

PASSENGER SERVICE CONTRACT

(Section 46 *Passenger Transport Services Act 2011* (Tas))

FORMAL INSTRUMENT OF AGREEMENT SCHOOL BUS SERVICE(S) ONLY



DSG Reference No.:

PSC Reference No.(s):

Details

Date:

Parties:

Name **The Crown in Right of Tasmania**
(acting through the Secretary of the Department of State Growth)
Short form name **Crown**
Notice details C/- Department of State Growth
Salamanca Building, Salamanca Place, Hobart, Tasmania, 7000
Email: [##]
Attention: Secretary, Department of State Growth

Name [##insert name##]
ACN/ABN [##]
Short form name **Operator**
Notice details [##insert address##]
Email: [##]
Attention: [##insert name or position##]

Background: The Crown acting through the Secretary, pursuant to section 46 of the *Passenger Transport Services Act 2011* (Tas), has agreed to engage the Operator to provide one or more regular passenger services, and the Operator has agreed to accept that engagement. This Formal Instrument of Agreement has been entered into by the parties to record that agreement.

Agreement

The parties agree as follows:

1 Contract

1.1 Crown and Operator agree to be bound by Contract

The Crown and the Operator agree to be bound by the Contract.

1.2 Contract comprises

The Contract comprises:

- (a) this Formal Instrument of Agreement;
- (b) as at the date of this Formal Instrument of Agreement, the Passenger Service Table included in Attachment 1 (including any attachments and appendixes to it);
- (c) as at the date of this Formal Instrument of Agreement, the Contract Vehicle Table included in Attachment 2 (including any attachments and appendixes to it);
- (d) the 'Tasmanian Government: Passenger Service Contract Standard Conditions (Document Reference: PSC Standard Conditions 2019–02)' (the **Standard Conditions**), which are taken to be incorporated by reference in this Formal Instrument of Agreement;
- (e) the Bus Contract Payment Model applicable to the Contract (being the model referred to in Item 3 of Schedule 1);
- (f) any amendment to, or replacement of, any of the following made in accordance with the Contract:
 - (i) the Passenger Service Table;
 - (ii) the Contract Vehicle Table (including any special terms and conditions set out in the Contract Vehicle Table);
 - (iii) an Approved Timetable;
 - (iv) an Approved Route; and
- (g) the special terms and conditions (if any) set out, or referred to in, this Formal Instrument of Agreement (including Item 4 of Schedule 1).

1.3 Subsidy

The parties intend that amounts payable by the Crown to the Operator under the Contract are a subsidy for the purposes of section 46(1) *Passenger Transport Services Act 2011* (Tas).

1.4 Operator's acknowledgment

The Operator acknowledges that it received from the Department of State Growth, and has read a copy of, the Standard Conditions and the Bus Contract Payment Model (referred to in Item 3 of Schedule 1 that is applicable to the Contract), before signing this Formal Instrument of Agreement.

1.5 Approved Vehicles

As at the date of this Formal Instrument of Agreement, subject to any requirements or restrictions set out in Column 6 of the Passenger Service Table (included in Attachment 1), the Approved Vehicles that must be used to provide each Passenger Service are as set out in the Contract Vehicle Table (included in Attachment 2).

1.6 Defined terms

For the avoidance of doubt, unless the context otherwise requires, terms defined in the Standard Conditions have the same meanings when used in this Formal Instrument of Agreement.

2 Special terms and conditions

- (a) In this clause, '**special terms and conditions**' means the special terms and conditions (if any) in any attachment to this Formal Instrument of Agreement (including Item 4 of Schedule 1).

- (b) If there is any inconsistency between the special terms and conditions and any another provision of the Contract, the special terms and conditions override the other provision to the extent of the inconsistency.
- (c) A special term or condition is taken not to be inconsistent with another provision of the Contract if the special term or condition and the other provision are both capable of being complied with.

Schedule 1: Additional details, terms and conditions

Item 1: Operator's Representative

Name: [##]
Contact telephone no.: [##]
Email address: [##]

Item 2: Disclosure of Trust details

[##~ For the purposes of clause 28.1(h) of the Standard Conditions, the Operator discloses that it enters into each Contract in its capacity as trustee of the following trust: [##insert name##]
ABN [##] ~ or ~ Not applicable##]

Item 3: Bus Contract Payment Model

The Bus Contract Payment Model is the document 'Tasmanian Government: Bus Contract Payment Model – School Bus Services (Document Reference BCPM-SB 2019–02)' published by the Department of State Growth.

A reference in this Formal Instrument of Agreement to the Bus Contract Payment Model referred to in this Item 3 includes:

- (a) any amendment to, or replacement of, the Bus Contract Payment Model made in accordance with its terms; and
- (b) any later Bus Contract Payment Model agreed to, in writing, by the Crown and the Operator.

Item 4: Special terms and conditions

Special Condition 1 – Termination of Contract

- (a) The Crown, acting through the Secretary, may terminate by notice, in writing, to the Operator to that effect and without payment of any compensation, a Contract (formed by this Formal Instrument of Agreement) (each a **Specified Contract**) if, before the Start Date for the Specified Contract, the Crown terminates a Related Pre-Existing Contract.
- (b) In paragraph (a) of this special condition 1, **Related Pre-Existing Contract** means, in relation to a Specified Contract, another passenger service contract:
 - (i) for the purposes of section 46 of the Act;
 - (ii) in force as between the Crown and the Operator, or as between the Secretary and the Operator, at any time before the Start Date for the Specified Contract; and
 - (iii) which provides for the operation of a passenger service in respect of a route that is similar, or substantially similar, to the Approved Route for the Passenger Service to be provided under the Specified Contract.
- (c) Nothing in this special condition 1 limits or affects the Right of the Crown to terminate, in accordance with the Standard Conditions, a Contract (formed by this Formal Instrument of Agreement) before the Start Date applicable to the Term of that Contract.

Item 4: Special terms and conditions

[##Optional prepayment special condition. Delete if not applicable. Generally, this special only applies contracts for a passenger service which were previously contracted pursuant to a 'Contract for Services (Rural school bus).']

Special Condition 2 – Prepayment of part of January 2021 Annual Service Fee instalment

- (a) Subject to this special condition 2, on the Payment Date, the Crown must pay to the Operator, in respect of each Relevant Contract, the Specified Amount for that Relevant Contract.
- (b) A Specified Amount paid by the Crown in respect of a Relevant Contract is a partial prepayment of the instalment of the Annual Service Fee (plus GST) for that Relevant Contract which, subject to the Relevant Contract, will become payable by the Crown to the Operator for the Named Month of January 2021.
- (c) A Specified Amount is not payable by the Crown to the Operator if the Relevant Contract, to which the Specified Amount relates, is terminated before the Payment Date.
- (d) The Crown may refuse to consent to the novation of a Relevant Contract before the Specified Date, unless that Specified Amount, in respect of the Relevant Contract, is repaid by the Operator to the Crown concurrently with the novation of that Relevant Contract. This paragraph (d) of this special condition 2 does not limit the grounds upon which the Crown may otherwise refuse, in accordance with a Relevant Contract, to consent to the novation of that Relevant Contract.
- (e) If a Relevant Contract in respect of which a Specified Amount has been paid to the Operator is terminated before the Specified Date, the Specified Amount must be repaid by the Operator to the Crown not later than 10 Business Days after the termination of the Relevant Contract.
- (f) Unless previously repaid by the Operator to the Crown in accordance with paragraphs (d) or (e) of this Special Condition 2, the Specified Amount is to be deducted by the Crown from the instalment of the Annual Service Fee (plus GST) which, subject to the Relevant Contract, is to be paid by the Crown to the Operator for the Named Month of January 2021 in respect of the Relevant Contract to which the Specified Amount relates.
- (g) In this Special Condition 2:
 - (i) **Payment Date** means 15 January 2020.
 - (ii) **Relevant Contract** means [##~each Contract formed by this Formal Instrument of Agreement ~ or ~ each of the following Contracts formed by this Formal Instrument of Agreement: PSC Reference No. [##]; PSC Reference No. [##] ~ etc. ~ ##].
 - (iii) **Specified Date** means the due date for payment of the instalment of the Annual Service Fee payable in respect of a Relevant Contract for the Named Month of January 2021.
 - (iv) **Specified Amount** means, in relation to a Relevant Contract, an amount equivalent to 70% of the instalment of the Annual Service Fee (plus GST) payable by the Crown to the Operator for the Named Month of January 2020 in respect of that Relevant Contract.

Signing

Signing by Crown (acting through the Secretary or a delegate)

Executed as an agreement on behalf of the Crown by the Secretary (or a delegate acting on behalf of the Secretary pursuant to an instrument of delegation) in the presence of the witness named below:

Signature:
→

Witness'
signature:
→

*Print
name and
position:

*Witness
print
name:

*Use BLOCK LETTERS.

*Witness
print address

Signing by Operator who is an individual

(including where the individual acts as the Operator in its capacity as a trustee or is a sole trader)

Executed as an agreement by the Operator in the presence of the witness named below:

Operator's
signature:
→

Witness'
signature:
→

*Print
name:

*Witness
print
name:

*Use BLOCK LETTERS.

*Witness
print address

Signing by Operator that is a company

(including where the company acts as the Operator in its capacity as a corporate trustee)

Executed as an agreement by the Operator in accordance with section 127(1) of the *Corporations Act 2001* (Cwlth):

Signature:
→

Signature:
→

*Print
name and
office
held:

*Print
name and
office
held:

Note: In the case of a company that has only one director and one secretary, show the office held as 'SOLE DIRECTOR AND SOLE COMPANY SECRETARY'

*Use BLOCK LETTERS.

Signing by Operator that is a partnership (executed for and on behalf of partnership)

Executed as an agreement for and on behalf of the Operator (being a partnership) by being signed by a partner of that partnership (and who warrants that he/she is duly authorised to sign this Formal Instrument of Agreement on behalf of all partners of the partnership) in the presence of the witness named below:

Partner's
signature
on behalf of
partnership:
→

*Print name
of partner:
→

Witness'
signature:
→

*Witness
print
name:

*Use BLOCK LETTERS

*Witness
print address:

Signing by Operator that is a partnership (individual partner)[¶]

Executed as an agreement by the Operator in the presence of the witness named below:

Partner's
signature:
→

*Print name
of partner:
→

Witness'
signature:
→

*Witness
print
name:

[¶]NOTE: If this execution block is used, include a
separate execution block for each partner

*Use BLOCK LETTERS

*Witness
print address:

Attachment 1: Passenger Service Table

Operator's name:

DSG Reference No.:

Date:

Important note: The total number of vehicles listed in Column 8 does not have to equal the number of Approved Vehicles specified in Attachment 2.

| Column 1 Passenger Service | Column 2 Start Date for the service specified in Column 1 | Column 3 Term applicable to the service specified in Column 1 | Column 4 Approved Route for the service specified in Column 1 | Column 5 Approved Timetable for the service specified in Column 1 (note timetable must include Contracted Schools for a School Bus Service) | Column 6 Approved Vehicle requirements and/or restrictions for operation of the service specified in Column 1 | Column 7 Payment of fares by users of the service specified in Column 1 | Column 8 Number of vehicles assessed by the Crown as being required for the operation of the Passenger Service specified in Column 1 | Column 9 Crown's calculation of Annual Service Fee (excluding GST), as 1 July 2018, for the service specified in Column 1 in accordance with the BCPM | Column 10 Other details applicable to the service specified in Column 1, and relevant to the calculation of the Annual Service Fee for that service in accordance with the BCPM*** |
|--|--|--|--|--|--|--|---|--|---|
| 1. PSC Reference No: [##insert service number##] Service description (geographic location or area): [##insert description##] Service Type: [##select either ~ General Access Service ~ or ~ School Bus Service##] | | Term: [##] years Option: One option to extend the Term for [##] years | As set out or referred to in, or ascertained in accordance with, Contract Appendix [##]* | As set out, or referred to, in Contract Appendix [##]* | Bus Size: [##] Minimum operational capacity: [##]** | Yes ~ No | | Annual Service Fee: \$[##] | [##Insert required details ~ or As set out in Contract Appendix [##] |

* The date the Approved Route and the Approved Timetable are effective from is stated in the Contract Appendix.

** In column 6, 'operational capacity' means the operational capacity of a vehicle for the purposes of the *Passenger Transport Services Regulations 2013* (Tas).

*** A term used in column 10, or in a Contract Appendix referred to that column, which is defined in the BCPM, has the same meaning as in the BCPM.

In this Attachment, **BCPM** means the Bus Contract Payment Model referred to in Item 3 of Schedule 1 of the Formal Instrument of Agreement applicable to the Contract. A Contract Appendix referred to in a row of the Passenger Service Table, and the information in, or referred to in, that appendix, is taken to form part of, and to be shown, specified or included in, that row of the Passenger Service Table.

Attachment 2: Contract Vehicle Table

Operator's name:

DSG Reference No.:

Date: As at date of Formal Instrument of Agreement

Important note: If an Approved Vehicle has an Annual Capital Allowance greater than 'nil' for the purposes of any other agreement for the operation of a passenger service in Tasmania, the Annual Capital Allowance to be shown in the Contract Vehicle Table below must be 'nil'.

Part 1: Approved Vehicles

| Column 1 Registration number | Column 2 Make | Column 3 Model | Column 4 Year of manufacture | Column 5 Operational capacity – number of persons | Column 6 Bus Contract Payment Model used to calculate Annual Capital Allowance | Column 7 Bus Size | Column 8 Annual Capital Allowance per annum, being the total of VC and OVSC* (Note: Amounts shown are exclusive of GST) | Column 9 Date from which an Approved Vehicle | Column 10 Other details applicable to the Approved Vehicle, referred to in this row, and relevant to the calculation of the Annual Capital Allowance for that vehicle in accordance with the BCPM |
|------------------------------------|------------------|-------------------|------------------------------------|---|---|----------------------|---|--|--|
| 1. | | | | | BCPM-SB | | VC: \$[##] per annum OVSC as at [##]: \$[##] per annum | | |
| 2. | | | | | BCPM-SB | | VC: \$[##] per annum OVSC as at [##]: \$[##] per annum | | |

* A term used in column 8 which is defined in the BCPM-SB, has the same meaning as in the BCPM-SB. VC (as defined in the BCPM-SB) is not subject to indexation but may be recalculated in accordance with the BCPM-SB. OVSC (as defined in the BCPM) is subject to indexation in accordance with the BCPM-SB.

In this Attachment, **BCPM-SB** means the Bus Contract Payment Model, for School Bus Services, referred to in Item 3 of Schedule 1 of the Formal Instrument of Agreement.

Attachment 2: Contract Vehicle Table

Part 2: Special terms and conditions (if any) applicable to Approved Vehicles

| | |
|---|---|
| Special Condition 1 – Approved Monitoring Equipment | |
| Each Approved Vehicle listed in a row in Column 1 of the table below has installed (as at the date of the Contract) the equipment listed in Column 2 of that row. Subject to the Contract, that equipment is taken to be Approved Monitoring Equipment for the purposes of each Contract. | |
| Column 1: Approved Vehicle | Column 2: Details of Approved Monitoring Equipment |
| The Approved Vehicle Registration no.: [##] | |