;

- (ii) the Composite Rate Model is an average cost model so that the starting point is to be the average actual costs incurred by Contractors in providing the services the subject of the School Bus Contracts;
- (iii) the cost elements set out in the Components will primarily be spread across the service life of each school bus rather than being paid in a lump sum or being varied across the service life of each school bus;
- (iv) it may be determined that a payment for a Reviewable Component not be averaged across Contracts or spread over the service life of the school bus where:
  - A. it is administratively practical to do so;
  - B. there is no material increase in the administrative costs to the Authority; and
  - C. the administrative obligations and commercial outcomes imposed by the Composite Rate Model on the Parties are reasonable when compared with contracts for school bus services awarded under a competitive tender process,
 and for the avoidance of doubt, this includes the application of regional uplifts where the considerations in (A) - (C) above apply and it can be clearly shown that material regional cost differences exist;

(v) each of:

- A. actual income earned by Contractors from sources other than the Authority from assets for which Contractors are compensated under School Bus Contracts; and
  - B. the fact that there is potential to make savings across School Bus Contracts through bulk purchasing of inputs,
- is a relevant consideration;

(vi) the Party seeking to change a Reviewable Component must present sufficient evidence to reasonably prove that the current quantum paid to Contractors in respect of the Component is not appropriate;

(vii) evidence must be based on:

- A. benchmarks that are directly relevant to the particular Reviewable Component; or
- B. detailed sampling of the Western Australian school bus fleet, provided that the data generated from such sampling is representative of the costs across the industry; and

(viii) each of:

- A. the Return on Investment Component; and
  - B. the determination or meaning of the Approved Depot, insofar as it relates to the calculation of the Standard Daily Kilometres,
- is not a Reviewable Component and can only be varied by agreement of the Authority.

## 10. Agreement

- (a) **(Agreement at any time)** At any time during the Review Period, the Authority may agree with all Contractor Representatives unanimously as to:
  - (i) variations of the kind referred to in item 9(a)(ii) to be made in respect of a Reviewable Component; or
  - (ii) any other variation to be made to this Contract.



- (b) (**Notification to Contractor**) In the event that an agreement of the kind referred to in item 10(a) is made, the Authority will notify the Contractor of the proposed variations. The Contractor may, at any time within the period of 30 days after the Authority gives notice ("**Objection Period**"), lodge with the Authority an Objection Notice in respect of the proposed variations.
- (c) (**Objection by Contractors**) In the event that:
  - (i) the Authority receives during the Objection Period an Objection Notice in respect of the proposed variations from persons who hold more than 10% of the number of School Bus Contracts at 9.00am on the first day of the Objection Period, the proposed variations will not take effect and if those variations related to a Review Issue, the matter will proceed as a Review Issue; or
  - (ii) the Authority does not receive during the Objection Period an Objection Notice in respect of the proposed variations from persons who hold more than 10% of the number of School Bus Contracts at 9.00am on the first day of the Objection Period:
    - A. if the proposed variations relate to a Review Issue, they will take effect as a Determination in respect of the Reviewable Component and the matter the subject of the proposed variations may not become or will cease to be (as the case may be) a Review Issue; and
    - B. if the proposed variations are of the kind referred to in item 10(a)(ii), this Contract will be varied in accordance with those proposed variations with effect from the end of the Objection Period or such other time as the Authority and the Contractor Representatives agree prior to the start of the Objection Period.

#### 11. **Variation of School Bus Contracts**

Where the Review Panel makes a Determination in respect of a Reviewable Component (other than a Determination of the kind referred to in item 7(k)), the Contract will be varied in terms of the Determination with effect from the time specified by the Review Panel.

#### 12. **Withdrawal of Issue Notification**

Any person who has lodged an Issue Notification may withdraw that Issue Notification at any time, in which case the Issue Notification will cease to have effect.

#### 13. **Savings**

The Parties agree that the validity of any agreement between any persons pursuant to the procedures set out in this Schedule 5, or any determination by the Review Panel, will not be invalid or called into question by reason only of:

- (a) any defect or irregularity in the constitution of the Review Panel or in the appointment or qualifications of a member of the Review Panel; or
- (b) any failure by any person (other than the Review Panel) to follow the procedures set out in this Schedule 5

#### 14. **ROI Meeting**

- (a) The Authority will, in December 2005, make available Qualified Officers to meet at reasonable times with Contractor Representatives who were appointed for the purposes of the Review which commenced on 1 February 2005 ("**Preceding Review**"), to discuss whether the Return on Investment Component should be changed and, if so, how this Contract should be varied to reflect the change. If the Qualified Officers and all of the Contractor Representatives who were appointed for the purposes of the Preceding Review agree before 31 December in that year:

(i) that the Return on Investment Component should be changed; and

(ii) as to how this Contract should be varied to reflect the change,

that agreement will be treated as an agreement under item 10(a)(ii) and items 10(b) and 10(c) will apply to it.

- (b) The Authority will undertake the actions referred to in item 14(a) every second December after December 2005, with Contractor Representatives who were appointed for the purposes of the Review immediately preceding that December.

**Attachment 1**

**Nomination Form**

**FORM FOR NOMINATION AS CONTRACTOR REPRESENTATIVE**

\_\_\_\_\_  
Name of Contractor

nominates

\_\_\_\_\_  
Name of person nominated as contractor representative

As my/our/its contractor representative in relation to:

Contract number: \_\_\_\_\_

Service name: \_\_\_\_\_

For the purposes of item 6 of schedule 5 of that Contract.

\_\_\_\_\_  
Sign

\_\_\_\_\_  
Full name of signatory

\_\_\_\_\_  
Name of company, and capacity of signatory, if signing for and on behalf of company (\*  
do not complete if inapplicable)

Date:

**Attachment 2**  
**Objection Notice**

**OBJECTION NOTICE**

\_\_\_\_\_  
Name of Contractor

holder of contract number \_\_\_\_\_ ("**Contract**")

notifies the Public Transport Authority that it objects to the making of the proposed variation(s) to the Contract referred to in the Authority's notice dated .....(date), for the purposes of item 10 of schedule 5 of that Contract.

\_\_\_\_\_  
Sign

\_\_\_\_\_  
Full name of signatory

\_\_\_\_\_  
Name of company, and capacity of signatory, if signing for and on behalf of company (\* do not complete if inapplicable)

Date:

## **SCHEDULE 6 – ADDITIONAL REQUIREMENTS IN RELATION TO THE SERVICE**

### **1. Conveyance of Other Passengers**

The Contractor must ensure that, except with the prior approval of the Co-ordinator or the Authority (which need not be given in writing), no passengers are carried on the School Bus whilst it is being used to perform the Service, other than:

- (a) representatives of the Authority;
- (b) Students;
- (c) teachers or other staff from Schools;
- (d) the Contractor, Drivers and Bus Aides; and
- (e) any person:
  - (i) training to be a Driver or a Bus Aide; or
  - (ii) who wishes to observe the Contractor's operations for the purpose of acquiring the Contractor's business,

but only where that person has obtained a National Police Certificate or other document satisfactory to the Authority, which discloses that the person has not been convicted of a criminal offence.

For the avoidance of doubt, the Co-ordinator or the Authority may approve a category or class of persons who may be carried on the School Bus. Any person who falls within a category or class of persons at that time approved by the Co-ordinator or the Authority may be carried on the School Bus while it is being used to perform the Service.

### **2. Nomination of Students**

The Authority must ensure that:

- (a) the Contractor has from time to time been advised of those Students who attend the Approved Schools and the Additional Schools who are nominated as students whom the Contractor is required to pick up and drop off over the Approved Route; and
- (b) the Contractor has been advised of the Student Details in respect of each of the Students nominated pursuant to item 2(a).

### **3. Preparation of Timetables**

Not later than 14 days after the commencement of the first School Term each year, the Contractor must prepare a written timetable setting out the estimated times each day that each Nominated Student will be picked up from, and dropped off at, the Pick-Up Location and Drop-Off Location for that Nominated Student and provide a copy of the timetable to:

- (a) the Authority, and
- (b) the Co-ordinator.

#### **4. Variation**

Where the Authority makes a variation under clause 4.2(a)(iii):

- (a) the Authority must ensure that Authority's notice given under that clause contains such information as is necessary to appropriately update the information held by the Contractor in respect of the matters referred to in items 2(a) and 2(b); and
- (b) if that variation affects the pick up or drop off times of any of the Nominated Students, the Contractor must:
  - (i) promptly advise the legal guardians of the affected Students of the Students' new pick up or drop off times, and
  - (ii) not later than 14 days after the Authority gives written notice under clause 4.2(a)(iii), prepare a revised version of the Timetable and provide a copy to:
    - (A) the Authority, and
    - (B) the Co-ordinator.

#### **5. Control over Students and Student Incident Reports**

The Contractor must ensure that each Driver:

- (a) exercises reasonable control over the behaviour of the Students on the School Bus; and
- (b) whenever there is an incident of, in the reasonable opinion of the Driver, improper or unruly conduct or misbehaviour by any Student which comes to the Driver's notice, prepares and promptly submits to the Co-ordinator a written report in the form specified by the Authority which details:
  - (i) the names of those involved in the incident;
  - (ii) the nature of the incident;
  - (iii) the name of the school attended by those involved in the incident;
  - (iv) the date and time of the incident; and
  - (v) any action taken by the Driver or a Bus Aide at the time of the incident.

#### **6. Refusal to Carry Students**

- (a) Subject to clause 10.1(c) and item 6(b), the Contractor and the Driver must not, without the prior consent of the Authority or the Co-ordinator, refuse to carry a Nominated Student on the School Bus.
- (b) Where the Contractor or Driver holds a reasonable belief that a Student on the School Bus constitutes, or is likely to constitute, a danger to the health, safety or well-being of the Contractor, the Driver, the Student himself or herself or any other person on the School Bus, the Contractor or Driver may:
  - (i) stop the School Bus and arrange for the Student to be removed from the School Bus and placed in the care of a responsible adult; or
  - (ii) convey that Student to either the School attended by that Student or the Student's home,

and thereafter refuse to carry that Student on the School Bus unless otherwise directed in writing to do so by the Authority.

The Authority agrees that it will not direct the Contractor under this item 6 unless and until it has taken what it considers to be appropriate action in respect of the Student concerned.

- (c) The Contractor must immediately notify the Authority of any action taken by the Contractor or a Driver under item 6(b) and the reasons for such action.

## **7. Safety, Accidents and Emergencies**

- (a) Prior to the commencement of the first School Term in each year, the Contractor must prepare:
  - (i) a written safety management plan in connection with the Service, based on the framework for the plan provided by the Authority (and the Contractor is not obliged to prepare the plan until the Authority has provided such framework); and
  - (ii) a written plan of the procedures to be followed in the event of an Emergency in connection with the Service, containing the information specified in Schedule 2,and must provide a copy of each plan to the Authority.
- (b) The Contractor must:
  - (i) at all times comply with, and ensure that each Driver and Bus Aide complies with, the Safety Management Plan; and
  - (ii) upon the occurrence of an Accident or an Emergency, comply with, and ensure that each Driver and Bus Aide involved in, or affected by, the Accident or Emergency complies with, the relevant procedures described in the Emergency Plan and any directions issued by the Authority or the Co-ordinator.
- (c) The Contractor must prepare an Accident Report in respect of each Accident as soon as reasonably practicable after the relevant Accident and must keep and submit a copy of that report to the Authority in accordance with Schedule 10.
- (d) If either Party becomes aware of the existence of an Emergency, it must immediately advise the other Party of the existence and nature of the Emergency.
- (e) The Authority may at any time notify the Contractor that it must undertake certain action in relation to any matter concerning or impacting on safety in connection with performance of the Service, and the Contractor must promptly comply with any such notice.

## SCHEDULE 7 – DRIVERS

### PART 1 - REQUIREMENTS FOR DRIVERS

#### 1. General Requirements

Unless otherwise agreed by the Authority, the Contractor must ensure that each Driver:

- (a) complies with all Legislative Requirements notified by the Authority to the Contractor for the purposes of this item from the time specified in the Authority's notice in respect of the Legislative Requirement (provided that the Authority will only give notice under this item in respect of Legislative Requirements which affect or apply to something the Driver is required to do under this Contract or otherwise to the Contractor's Obligations);
- (b) holds all appropriate qualifications, permits and licences notified by the Authority for the purposes of this item from the time specified in the Authority's notice in respect of the relevant qualification, permit or licence (provided that the Authority will only give notice under this item in respect of qualifications, permits and licences which affect or apply to something the Driver is required to do under this Contract or otherwise to the Contractor's Obligations);
- (c) holds a current basic first aid certificate from St John Ambulance Australia, or such other first aid qualification approved by the Authority;
- (d) has not been convicted of a criminal or other offence and has obtained a National Police Certificate, or other document satisfactory to the Authority, which evidences that fact;
- (e) is capable of doing the things which a Driver is required under this Contract to do;
- (f) keeps and maintains the Records that relate to such of the Service that is performed by the Driver;
- (g) whilst engaged in the provision of the Service, complies with the School Bus Drivers' Instructions.

#### 2. Authority may require tests - Testing Notice

- (a) The Authority may, if the CEO, acting reasonably, considers it is necessary in order to ensure the safety or well-being of Students, notify the Contractor that the Authority requires a Driver to undergo specified medical, psychological or psychiatric tests. The Authority's notice must be signed by the CEO personally. If the Authority gives notice in accordance with this item the Contractor must, subject to item 2(b), promptly take all reasonable steps to ensure that the Driver:
  - (i) undergoes the tests specified in the notice; and
  - (ii) provides the results of the tests to the CEO.
- (b) A Testing Notice issued under item 2(a) will take effect:
  - (i) if the Contractor does not commence an Appeal in accordance with clause 18.2 in respect of the Authority's notice, on the expiry of that period allowed under clause 18.2(a) for commencement of an Appeal; or
  - (ii) if the Contractor commences an Appeal in accordance with clause 18.2 in respect of the Authority's notice, on the date on which the Referee makes a determination under clause 18.5 pursuant to the Appeal that the Testing Notice was appropriately issued or, if the Appeal is withdrawn prior to the Referee making a determination, the date of withdrawal of the Appeal.



- (c) The Authority will pay, or reimburse the Driver for, the cost of any test the Authority requires be undertaken by the Driver under this clause.

### **3. Offences**

The Contractor must inform the Authority (providing full details) immediately after it becomes aware of the matter, if any Driver:

- (a) ceases to hold any Governmental Authorisation in respect of, relating to, or required for the operation of the School Bus, including the driving of it, or any qualification, permit or licence notified by the Authority under item 1(b); or
- (c) is charged with or convicted of committing any traffic offence (other than an offence for which a traffic infringement notice is issued under the *Road Traffic Act 1974*) or any offence involving sexual abuse of, or indecent dealing with, a child, or any offence involving violence of any nature,

and must provide the Authority from time to time with any further details about the matter of which the Contractor becomes aware.

## **PART 2 - SCHOOL BUS DRIVERS' INSTRUCTIONS**

### **4. Drivers must:**

- 4.1 comply with the requirements of the Code of Practice on Fatigue Management for Commercial Vehicle Drivers approved by the Minister as a code of practice under section 57 of the *Occupational and Safety and Health Act 1984* (WA) and with other requirements advised by the Authority from time to time;
- 4.2 maintain a neat, clean personal appearance and wear clothing with shoes or boots, and socks where appropriate, to maintain a reasonable standard of appearance;
- 4.3 regulate the speed of the School Bus to ensure the maximum safety and comfort of passengers and abide by all road traffic laws in force from time to time;
- 4.4 ensure that any escape doors on the School Bus remain unlocked whilst there are passengers on board;
- 4.5 ensure that whenever practicable, passengers are seated whilst the School Bus is in motion;
- 4.6 from time to time warn disembarking passengers of road and traffic dangers;
- 4.7 before crossing, stop the School Bus at railway crossings that do not have flashing lights and at intersections of main roads;
- 4.8 at the conclusion of every morning run and afternoon run, inspect the School Bus to ensure that all passengers have disembarked; and
- 4.9 comply with the provisions of the Safety Management Plan which are applicable to Drivers.1

### **5. Drivers must not:**

- 5.1 use any profane or obscene language in the presence or hearing of any Student;
- 5.2 smoke while providing the Service;
- 5.3 be under the influence of any drugs, including alcoholic beverages and prescribed medications, but the Driver may take medication where the Contractor has advised the Authority of the fact that the Driver needs to take the medication and has provided to the Authority a medical certificate which demonstrates that the medication will not in any way impair the Driver's ability to perform the Service in accordance with the Contract;
- 5.4 consume alcoholic beverages within eight hours prior to, or during, the time at which the Driver provides the Service;
- 5.5 carry any firearms on the School Bus, nor objects of a heavy or bulky nature including fuel in containers other than the fuel tanks of the School Bus;

- 5.6 allow any doors to remain open whilst the School Bus is in motion;
- 5.7 leave the School Bus with Students on board whilst its engine is running, unless it is for the purpose of assisting a Student on or off the School Bus, and a Bus Aide is on board;
- 5.8 permit the School Bus to proceed with the gears disengaged for a greater distance than is reasonable having regard to all of the circumstances;
- 5.9 open the doors of the School Bus to allow passengers to disembark if there is possible danger to those passengers from approaching vehicles;
- 5.10 permit luggage or other objects to be placed in the aisle of the School Bus or in front of any doors or emergency exits; and
- 5.11 permit passengers to:
  - (i) ride in a position so as to obstruct the Driver's view; or
  - (ii) ride on the steps or entry area of the School Bus.

## SCHEDULE 8 – BUS AIDES

### PART 1 - REQUIREMENTS FOR BUS AIDES

#### 1. General Requirements

Unless otherwise agreed by the Authority, the Contractor must ensure that each Bus Aide:

- (a) holds all appropriate qualifications, permits and licences notified by the Authority for the purposes of this item from the time specified in the Authority's notice in respect of the relevant qualification, permit or licence (provided that the Authority will only give notice under this item in respect of qualifications, permits and licences which affect or apply to something the Bus Aide is required to do under this Contract or otherwise to the Contractor's Obligations);
- (b) holds a current senior first aid certificate from St John Ambulance Australia or such other first aid qualification approved by the Authority;
- (c) is capable of doing the things which a Bus Aide is required under this Contract to do;
- (d) has not been convicted of a criminal offence and has obtained a National Police Certificate, or other document satisfactory to the Authority, which evidences that fact; and
- (e) performs and complies with the Bus Aide Duties.

#### 2. Authority may require tests - Testing Notice

- (a) The Authority may, if the CEO, acting reasonably, considers it is necessary in order to ensure the safety or well-being of Students, notify the Contractor that the Authority requires a Bus Aide to undergo specified medical, psychological or psychiatric tests. The Authority's notice must be signed by the CEO personally. If the Authority gives notice in accordance with this item the Contractor must, subject to item 2(b), promptly take all reasonable steps to ensure that the Bus Aide:
  - (i) undergoes the tests specified in the notice; and
  - (ii) provides the results of the tests to the CEO.
- (b) A Testing Notice issued under item 2(a) will take effect:
  - (i) if the Contractor does not commence an Appeal in accordance with clause 18.2 in respect of the Authority's notice, on the expiry of that period allowed under clause 18.2(a) for commencement of an Appeal; or
  - (ii) if the Contractor commences an Appeal in accordance with clause 18.2 in respect of the Authority's notice, on the date on which the Referee makes a determination under clause 18.5 pursuant to the Appeal that the Testing Notice was appropriately issued or, if the Appeal is withdrawn prior to the Referee making a determination, the date of withdrawal of the Appeal.
- (c) The Authority will pay, or reimburse the Contractor or a Bus Aide for, the cost of any test the CEO requires be undertaken by the Bus Aide under this clause.

#### 3. Offences

The Contractor must inform the Authority (providing full details) immediately after it becomes aware of the matter, if any Bus Aide:

- (a) ceases to hold any Governmental Authorisation in respect of, relating to, or required for the performance of the Bus Aide Duties, or any qualification, permit or licence notified by the Authority under item 1(a); or
- (b) is charged with or convicted of committing any offence involving sexual abuse of, or indecent dealing with, a child, or any offence involving violence of any nature,

and must provide the Authority from time to time with any further details about the matter of which the Contractor becomes aware.

## **PART 2 - BUS AIDES DUTIES**

### **4. Bus Aides must:**

- 4.1 assist in the transfer of ambulant and wheelchair bound Students on and off the School Bus;
- 4.2 supervise Student behaviour on the School Bus to ensure safe and secure travel;
- 4.3 secure wheelchair and Student restraints in the appropriate manner;
- 4.4 attend to the individual needs of Students on the School Bus, including liaising with the Driver on issues relating to matters such as heating and cooling on the School Bus;
- 4.5 demonstrate a positive, caring and supportive attitude to Students at all times, including engaging Students in conversation during the trip where possible;
- 4.6 maintain a neat and clean appearance and wear clothing with shoes or boots, and socks where appropriate, to maintain a reasonable standard of appearance;
- 4.7 work co-operatively with the Driver to ensure the safe passage of Students for the duration of the journey; and
- 4.8 comply with the provisions of the Safety Management Plan which are applicable to Bus Aides.

### **5. Bus Aides must not:**

- 5.1 use any profane or obscene language in the presence or hearing of any Student;
- 5.2 smoke while providing the Service;
- 5.3 be under the influence of any drugs, including alcoholic beverages and prescribed medications, but the Bus Aide may take medication where the Contractor has advised the Authority of the fact that the Bus Aide needs to take the medication and has provided to the Authority a medical certificate which demonstrates that the medication will not in any way impair the Bus Aide's ability to perform the Bus Aide Duties in accordance with this Contract; or
- 5.4 consume alcoholic beverages within eight hours prior to, or during, the time at which the Bus Aide performs the Bus Aide Duties.

## **SCHEDULE 9 – REQUIREMENTS IN RELATION TO SCHOOL BUS**

### **PART 1 - GENERAL**

#### **1. New Vehicle Information**

The Contractor must, prior to using any vehicle as the School Bus for the first time, notify the Authority of the following details in respect of the vehicle:

- (a) seating capacity;
- (b) registration number and vehicle identification number;
- (c) make;
- (d) model; and
- (e) any other details which the Authority (acting reasonably) notifies to the Contractor for the purposes of this item 1.

#### **2. Documentation**

The Contractor must ensure that at all times whilst providing the Service, the most current versions of the following documents are located on the School Bus and are known to, and accessible by, the Driver and the Bus Aide:

- (a) the Student Details;
- (b) the Emergency Plan; and
- (c) the Safety Management Plan.

#### **3. School Bus Standards and maintenance**

Unless otherwise agreed in writing by the Authority, the Contractor must, at the Contractor's sole cost and expense:

- (a) ensure the School Bus is safe, roadworthy and clean;
- (b) where the School Bus is of a Class to which those specifications apply, ensure the School Bus complies in all respects with:
  - (i) the School Bus Specifications, and
  - (ii) where the Contractor is required to carry any Student who is in a wheelchair or requires a passenger restraint system, the Wheel Chair Specifications;
- (c) where the School Bus is of a Class to which those specifications apply, maintain the School Bus in the condition set out in the School Bus Specifications and, if applicable, the Wheel Chair Specifications;
- (d) maintain and service the School Bus in accordance with the School Bus manufacturer's recommended maintenance and service schedule; and
- (e) put in place a prudent and appropriate system of regular checking of the School Bus which incorporates such checks and procedures as are necessary or desirable to ensure that the School Bus meets the requirements of this item 3.

#### **4. Repairs**

- (a) The Authority may, from time to time, direct the Contractor to carry out such repairs to and maintenance of the School Bus which are reasonably necessary to ensure the safe performance of the Service.
- (b) Subject to item 4(c), the Contractor must immediately arrange for:

- (i) any repairs to or maintenance of the School Bus as are necessary to enable the performance of the Contractor's Obligations, including replacement parts and components; and
  - (ii) any repairs or maintenance that the Authority directs the Contractor to carry out under item 4(a).
- (c) If:
- (i) the Authority issues a direction to the Contractor under item 4(a); and
  - (ii) the Contractor disputes that direction,
- the Contractor may notify the Authority of that fact and, if it does so, must provide to the Authority a written statement of an Approved Repairer that it is not reasonably necessary for the Authority's direction to be carried out. If the Contractor gives notice and provides a written statement in respect of a direction of the Authority:
- (iii) the Contractor must carry out the Authority's direction if the Authority notifies the Contractor that it still requires its direction to be carried out, but need not carry out the Authority's direction otherwise; and
  - (iv) if the Contractor complies with a notice by the Authority that it still requires its direction to be carried out and it eventuates that it was not reasonably necessary for the Authority's direction to be carried out, the Authority must bear the reasonable cost of the making of the repairs or undertaking the maintenance the subject of the Authority's direction.

For the purposes of this item, an "**Approved Repairer**" is, for any repairs or maintenance, a person listed or acknowledged by the Royal Automobile Club of WA (Inc) as an "approved repairer" for that type of repairs or maintenance, or any other person which the Authority agrees is an "Approved Repairer".

## 5. Additional Equipment in School Bus

- (a) When requested by the Authority and at the Authority's expense, the Contractor must allow the Authority to install and maintain in the School Bus such additional equipment for or in connection with the Service as the Authority deems necessary.
- (b) The Authority must comply with all applicable Legislative Requirements when installing any equipment pursuant to this item 5.
- (c) When requested by the Authority, the Contractor must allow the Authority to remove from the School Bus the equipment referred to in item 5(a), and the Authority must make good any resulting damage to the School Bus.
- (d) The Authority may issue a notice requiring the Contractor to install and maintain in the School Bus such additional equipment for or in connection with the Service as the Authority deems necessary, and the Contractor must promptly comply with any such notice. The Authority will pay, or reimburse the Contractor for, the reasonable costs incurred by the Contractor in complying with a notice issued under this item 5(d).
- (e) Unless the Authority notifies the Contractor otherwise, all equipment installed in the School Bus pursuant to this clause is and will remain the property of the Authority.

## 6. Inspections

The Authority or any nominee of the Authority may:

- (a) at any time the School Bus is being used to provide the Service; or
- (b) on any School Day between 7 am and 6 pm; or

- (c) on any day other than a School Day, between 7 am and 6 pm and after giving prior notice (which need not be in writing) of at least 24 hours or such shorter period as the Contractor agrees,  
inspect the School Bus and may, for that purpose, access and ride the School Bus.

**7. Submission of School Bus for inspection**

The Authority may at any time, by notice to the Contractor of not less than 5 Business Days, require the Contractor to:

- (a) take the School Bus to a location reasonably specified by the Authority;
- (b) at that place, submit the School Bus for inspection by the Authority or its nominee,

and the Contractor must comply with that notice.

**8. Contractor to Provide Access**

If the Authority wishes to inspect the School Bus in accordance with item 6 or 7, the Contractor must promptly provide proper and complete access to the School Bus, and any documents, records or other thing which this Contract requires the Contractor to keep on the School Bus. Without limiting this item 8, the Authority may request the Contractor's permission to drive the School Bus as part of inspecting it and the Contractor's permission in this regard may not be unreasonably withheld.

The Authority must take reasonable measures to exercise its rights under items 6 and 7 in a manner which causes minimal disruption to the performance of the Service by the Contractor.

**9. Signage**

The Contractor must ensure that all signage relating to the Service is removed from the School Bus when it ceases to be used for the purpose of providing the Service.

**10. Depot**

The Contractor must provide the Authority with written details of the location at which the School Bus is usually kept while not performing the Service, including without limitation details of the type of any garaging arrangement or structure used. If that location changes, the Contractor must promptly notify the Authority and provide written details of the new location.

## **PART 2 - SCHOOL BUS SPECIFICATIONS**

These specifications apply to A, B,C,D,E,F,G,H Class, School Buses, and any other Classes to which the PTA from time to time determines they apply.

### **1 GENERAL**

#### **1.1 School Bus must be fit for use and licensable**

Every vehicle used as a contract school bus (School Bus) must be roadworthy, appropriate to the conditions under which it will be driven, comply with all applicable Acts, Australian Standards, Australian Design Rules (ADRs), ISO Standards and all specifications set out below relevant to the particular vehicle and its safe operation, and be licensed or licensable for use in Western Australia.

#### **1.2 Seatbelts mandatory on New School Buses**

All new School Buses must be fitted with ADR 68-compliant passenger seats with retractable lap-sash seatbelts of a type approved by the PTA.

As of 1 March 2007 all drivers seats on new school buses must be ADR 68 compliant drivers seats, fitted with lap-sash seat belts of a type approved by the PTA.

#### **1.3 School Bus must be approved before use on Service**

Prior to being used on a contract school bus service (Service), each School Bus must be inspected and approved by a vehicle inspector appointed by the PTA (PTA Inspector) as acceptable for use on the Service, and the Contractor will, at the Contractor's expense, make the School Bus available for inspection at a location nominated by the PTA.

#### **1.4 Items may not be fitted to or removed from School Bus without PTA Approval**

No item, including any item classified as an accessory, may be fitted to or removed from a School Bus unless the Contractor has applied in writing to the PTA to have the item fitted or removed and the fitment or removal has been approved by a PTA Inspector.

#### **1.5 PTA may amend Specification**

The PTA reserves the right to amend this specification, and will give Contractors not less than 1 month's notice in writing if it does so, unless the amendment relates to a matter of safety such as to require immediate action, in which case the PTA may amend the specification and verbally advise Contractors of the amendment.

#### **1.6 Classes of School Bus ( 2 Wheel Drive Vehicles)**

Class A School Bus is a vehicle with a maximum seating capacity of 20 adult seats with a primary conversion of 27 or 24 adults with no primary conversion, with a service life of 10 years.

Class B School Bus is a vehicle with a seating capacity of 43 adults, with a service life of 15 years.

Class C School Bus is a vehicle with a seating capacity of 57 adults and a maximum of 83 primary students, with a service life of 15 years.

Class D School Bus is a vehicle with a maximum passenger seating capacity of 15 adults, with a service life of 10 years.

Class E School Bus is a vehicle with a maximum passenger seating capacity of 7 primary students or 7 adults, with a service life of 10 years.

#### **Classes of School Bus ( 4 Wheel Drive Vehicles)**

Class F School Bus is a vehicle with a seating capacity of 17 adults and a maximum seating capacity of 21 primary students with a service life of 15 years.

Class G School Bus is a vehicle with a seating capacity of 24 adults and a maximum seating capacity of 32 primary students, with a service life of 15 years.

Class H School Bus is a vehicle with a seating capacity of 34 adults and a maximum seating capacity of 49 primary students, with a service life of 15 years.



## **2 STANDARD SPECIFICATION OF SCHOOL BUS**

### **2.1 Compliance with Acts, Standards and ADRs**

2.1.1 The School Bus and all equipment used on it must comply with all applicable Acts, Standards and ADRs.

2.1.2 If there is any inconsistency between this specification and any applicable Act, Standard or ADR then the Act, Standard or ADR will prevail.

### **2.2 Engine**

The School Bus must be diesel powered.

### **2.3 Transmission**

As of 1 July 2010 all School Buses must either be fitted with Automatic or Manual Transmission.

### **2.4 Air Conditioning**

As of 1 July 2010 all School Buses must be air conditioned.

### **2.5 Brakes**

An audible warning device indicating low system vacuum/air must be fitted in addition to the requirements of any relevant ADR.

### **2.6 Engine Compartment**

2.6.1 The engine compartment must be insulated to minimise the transfer of noise and heat

2.6.2 Adequate removable covers must be provided to allow access for maintenance.

### **2.7 Wheels and Tyres**

2.7.1 All wheels must be fitted with steel-belt radial-ply tyres of a load or ply rating not lower than that set by the manufacturer.

2.7.2 All tyres must be original tread and of equal ply rating and construction.

2.7.3 If the original tread on a tyre has been re-grooved, the tyre will be regarded as having original tread where those tyres are fitted to the rear axle, but not otherwise. Re-grooved tyres are to be used on rear dual wheel only with the tyre clearly labelled as been re-grooved.

2.7.4 The School Bus must be equipped with a spare wheel fitted with a tyre having the same ply rating and original tread of a pattern matching with the tyres fitted to the front wheels.

2.7.5 If the School Bus has seating capacity for more than 15 adult passengers, it must be fitted with dual rear wheels. In certain circumstances, upon prior application to the PTA, consideration will be given to the fitting of single rear wheels where dual wheels would otherwise be required.

2.7.6 Road wheel retaining nuts shall be exposed to facilitate frequent visual inspection and physical checking to prevent driving with loose wheel nuts.

### **2.8 Colours and Markings**

The School Bus must be painted with a high-grade baked enamel finish as follows:

- (a) All solid areas above the lower edge of the passenger compartment windows must be white;
- (b) All solid areas below the windows must be in a colour matching Readymix Orange and must be relieved by a strip painted in a colour matching Hawthorn Green not less than 50 mm and not greater than 150 mm in width running longitudinally around the vehicle.

### **2.9 Exterior Signage**

2.9.1 Other than as provided in this item, no symbols or markings may be placed on the outside of the School Bus.

2.9.2 The words 'SCHOOL BUS' and 'CAUTION' must be displayed in Hawthorn Green or black lettering mounted on a white background not less than 100 mm in height at the front and rear of the vehicle, and located in a position designated by a PTA Inspector.

2.9.3 Symbolic 'child crossing' signs must be positioned as far to the right as practicable and must also be displayed at the front and rear of the School Bus, and located in a position designated by a PTA Inspector.

2.9.4 The Contractor's name, address and telephone number may be placed on the front right-hand side of the School Bus in Hawthorn Green or black lettering provided the lettering is no more than 50 mm high.

2.9.5 A radio call sign may be placed on the rear right-hand side of the School Bus provided it is in black or white lettering no more than 100 mm high.

2.9.6 Disability access signs are permitted where required.

2.9.7 Internal steps must have 'Caution Steps' sign in lettering not less than 25mm in size and must be clearly visible at all times.

## **2.10 Construction**

2.10.1 Body construction, modification or structural repairs to the School Bus may only be carried out by a licensed motor body builder.

2.10.2 The Contractor must notify the PTA of the name of the body builder, so that inspection of the body whilst work progresses may be carried out by a PTA Inspector.

2.10.3 No step may be fitted at the rear of the School Bus other than foot holds used with emergency exits, as specified in ADR 42/02.

## **2.11 Passenger Service Doors**

2.11.1 The School Bus may not have external plug type forward opening doors.

2.11.2 If the School Bus has seating capacity for more than 24 adult passengers, passenger entry door must have a door-sensitive safety edge.

2.11.3 All entry doors held in the closed position by air pressure or electrical means must have an external and internal visual release control to allow for manual opening in an emergency.

2.11.4 The release control must be located as close to the door as possible and be clearly labelled.

2.11.5 All entry doors located to the rear of the Driver must have an 'open position' audible warning device fitted to operate when the emergency brake is in the released position.

2.11.6 A service door of the hinged, jack-knife or sliding type must be fitted on the left-hand side of the School Bus for the entry and exit of passengers.

2.11.7 Internal lever type service door handles must be adjusted in order that they turn upwards to open.

2.11.8 External door handles must be recessed to be flush with body panels.

## **2.12 Emergency Exits**

2.12.1 Where the School Bus is constructed without a side emergency exit, a full width rear emergency window must be positioned across the rear of the School Bus.

2.12.2 The emergency window must have a minimum escape area of 0.7 square metres and have no dimension less than 500 mm (folding forward rear seat squabs to gain these dimensions are not acceptable).

2.12.3 All equipment supplied for the breaking of emergency glass windows must be securely attached to the School Bus and have audible warning devices fitted to warn the Driver if they are dislodged.

2.12.4 The School Bus must have an external 'door release' mechanism for use in emergencies.

### **2.13 Fire Extinguisher**

2.13.1 The School Bus must contain at least one efficient and operational fire extinguisher of a type approved by the PTA and conforming to AS 2444 (20B minimum rating, fitted with hose), which must be stored securely in an accessible location and its location notified by appropriate signage as designated by a PTA Inspector.

2.13.2 Fire extinguishers must be inspected in accordance with Australian Standards (AS 1851 – 2005) and passed and date stamped by an organisation competent and authorised to provide appropriate certification.

### **2.14 First Aid Kits and Safety Triangles**

The School Bus must contain a first aid kit or kits which comply with Australian Standards and are stored in an enclosed cabinet displaying appropriate signage at the front of the bus.

Class A, D, E and F to have 2 First Aid Kits and 5 Safety Triangles

Class B, C, G and H to have 3 First Aid Kits and 6 Safety Triangles

Note: 1 Safety Triangle for each First Aid Kit to be placed with the First Aid Kits for B and C Class, the additional 3 Safety Triangles should be placed in the vehicle's Tool Box.

### **2.15 Guard Rails**

All guardrails must be enclosed and suitably padded (as specified in the ADRs).

### **2.16 Electrical**

2.16.1 Unless otherwise permitted by the PTA, the School Bus must be fitted with an audible reverse warning buzzer, and high-level roof-mounted stop and direction indicator lights, mounted as close as possible to the outside edge of the body.

2.16.2 The dimensions and power of lights fitted to the School Bus must be in accordance with the ADRs.

### **2.17 Linings**

The School Bus must have a metal roof which is insulated or lined with a suitable material (as specified in the ADRs).

### **2.18 Luggage Racks**

2.18.1 If the School Bus has seating capacity for more than 24 adult passengers (excluding wheelchair buses) it must be fitted with luggage racks.

2.18.2 Where fitted, luggage racks must:

- (a) extend as far as practicable along both sides of the School Bus from the front seat to the rear of the body;
- (b) have a minimum width of 450 mm with an aperture at least 200 mm wide;
- (c) have bars or lips along the edges and be closed at the front to prevent accidental dislodgment of school bags or other items, and have no sharp edges or corners and be fully enclosed; and.
- (d) Not have mesh racks.

### **2.19 External Roof Racks**

The School Bus must not be fitted with external roof racks.

### **2.20 Under-floor Storage Bins**

If the School Bus has seating capacity for more than 24 adult passengers (excluding wheelchair buses), it must be fitted with under-floor storage bins located on the near-side of the School Bus and have no more than 2 access doors to the storage bins (unless otherwise approved by the PTA or if installing the storage bins would, for reasons relating to Gross Vehicle Mass, reduce the School Buses seating capacity).

## **2.21 Driver's View**

2.21.1 The Driver, when in his/her normal driving position, must have an adequate view of passenger access doors and approaches, including the first 2 windows to the rear of the entry door.

2.21.2 The vehicle must be fitted with suitably placed internal or external mirrors, including a convex mirror of a minimum size of 165 mm<sup>2</sup> to the front left-hand side.

2.21.3 The mirrors described in item 2.19.2 are additional to the mandatory driving mirrors.

2.21.4 If the School Bus has seating capacity for more than 24 adult passengers, it must have two sun-visors fitted to the front windows for the driver's benefit.

## **2.22 Passenger Seats and Seatbelts**

2.22.1 All passenger seats must face the direction of travel and be least 300 mm wide.

2.22.2 Where seats are raised to allow for stepped floors no seat cushion height may exceed 150 mm above the seat cushion height of the seat directly in front.

2.22.3 Where the top of a seat cushion is less than 150 mm below the windowsill a padded bar must be fitted across the window 300 mm above the window sill for added passenger protection.

2.22.4 If the School Bus is not fitted with seatbelts for use by passengers, the seating cushion area and the backrest seating surface must be flat across the entire width of the seat.

2.22.5 If the School Bus is fitted with seatbelts for use by passengers, the seatbelts must be of a lap-sash type (ADR 68/00) with retractor approved by the PTA and fitted in accordance with all relevant ADRs.

2.22.5 If the School Bus has seating capacity for more than 24 adult passengers and is fitted with seatbelts for use by passengers, all seats must have hand grips on the side facing the aisle.

2.22.6 If the School Bus is fitted with seatbelts for use by passengers, it must have an interior sign fitted that is visible to all passengers and which displays the words 'FASTEN SEATBELTS WHILST SEATED' (or similar) and the sign:

- (a) if fitted to a School Bus with seating capacity for more than 24 adult passengers, must be illuminated; and
- (b) if fitted to a School Bus with seating capacity of up to 24 adult passengers, must be illuminated or made of a reflective material.

## **2.23 Windows**

2.23.1 If the School Bus is not air-conditioned, at least half of the windows adjacent to passengers' seats must be fitted with latches and grips for the purpose of opening and closing.

2.23.2 Any opening passenger window of a height greater than 230 mm must be restricted to a maximum opening of 125 mm.

2.23.3 The School Bus must not be fitted with hopper-type windows.

## **2.24 Regulation Card**

A card showing the rules for bus travel approved by the PTA must be prominently displayed in the School Bus in a card holder designed for that purpose.

## **2.25 Tool Box**

2.25.1 A compartment or toolbox of adequate size must be used to constrain wheel changing equipment, tools and safety triangles.

2.25.2 The toolbox must be housed securely to prevent possible injury to passengers in the event of an accident.

## **2.26 Communications Equipment**

2.26.1 The School Bus must be fitted with a functioning mobile telephone with 'hands-free' kit, two-way radio or equivalent communications device approved by the PTA, which must be switched on whenever students are being transported.

2.26.2 If the School Bus transports Students to education support facilities, it must have a functioning mobile telephone with 'hands-free' kit, which must be switched on whenever students are being transported.

## SCHEDULE 10 – RECORDS

### 1. Contractor to keep records

The Contractor must create and retain the following written records:

- (a) Accident Reports;
- (b) Emergency Plans;
- (c) Safety Management Plans;
- (d) Student Incident Reports;
- (e) a Contact Log;
- (f) details of the fares collected pursuant to clause 10;
- (g) details of the dates and nature of repair, service and maintenance work carried out on the School Bus;
- (h) the records referred to in clause 8.3(a) (adjustment at the end of School Term);
- (i) documentary evidence of the extent to which each Driver meets the requirements as to qualifications set out in items 1(b), 1(c) and 1(d) of Part 1 of Schedule 7; and
- (j) documentary evidence of the extent to which each Bus Aide meets the requirements as to qualifications set out in items 1(a) and 1(b) of Part 1 of Schedule 8;
- (k) details of any costs incurred by the Contractor in or in connection with performing the Service or complying with the Contractor's Obligations which are not referred to above; and
- (l) any other records the Authority (acting reasonably) requires the Contractor to keep from time to time.

### 2. Retention of Records

The Contractor must retain the Records for a period of not less than 7 years from the date of the Record.

### 3. Provision of Records to the Authority

The Contractor must provide the Record referred to in column A below to the Authority by the corresponding time referred to in column B below.

<b>A</b>	<b>B</b>
Student Incident Report	As soon as reasonably practicable after the occurrence of the incident the subject of the report.
Accident Report	As soon as reasonably practicable after the occurrence of the Accident the subject of the report.
Contact Log	Not later than 5 Business Days after a request by the Authority.
School Bus maintenance records (item 1(g))	Not later than 5 Business Days after a request by the Authority.
Documentary evidence of Drivers' compliance with the requirements of item 1 of Part 1 of Schedule 7.	Not later than 5 Business Days after a request by the Authority.

<b>A</b>	<b>B</b>
Documentary evidence of Bus Aides' compliance with the requirements of item 1 of Part 1 of Schedule 8.	Not later than 5 Business Days after a request by the Authority.
Any other Records not referred to above	Not later than 5 Business Days after a request by the Authority.

**4. Student Attendance Register**

If the School Bus is an Education Support Bus, the Contractor must:

- (a) on each School Day on which the Contractor provides the Service, record the names of Students who travelled on the School Bus that day;
- (b) submit to the Authority, in the form prescribed by the Authority, a report which sets out the names of Students who travelled on the School Bus each School Day during:
  - (i) each period of 4 weeks during a School Term; and
  - (ii) if the period from the end of a 4-week period referred to in item 4(b)(i) until the end of a School Term is less than 4 weeks, then that shorter period,

not less than 5 Business Days after the end of the relevant period.

## **SCHEDULE 11 – WHEEL CHAIR SPECIFICATIONS**

These Specifications apply to A Class, B Class, C Class and D Class School Buses, and any other Classes to which the Authority from time to time determines they apply.

### **1. Seating**

- 1.1 Construction or alteration of a vehicle to carry wheelchairs and/or occupant restraint systems must provide the maximum normal seating compatible with the number of wheelchair and restraint positions required.
- 1.2 Seats and restrained wheelchairs must be facing in the direction of travel.

### **2. Restraints**

- 2.1 Restraints for the support of persons with disabilities must be attached directly to the seat frame with reinforcement of the seat mountings and structure as deemed necessary by the Authority.
- 2.2 Wheelchair restraint systems must allow suitably adapted conventional seating to be utilised when required.
- 2.3 Wheelchair restraint connection points must be secured to suitably reinforced structural members of the vehicle body frame as per manufacturer's instructions and specifications.
- 2.4 Provision must be made for the convenient and safe stowage of all detachable restraint accessories.

### **3. Wheelchair Lift**

- 3.1 All work must be in accordance with:
  - (a) AS.2942 "Wheelchair Occupant Restraint Assemblies for Motor Vehicles" and appended recommendations and guidelines;
  - (b) the School Bus Specifications;
  - (c) the Road Traffic (Vehicle Standards) Regulations 2002; and
  - (d) the Road Traffic (Vehicle Standards) Rules 2002.
- 3.2 Construction and alteration of the wheelchair lift must be inspected by the Authority as such works proceed and must be approved by the Authority before the School Bus is placed into service.
- 3.3 The wheelchair lift must be of a type and model which complies with this specification and is approved by the Authority.

### **4. Installation of Wheelchair Lift**

- 4.1 The installation of the wheelchair must only proceed after both the lift and the School Bus have been approved by the Authority.
- 4.2 An installation must only be carried out by a person authorised by the lift manufacturer or an agent thereof, and must be carried out in a suitably equipped workshop in accordance with the manufacturer's installation instructions.
- 4.3 Prior to commencement of an installation the Authority must be informed in order that progress and standards of workmanship may be monitored.
- 4.4 All components of the lift and its accessories and power unit must be protected from stones, water, dust, mud and other contaminants.
- 4.5 The opening for the lift must be sealed and closed by a weatherproof hinged, metal framed door.
- 4.6 The door handles must turn upwards to open.
- 4.7 External door handles must be recessed to be approximately flush with the body panels.



- 4.8 The door and adjacent bodywork must have clips attached to hold the door in the open position to prevent slamming in windy conditions.
- 4.9 An audible warning device must be fitted so as to sound when the wheelchair access door is in the open position without the vehicle parking brake being applied.
- 4.10 The lift must be fitted on the left hand side of the School Bus, separate to the passenger entry door.
- 4.11 Special approval must be obtained to fit a lift to the rear of a School Bus.

## **5. Capacity and Mass of Wheelchair Lift**

- 5.1 The static capacity of the lift must be not less than 500 kg.
- 5.2 The rated continuous load capacity must be not less than 180 kg.
- 5.3 The total mass of the lift, with all options, must not be greater than 400 kg.

## **6. Platform for Wheelchair Lift**

- 6.1 The minimum width of the platform must be 750 mm.
- 6.2 The distance between the wheelchair roll stop and the edge closest to the School Bus must be not less than 1150 mm.
- 6.3 Any hand rail attached to the platform must be at least 800mm above the platform and must have a nominal outside diameter of 38mm and must not intrude into the platform minimum chair space of 750 mm x 1150 mm.
- 6.4 When the platform is at School Bus floor height, the maximum slope from the horizontal must not exceed 20 mm in 300 mm measured in any direction whilst the School Bus is parked on a level surface.
- 6.5 The head room above the School Bus floor or lift bridge plate measured to the door header or horizontal lift member must be not less than 1400 mm.
- 6.6 The platform and ramps or bridge plate must at no point in the lift travel expose an opening through which a 19 mm diameter steel ball can pass.
- 6.7 The platform must have an automatically functioning roll prevention device at the wheel chair exit/entry point to prevent the chair and occupant falling from the platform.
- 6.8 The automatically functioning roll prevention device must operate at any time the platform is 50 mm or more above the ground. The device must have the same effect on an outward moving wheelchair as would a 75 mm high chock placed transversely in the path of the wheels.
- 6.9 The motion of the lift platform must not subject the wheelchair occupant to lateral or vertical movement which could potentially be frightening, uncomfortable or dangerous.
- 6.10 The platform must be fabricated from a slip resistant material to give adequate tyre adhesion in wet conditions.
- 6.11 Bridge plates, ramps or steps over which a wheelchair will roll must not preclude ease of access and must not have a vertical height greater than 16 mm above the surface upon which the platform rests in the loading position.

## **7. Finish of Wheelchair Lift**

- 7.1 Protective covering, housing and padding materials must have fire retardant properties.
- 7.2 All components of the lift system must be free of sharp or jagged edges and protrusions, to minimise possibility of injury to lift operators and School Bus passengers.
- 7.3 All welds must be cleaned free of slag and non-ferrous materials and cleaned free of mill scale, rust, grease and dirt, by means of scraping and wire brushing, not more than 24 hours prior to painting with at least one rust inhibitive primer coat.
- 7.4 Two or more colour coats of abrasion and corrosion resistant flat finish paint must be applied in accordance with the paint manufacturer's recommendations.

7.5 The coating must be selected to minimise solar radiation absorptiveness of the lift metal work.

## **8. Operation of Wheelchair Lift**

8.1 The lift operation must ensure that no movement of the wheelchair on the platform is required during raising or lowering modes.

8.2 The operating system must have provision for manual operation in the event of failure of the primary functions. Written instructions for the action required to manually operate the lift in the event of such failure must be located on the School Bus.

8.3 A comprehensive operating manual must be supplied by the lift manufacturer and located on the School Bus and must include:

- (a) general operating instructions;
- (b) preferred entry/exit techniques;
- (c) operating of all controls, resultant platform movements and required user actions;
- (d) actions a user should not take; and
- (e) warning of unusual noise, motion or other fright causing factors and potential hazards.

8.4 A specification sheet must be supplied to the Authority showing all details of equipment incorporated in the unit's control, electrical and hydraulic systems including part numbers and sources of supply for spare parts.

8.5 Schematic diagrams must be supplied to the Authority showing the hydraulic and electrical circuits.

8.6 Mechanical components subject to periodic replacement must be listed with the respective part numbers and supplied to the Authority.

8.7 Graphical drawings and photographs must be supplemented, where required by the Authority, for clarification.

## **9. Bus Body Construction and Alteration**

9.1 The structure of the bus body not be weakened by the fitment of the wheelchair lift.

9.2 The vehicle floor must be free of obstructions, effectively sealed and covered with vinyl or durable alternative material laid over marine plywood of 17 mm minimum thickness and be finished to a neat appearance.

9.3 Sharp edges, protrusions or fittings must be covered or otherwise protected to prevent injury.

9.4 The engine exhaust outlet must terminate outside the body panels or bumper and must be not closer than 600 mm to any wheelchair lift or passenger entry door.

9.5 Provision must be made for an emergency exit to the standard required by the Authority.

9.6 Additional ventilation must be provided where the Authority considers existing provision to be inadequate for the comfort of passengers.

9.7 Vehicles purpose built for the installation of a wheelchair lift must have a duplicate set of batteries secured and housed in a compartment with an access hatch.

9.8 The batteries must be identical and inter-changeable with those supplied by the vehicle chassis manufacturer.

9.9 The duplicate battery set must be charged by the vehicle engine charging system through a commercially procurable battery isolating device designed for the purpose. This must be arranged in such a manner as not to affect the normal vehicle operation.

## **10. Notices**

10.1 A notice must be displayed on the inside of the wheelchair lift door, printed clearly with all instructions for the safe use and operation of the lift and must include instructions for manual operation in event of failure of the primary operations.

10.2 The notice must be protected by a durable perspex covering.

## **11. Restraint Tracking**

- 11.1 Heavy duty floor-mounted tracking, of a type approved by the Authority, is to be fitted to the full length of both sides of the passenger area of the vehicle in accordance with the tracking manufacturer's instructions.
- 11.2 No tracking is to be fitted without prior approval from the PTA as to the exact type of tracking required.
- 11.3 The tracking must be compatible with the types of wheelchairs and restraint systems specified by the PTA for use on the vehicle.
- 11.4 The tracking is to be recessed with a maximum of 3.5mm projection above the floor surface. Edges to be chamfered down to a maximum projection of 1mm.
- 11.5 Anchor points to be clearly marked on the tracking surface so as to allow wheelchair clear space requirements as specified in AS 2942.
- 11.6 The tracking to be clearly marked to allow correct seat spacing, as specified in the ADR, when normal seats are fitted.
- 11.7 A suitable removable guardrail is to be supplied by the vehicle body builder for placement when only one restrained wheelchair is being transported.

## **12. Docking Systems**

- 12.1 Wheelchair docking systems may be fitted to a School Bus subject to prior approval from the PTA as to the precise type and number of docking units required.
- 12.2 Docking units are to be fitted in accordance with the manufacturer's instructions and so as to allow clear space requirements as specified in Australia Standards and or ISO Standards.

## SCHEDULE 12 – SERVICE DETAILS

- Item 1: Name of Contractor**
- Item 2: Termination Date**
- Item 3: Specified School Bus**
- Item 4: Contractor’s Address for Service**
- Item 5: Effective Date**
- Item 6: Type of Service**
- Item 7: Approved Depot**
- Item 8: Existing Contract**
- Item 9: Approved Route Distance (Education Support Contract)**
- Item 10: Office Equipment**

**SCHEDULE 13 – BUS ROUTE NARRATIVE AND MAP FOR BUS SERVICE**

**SCHEDULE 14 – BUS WARDENS SCHEDULE IF REQUIRED**

