

**From:** Mike Lewis  
**To:** [Patrick Austin](#)  
**Cc:** [Broadcast Pacific](#)  
**Subject:** Expression of Interest  
**Date:** Tuesday, 22 December 2015 1:34:00 PM  
**Attachments:** [Email Footer Smaller.png](#)


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Dear Patrick,

Thanks very much for your time this morning chatting to my boss, Matt Percy.

I would like to state formally that we have an genuine expression of interest in the purchase of your 14 metre SD trailers.

Could you please keep me informed of the process.

Should you require further details from us please contact me directly or Matt on 



Regards

Mike

**Mike Lewis**  
**Head of Operations**

**Pacific Broadcast Pty Ltd**  
**Cook Road Business Park**  
**Unit 10 / 23a Cook Road**  
**Mitcham 3132**  
**Victoria, Australia**

Local: 1300 782 777  
International: +61 3 9944 0855



[www.pacificbroadcast.tv](http://www.pacificbroadcast.tv)





## Cecelia Henry

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**From:** Cecelia Henry  
**Sent:** Thursday, 3 March 2016 11:51 AM  
**To:** Alexandra Morrissey  
**Subject:** RE: SMP - new agreement for OB Van and equipment Pacific Broadcast Pty Ltd [IWOV-Legal.FID40415]

Hi Alex

From my enquiries (calls to VicRoads and the Traffic Accident Commission (TAC)), it appears that:

1. The pending transaction between the ABC and Pacific Broadcast PL will constitute a transfer of vehicle between a buyer and seller. The standard VicRoads Transfer of Registration form is the correct paperwork to be filled in.
2. Stamp duty is payable if the ACN is different between the 'seller' and the 'buyer'; and
3. the NSW equivalent of CTP is covered in VicRoads' registration fee that must be paid for annually.

### Stamp duty:

Even though the registration of the OB Van will not amount to a sale to Pacific Broadcast, stamp duty is payable as the ACNs of the 2 relevant parties of the transaction are different. Stamp duty will be calculated on the higher of the purchase price and market value @ \$42/\$1,000 for cars/vans below a 4.2 tonne weight.

### Insurance:

CTP is covered in the registration fee in Victoria.

Eg if the VicRoads rego fee for a car is \$700+ this is broken down as follows:

Registration: \$277.70  
CTP: \$400+

Vic CTP is covered by the Traffic Accident Commission (TAC) for liability for injury/death when there has been a car accident. Victorians do not have to shop around for CTP like NS Welshmen do; it is done through the TAC. FYI TAC will cover for the life of the injury and extend this to helping the injured around the house or how to return to work. Sounds like we're getting a raw deal.

Comprehensive insurance to cover damage to third party vehicles is taken out at the discretion of the car owner

I hope this helps for drafting. Please let me know if you need any more information.

Thanks  
Cecelia

**From:** Alexandra Morrissey  
**Sent:** Thursday, 3 March 2016 10:03 AM  
**To:** Cecelia Henry  
**Subject:** RE: SMP - new agreement for OB Van and equipment Pacific Broadcast Pty Ltd [IWOV-Legal.FID40415]

Hi Cecelia,

## Memorandum



**ABC**  
Australian Broadcasting Corporation  
**Commercial**

Attention: David Pendleton, Chief Operating  
Officer  
From: Robert Patterson,  
Director Commercial  
Date: 6 April 2016  
Copy: Gareth Thompson, Head Financial  
Services

ABC Ultimo Centre  
700 Harris Street  
Ultimo NSW 2007  
GPO Box 9994  
Sydney NSW 2001  
Tel. +61 2 8333 1500  
abc.net.au

s 47C, s 47E(d)


s 47C, s 47E(d)

### Background:


Pacific Broadcast Pty Ltd, ABN 47 097 539 458, (**Pacific**) is an Australian production company that provides broadcast services internationally. Pacific is best known for its innovative outside broadcasting services in surfing, cycling and motocross riding.

s 47C, s 47E(d)


§ 47C, § 47E(d)

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§ 47C, § 47E(d)

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§ 47C, § 47E(d)

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David Pendleton,  
Chief Operating Officer

Date: 13/4/16





**From:** Patrick Austin  
**To:** Cecella Henry  
**Subject:** Pacific Broadcast - Invoice & EFT Confirmation of Deposit  
**Date:** Monday, 9 May 2016 4:01:00 PM  
**Attachments:** 001.jpg  
002.jpg

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	Patrick Austin	
	Head ABC Studios & Media Production	
P	+61 3 9524 2500	E <a href="mailto:austin.patrick@abc.net.au">austin.patrick@abc.net.au</a>
M		
cid:image002.jpg@01CFB7B2.BA0587A0		
		





AUSTRALIAN BROADCASTING CORPORATION  
85 NORTH EAST ROAD, COLLINSWOOD, SA, 5081, AUSTRALIA  
ABN 52 429 278 345

ALL REMITTANCES TO:  
GPO Box 9994, Adelaide, SA, 5001, Australia

TELEPHONE (08) 8343 4058  
INTERNATIONAL +61 8 8343 4058  
FAX (08) 8343 4011  
INTERNATIONAL +61 8 8343 4011

PACIFIC BROADCAST PTY LTD  
ATT: MATTHEW PERCY

s 47F

Page  
Date  
Customer Number  
Our Reference

1 of 1

02.05.2016

s 47(1)(b), s 47E(d)

**TAX INVOICE - 1400102289**

DESCRIPTION	TOTAL
On Execution of ABC Agreement GST Component 10 % <b>Document Total</b>	s 47(1)(b), s 47E(d)
Lease Fee for the execution of the ABC Commercial / Pacific Broadcast rental hire Agreement.	
Total of this invoice excluding GST is	s 47(1)(b), s 47E(d)

**REMITTANCE COPY - PLEASE RETURN THIS WITH PAYMENT TO:**

GPO Box 9994 Adelaide, SA, 5001, Australia

**PAYMENT CAN BE TRANSFERRED DIRECT TO:-**

Bank:

s 47(1)(b), s 47E(d)

A/C Name:

A/C No:

BSB Code:

Reference:

**OR BE MADE BY CREDIT CARD IF SETTLED WITHIN 7 DAYS OF INVOICE DATE**

☐ Visa

☐ Mastercard

Card Number

Expiry Date

Cardholder Name

Amount Paid

Signature

AUD

Date

02.05.2016

Customer Number

s 47(1)(b), s 47E(d)

Customer Order No.

Tax Invoice

1400102289

**PAYMENT DUE**

**01.06.2016**

**TOTAL AMOUNT DUE - AUD**

s 47(1)(b), s 47E(d)



**Transaction ID:** § 47(1)(b), § 47E(d)  
**Description:** ABC

**Status:** Processed  
**Type:** Direct Credit  
**Purpose:**

**Total amount:** § 47(1)(b), § 47E(d)  
1 debit, 1 credit

**APCA:** § 47(1)(b), § 47E(d)  
**Processing date:** 02/05/2016

Date	Status History
02/05/2016 05:32:33 PM	Confirmed - Erin Bishop
02/05/2016 05:32:52 PM	Authorised - Erin Bishop
02/05/2016 05:32:53 PM	Processed

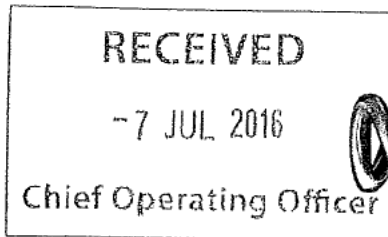
**From accounts**

BSB	Account Number	Account Name	Trace Account	Lodgement Reference Remitter	Amount
§ 47(1)(b), § 47E(d)		PACIFIC BROADCAST PTY LTD	§ 47(1)(b), § 47E(d)	§ 47(1)(b), § 47E(d)	§ 47(1)(b), § 47E(d)

**To accounts**

BSB	Account Number	Account Name	Trace Account	Lodgement Reference Remitter	Amount
§ 47(1)(b), § 47E(d)		ABC Debtors	§ 47(1)(b), § 47E(d)	§ 47(1)(b), § 47E(d)	§ 47(1)(b), § 47E(d)

**Memorandum**



**ABC**  
Australian Broadcasting Corporation  
**Commercial**

Attention: David Pendleton, Chief Operating Officer  
From: Robert Patterson, Director Commercial  
Date: 07 July 2016  
Copy: Gareth Thompson, Head Financial Services

ABC Ultimo Centre  
700 Harris Street  
Ultimo NSW 2007  
GPO Box 9994  
Sydney NSW 2001  
Tel. +61 2 8333 1500  
abc.net.au

s 47C

s 47C

**Background:**

Pacific is an Australian production company that provides broadcast services internationally. Pacific is best known for its innovative outside broadcasting services in surfing, cycling and motocross riding.

s 47C

s47C



David Pendleton,  
Chief Operating Officer

Date: 10/7

11 July 2016

Pacific Broadcast Pty Ltd  
Unit 10, 23A Cook Road  
MITCHAM VIC 3132

Attention: Matt Percy



**ABC**  
Australian Broadcasting Corporation  
**Commercial**

ABC Ultimo Centre  
700 Harris Street  
Ultimo NSW 2007  
GPO Box 9994  
Sydney NSW 2001  
Tel. +61 2 8333 1500  
abc.net.au

Dear Matt

**ABC TO PACIFIC BROADCAST PTY LTD  
LETTER OF VARIATION TO EQUIPMENT AGREEMENT**

The Australian Broadcasting Corporation (**ABC**) and Pacific Broadcast Pty Ltd (**Company**) entered into an Equipment Hire Agreement dated 2 May 2016 for the lease of certain Equipment (**Principal Agreement**).

All expressions used in this Letter of Variation that appear in the Principal Agreement, will have the same meaning as ascribed to them in the Principal Agreement.

Effective from 2 May 2016, it is now agreed that the Principal Agreement is amended as follows:

**(1) Schedule 2 - Lease Schedule**

The parties agree to amend Schedule 2 as follows:

- (a) Amend the name "**Schedule 2 - Lease Schedule**" to "**Schedule 2 – OB Van no. 5 Lease Schedule**"; and
- (b) in the "Lease Fees and Payment Schedule" section of Schedule 2 the date "2 April 2016" is deleted and replaced with:

"2 May 2016".

s 47(1)(b), s 47E(d)



s 47(1)(b), s47E(d)

s 47(1)(b), s47E(d)

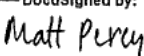
Except as specifically amended by this Letter of Variation, all terms and conditions of the Principal Agreement remain in full force and effect, including Clause 12 of the Principal Agreement relating to termination. The parties acknowledge and agree that signature by electronic communication will constitute both writing and signing of this Letter of Variation.

Please return a fully executed counterpart in acknowledgement to Business Affairs, ABC Commercial.

Yours sincerely

DocuSigned by:  
  
B6C987CC002A4BF...  
**Robert Patterson**  
Director ABC Commercial

Executed by Pacific Broadcast )  
Pty Ltd in accordance with section )  
127 of the Corporations Act 2001 (Cth) )

DocuSigned by:  
  
3E6EA27E0AD8430...

Signature of Matt Percy

12 July 2016

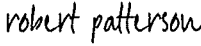
Date



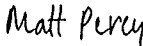




This Lease Schedule 3 - **OB Van no. T4 Lease**  
**Schedule** is signed for and on behalf of the  
ABC by:

DocuSigned by:  
  
B6C987CC002A4BP...  
Signature of Robert Patterson  
Director  
ABC Commercial  
12 July 2016  
Date

This Lease Schedule 3 - **OB Van no. T4 Lease**  
**Schedule** is executed by **Pacific Broadcast Pty Ltd**  
in accordance with section 127 of the *Corporations*  
*Act 2001* (Cth):

DocuSigned by:  
  
3E6EA27ECAD9430...  
Signature of director

Signature of director/company secretary (delete  
as applicable)

Matt Percy  
Name of director (print)

Name of director/company secretary (delete as  
applicable)

12 July 2016  
Date

**From:** Cecelia Henry  
**To:** Julianne Goss  
**Subject:** RE: Pacific Broadcast-Lease OB Van 4 & 5 - options  
**Date:** Tuesday, 12 September 2017 7:59:00 AM

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Excellent.

Thanks Jules.

C

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**From:** Julianne Goss  
**Sent:** Monday, 11 September 2017 5:58 PM  
**To:** Cecelia Henry <Henry.Cecelia@abc.net.au>  
**Subject:** FW: Pacific Broadcast-Lease OB Van 4 & 5 - options

Hi Cecelia,

Here is the notification from Pacific Broadcast regarding their intention to purchase the 2 x vans in November.

Cheers

Jules

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**From:** David Tasker <sup>s 47F</sup>  
**Sent:** Monday, 11 September 2017 5:29 PM  
**To:** Julianne Goss <Goss.Julianne@abc.net.au>  
**Cc:** Erin Bishop <sup>s 47F</sup>  
**Subject:** Re: Pacific Broadcast-Lease OB Van 4 & 5 - options

Hi Julianne,

Thank you for the email.

Yes, Pacific Broadcast shall be taking up the option of purchase on both ABC OB vans and shall make the final payments of <sup>s 47(1)(b),</sup><sub>s47E(d)</sub> per OB van in November.

kind regards

David

David Tasker  
General Manager

Pacific Broadcast Pty Ltd  
Cook Road Business Park  
Unit 10/ 23a Cook Road  
Mitcham 3132  
Victoria, Australia

Local: 1300 78 2777

International: +61 3 9944 0855

Mobile: [REDACTED]

Email: [REDACTED]

[www.pacificbroadcast.tv](http://www.pacificbroadcast.tv)

On 11 Sep 2017, at 4:58 pm, Julianne Goss <[Goss.Julianne@abc.net.au](mailto:Goss.Julianne@abc.net.au)> wrote:

Hi Erin and David,

I hope you are both well.

This is just a friendly reminder that your two ABC OB Vans are up for option to purchase in November.

Basically you need to issue me with a written notice advising me of your intention (or not) to exercise the option and payment of [REDACTED] per OB Van.

Many thanks

Jules

-

Please consider the environment before printing this e-mail.

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<Pacific Broadcast-Lease OB Van 5 SIGNED 00516.pdf>

<Pacific\_Bdcast\_Eqmt\_Agt-\_LoV#1 SIGNED 120716.pdf>

**From:** David Tasker  
**To:** Julianne Goss  
**Cc:** Matt Percy; Erin Bishop  
**Subject:** Sydney SD OB Van and Triax  
**Date:** Tuesday, 12 September 2017 1:37:57 PM

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Hi Julianne,

I would like to confirm with you our purchase of the Sydney SD OB van and § 47(1)(b), §47E(d)  
§ 47(1)(b), §47E(d) for § 47(1)(b), §47E(d)

Julianne, could you draw the paperwork up for the purchase on the following terms.

§ 47(1)(b), §47E(d)

In addition to the above we are also interested in the potential purchase of available SD equipment the ABC is disposing of.

Would it be possible to acquire a list of retired SD equipment the ABC would consider offers on.

§ 47(1)(b), §47E(d)

Do let me know if you require any more details for the establishment of the Sydney OB Van and § 47(1)(b), §47E(d) agreement.

kind regards

David

David Tasker  
General Manager

Pacific Broadcast Pty Ltd  
Cook Road Business Park  
Unit 10/ 23a Cook Road  
Mitcham 3132  
Victoria, Australia

Local: 1300 78 2777  
International: +61 3 9944 0855

§ 47F

[www.pacificbroadcast.tv](http://www.pacificbroadcast.tv)

**From:** [Manda Hatter](#)  
**To:** [Julianne Goss](#)  
**Cc:** [David N Anderson](#); [Stephen Murray](#); [Frank Chiodi](#)  
**Subject:** FW: SD 2 OB Van  
**Date:** Monday, 18 September 2017 8:42:04 AM

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Hi Julianne

I have responses back from Tony Silva, David Anderson and Mark Woodley.

You are approved for the sale.

Thanks,

Manda

**From:** Mark Woodley  
**Sent:** Friday, 15 September 2017 2:26 PM  
**To:** Julianne Goss ; Manda Hatter  
**Cc:** Stephen Murray ; Frank Chiodi ; Robert Patterson  
**Subject:** RE: SD 2 OB Van

Julianne,

Great result.

Regards

Mark

**From:** Julianne Goss  
**Sent:** Friday, 15 September 2017 11:18 AM  
**To:** Manda Hatter <[Hatter.Manda@abc.net.au](mailto:Hatter.Manda@abc.net.au)>  
**Cc:** Mark Woodley <[Woodley.Mark@abc.net.au](mailto:Woodley.Mark@abc.net.au)>; Stephen Murray <[Murray.Stephen@abc.net.au](mailto:Murray.Stephen@abc.net.au)>; Frank Chiodi <[Chiodi.Frank@abc.net.au](mailto:Chiodi.Frank@abc.net.au)>; Robert Patterson <[Patterson.Robert@abc.net.au](mailto:Patterson.Robert@abc.net.au)>  
**Subject:** SD 2 OB Van

Hi Manda,

I have negotiated a deal to sell another SD Van, this time to Pacific Broadcast in Melbourne.

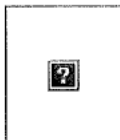
- The Van is SD 2 currently based in Lanceley place.

s 47(1)(b), s47C

Once we have received the endorsement from the relevant stakeholders, we will issue a deal memo and proceed with the sale.

Many thanks

Julianne



Julianne Goss  
National Manager Productions, ABC Studios & Media Production

P **+61 3 9524 2592** E [goss.julianne@abc.net.au](mailto:goss.julianne@abc.net.au)  
M s 47F

cid:image002.jpg@01CFB7B2.BA0587A0



**From:** Cecelia Henry  
**To:** Jacqueline Foord  
**Subject:** Studio and Media Production - sale of OB Vans to Pacific Broadcast  
**Date:** Tuesday, 10 October 2017 12:09:00 PM  
**Attachments:** image001.gif  
Pacific Broadcast- sale & hire agt v.1 041017.docx

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Hi Jacquie,

Could you please arrange for one of your team to settle the attached draft sale agreement?

In 2016, Pacific Broadcast, a Victorian production company took a lease on 2 x OB Vans with option to purchase. Pacific Broadcast has exercised the option and agrees to pay <sup>s 47(1)(b), s47E(d)</sup> each to purchase these OB Vans.

In addition, Pacific Broadcast wish to purchase a further SD OB Van for <sup>s 47(1)(b), s47E(d)</sup>

<sup>s 47(1)(b), s47E(d)</sup>

<sup>s 47(1)(b), s 47E(d), s 47F</sup>

Happy to provide further information when required.

Thanks,

Cecelia



# PACIFIC BROADCAST PTY LTD EQUIPMENT SALE AGREEMENT



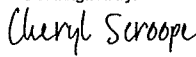




# Contract Details

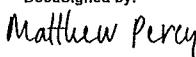
By signing below the ABC and the Company (as defined above) agree to be bound by the terms of these Contract Details, Schedules 1 and 2 and the attached General Terms and Conditions.

Signed for and on behalf of the ABC by:

DocuSigned by:  
  
.....E8ED692E9F0D4D9.....  
Cheryl Scroope  
Chief Financial Officer  
ABC Commercial

08 December 2017 | 4:12 PM AEDT  
.....  
Date

Executed by PACIFIC BROADCAST PTY LTD in  
accordance with section 126 of the *Corporations Act*  
*2001* (Cth):

DocuSigned by:  
  
.....3E6EA27ECAD9430.....  
Matthew Percy  
Director

08 December 2017 | 4:30 PM AEDT  
.....  
Date

## General Terms and Conditions

### 1. Definitions & Interpretation

#### 1.1 In this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to this Agreement includes an Annexure or Schedule to this Agreement;
- (c) a word or expression in the singular include the plural, and the other way around;
- (d) words importing a gender include any gender;
- (e) a reference to a party to this or any other agreement includes that party's successors and permitted assigns;
- (f) a reference to a person or words denoting a person includes a company, statutory corporation, partnership, joint venture, association, board, government or semi-government agency or authority and that person's successors and legal personal representative;
- (g) a reference to dollars or \$ is a reference to Australian dollars; and
- (h) if there is any inconsistency between the Schedules, Annexures and the General Terms and Conditions, the documents will take the following order of precedence: Contract Details, the General Terms and Conditions, the Lease Schedules, other Schedules.

#### 1.2 Unless the context otherwise requires, where commencing with a capital letter, the following words and expressions have the following meanings in this Agreement:

**ABC** means the Australian Broadcasting Corporation.

**Business Day** means a day that is not a Saturday, Sunday or a gazetted public holiday in New South Wales, Australia.

**Confidential Information** means:

- (a) information that is by its nature confidential; and
  - (b) information (if any) designated as confidential in Schedule 1 of this Contract; or
  - (c) information a party knows or ought to know is confidential,
- but does not include:
- (d) information which is or becomes public knowledge other than by breach of the Contract or other unlawful means;
  - (e) information already in the possession of a party with no restriction on its disclosure at the earlier of the time it is received from the other party or execution of the Contract; or
  - (f) information developed or acquired by a party independently of the Contract.

**Completion Date** means the date on which the Company pays to the ABC the final Fee instalment (as set out in Schedule 1) which must occur on or before 5 September 2018, unless otherwise agreed.

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

**Equipment** means the equipment included in the SD OB Van specified in **Schedule 2**.

**Equipment Hire Agreement** means the equipment hire agreement dated 2 May 2016 between the ABC and the Company for the licensing of OB Vans No. 4 & 5 respectively.

## General Terms and Conditions

**Fee** means the fee payable by the Company for the purchase of the Equipment as set out in the **Contract Details**.

**Proportionate Liability Legislation** means the Civil Liability Act 2002 (NSW) Part 4 and any laws having similar effect in the Commonwealth and other States or Territories of Australia or the applicable Territory.

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

**Related Body Corporate** has the meaning it has in the Corporations Act.

### 2. ABC's responsibilities

2.1 ABC agrees to sell to the Company the Equipment as set out in Schedule 2.

2.2 The Company acknowledges and agrees that:

- (a) ABC remains the owner of the Equipment until receipt of the Fee in full;
- (b) the Equipment is provided as is and the ABC makes no warranties or representations of any kind and to the full extent permitted by law expressly disclaims all warranties, whether express, implied or statutory, including, but not limited to any warranties or guarantees that the Equipment:
  - (i) is fit for a particular purpose;
  - (ii) will meet the Company's requirements;
  - (iii) is of acceptable quality;
  - (iv) is lasting;
  - (v) has no faults;
  - (vi) will operate uninterrupted, reliably, safely or in compliance with applicable laws
  - (vii) is weather proof;
  - (viii) looks acceptable;
  - (ix) does all the things normally expected of such Equipment;
  - (x) has been accurately described;
  - (xi) matches any sample or demonstration model;
  - (xii) has spare parts and repair facilities reasonably available for a reasonable period of time;
- (c) risk in the Equipment passes to the Company immediately upon collection of the keys to the Equipment from the ABC.
- (d) the ABC is not liable for any costs or expenses directly or indirectly relating to the Equipment after the Effective Date;

### 3. Company's Obligations

3.1 Company agrees to pay to the ABC the Fee on the terms set out in clause 4.

3.2 With regards to the SD2 vehicle only, the Company must at all times up to the Completion Date:

- (a) ensure that it complies with any additional company obligations set out in Schedule 2;
- (b) transport, use, store and maintain SD2 at its own expense and risk;
- (c) keep SD2 clean and tidy and in good working order at all times;
- (d) keep SD2 in good appearance and in good repair and condition, fair wear and tear excepted;
- (e) report any damage to SD2 to the ABC immediately after the damage occurs;
- (f) immediately make good any damage to SD2 to the reasonable satisfaction of ABC, at the cost of the Company;

## General Terms and Conditions

- (g) immediately make good any damage caused to third party property by the Company or the Company's employees or contractors in association with the Company's use of SD2;
  - (h) comply with all rules, regulations, directions and, any applicable laws, including work health and safety laws in connection with SD2 and any goods or services in connection with SD2;
  - (i) [intentionally deleted];
  - (j) [intentionally deleted]; and
  - (k) make good SD2 to the reasonable satisfaction of ABC, at the cost of the Company, including ensuring SD2 is in good appearance and in good repair and condition, fair wear and tear excepted.
- 3.3 The Company must remove all ABC livery from the Equipment before use, including removing all ABC signage, logos and trade marks (exterior and interior). The Company must provide the ABC with photos evidencing such removal and allow the ABC to inspect the vehicle to verify such removal. The Company acknowledges and agrees it is prohibited from using the ABC's trade marks in any manner. The Company must not carry on any business or service under a name incorporating any ABC trade mark, logo or any similar trade mark. The Company agrees not to apply to register a trade mark the same as or similar any ABC trade mark in any jurisdiction.

### 4. Payment

- 4.1 The Company must pay the Fee set out in **Schedule 1** in accordance with the payment schedule, subject to the issue of an applicable tax invoice by the ABC.
- 4.2 The Fee does not include taxes, duties and other statutory charges (including without limitation stamp duty) that may be imposed in relation to this Agreement or the supply of goods or services under this Agreement. All taxes are payable by the Company and if paid by the ABC must be reimbursed on demand.
- 4.3 If any amount payable by the Company to the ABC is not paid within 14 days of the due date then in addition to the ABC's other rights under this Agreement:
- (a) all money that the Company owes the ABC on any account becomes immediately payable despite any previously agreed credit conditions. If the Company fails to pay all monies owing as required by this clause 4.3 (a) the ABC has the right to take possession of the Equipment;
  - (b) the ABC may suspend supply or cancel any outstanding orders the ABC has accepted from the Company; and
  - (c) the ABC may charge the Company interest on any amount outstanding, commencing on the day after the due date for payment and ending on the date when payment is received by the ABC. The interest rate charged to the Company is to be calculated by adding a margin of three percent per annum to the cash target rate specified by the Reserve Bank of Australia on each day that the payment is due. Interest will be calculated daily and payable on demand.

### 5. GST

- 5.1 Expressions used in this clause have the same meaning given to those expressions in the Australian *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the "GST Law").
- 5.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- 5.3 Subject to clause 5.4, if GST is imposed on any Taxable Supply made under or in connection with this Agreement (a "GST Amount"), the recipient must pay to the supplier the GST Amount in addition to and (unless otherwise agreed) at the same time as payment for the Taxable Supply is required to be made under this Agreement.

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5.4 Unless otherwise agreed, the recipient of a Taxable Supply will have no obligation to make any payment in respect of that Taxable Supply until 7 days after the supplier has provided the recipient with a valid Tax Invoice for that Taxable Supply.

5.5 Where appropriate, the parties will enter an agreement to enable the recipient to issue Recipient Created Tax Invoices in accordance with the GST Law.

6. [intentionally deleted]

### 7. Insurance

7.1 The Company must within seven (7) days from the date of this Agreement effect and maintain the following insurances (collectively, the **Insurances**) at its own cost and expense:

- (a) workers' compensation insurance as required by law;
- (b) public liability insurance;
- (c) comprehensive vehicle insurance in relation to the Equipment for its full replacement value as well as personal injury insurance covering injury caused to any person during the operation of the Equipment, in each case:
  - (i) for amounts not less than the amounts specified in Schedule 1.
  - (ii) in the name of the Company with the ABC named as an additional insured; and
  - (iii) which cover:
    - (A) the respective rights and interests; and
    - (B) liabilities to third parties

of the ABC, the Company and any persons using or connected to the Equipment in any way, arising directly or indirectly out of or in connection with the Equipment.

7.2 Upon entering this Agreement, upon renewal of each insurance policy and whenever requested in writing by the ABC, the Company will provide the ABC with certificates of currency in respect of each insurance policy and a copy of any required insurance policy or other evidence of insurance cover, to the satisfaction of the ABC, including details of the insurance companies, the policy number, the term of the policy, the type of insurance deductibles, excesses, material exclusions and limitations of indemnity.

7.3 The Insurances must be with an insurer authorised to carry on business under the Insurance Act 1970 (Cth) or equivalent law applicable in the Territory;

7.4 The Company must maintain each of the Insurances until the Completion Date.

7.5 The excess payable in relation to the Insurances must not exceed the amounts specified in **Schedule 1**.

7.6 Any Insurances required to be effected in joint names must include a cross liability clause in which the insurer agrees:

- (a) to waive all rights of subrogation or action against any of the entities constituting the insured; and
- (b) to act as though separate contracts of insurance have been issued in respect of each entity constituting the insured (subject always to the overall sum insured not being increased).

7.7 The Company must not do anything which might provide grounds for an insurer to refuse payment of any claim made under any policy required to be maintained under this clause.

7.8 The Company must not use or transport the Equipment unless the insurance policies required under are held by it and are current.

7.9 The Company must ensure that all sub-contractors engaged and uses of the Equipment from time to time effect appropriate relevant insurances as required by law and as reasonably appropriate for their use of the Equipment.

7.10 This clause survives termination or expiry of this Agreement.

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### 8. Company warranties

8.1 The Company warrants to the ABC that:

- (a) it has the right to enter into and perform this Agreement;
- (b) the Company's details set out in Contract Details are complete and correct;
- (c) it will comply with its duties and obligations under this Agreement and all applicable laws standards, rules and regulations (including without limitation, in Australia, in transit and in the Territory) in connection with the Equipment;
- (d) in selecting the Equipment, the Company has relied on its own skill or judgement as to its attributes and suitability of the Equipment for its purpose and has not relied on any representations made by the ABC or on the ABC's behalf; and
- (e) it will be solely responsible for all costs in connection with the use and operation of the Equipment during the Term including any applicable software licences.

### 9. Personal Property Securities Act

9.1 Words or phrases used in this clause 9 which are not defined in this Agreement but are defined in the PPSA have the meaning given to them in the PPSA

9.2 This clause applies only to the extent the ABC has a "security interest" in SD2 for the purposes of the *Personal Property Securities Act 2009* (Cth) (the "**PPSA**").

9.3 The ABC may do anything it reasonably considers necessary including but not limited to registering its interest in the SD2 on the Personal Property Securities Register in order to perfect the security interest and comply with the requirements of the PPSA. The Company waives the PPSA's requirements to give notice of any registration event. The Company releases the ABC in respect of any claim arising from registration of its interest in SD2, even if the ABC's interest is found not to be a 'security interest'.

At any time prior to the Completion Date the Company must:

- (a) at ABC's reasonable request, promptly execute any documents and do anything required to ensure that
  - (i) any security interest created under this Agreement is enforceable;
  - (ii) ABC's priority position is preserved or secured; and
  - (iii) any defect in the security interest, including its registration, is overcome;
- (b) not without ABC's prior written consent, sell, assign, lease, dispose of, create a security interest in, mortgage or part with possession of SD2 or any interest in it (or purport or attempt to purport to do so) or permit any lien over the Equipment;
- (c) not change its name, address or contact details without providing ABC with prior written notice; and
- (d) not register a financing change statement or a change demand without ABC's prior written consent.

9.4 To the extent that the PPSA permits, the Company waives its rights:

- (a) to receive a copy of any verification statement or financing change statement or a statement of account on sale of SD2;
- (b) to receive any notice required under the PPSA, including a notice that ABC intends to sell SD2 or to retain SD2 on enforcement of the security interest granted to ABC;
- (c) to object to a proposal by ABC to retain SD2 in satisfaction of any obligation owed by the Company to ABC;
- (d) to receive a statement of account if there is no disposal under s130(4); and under sections 95, 118, 121(4), 125, 128, 129, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA to the extent the law permits them to be excluded.



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9.5 On the date the ABC receives full payment of the Fee in relation to SD2 and related Equipment of § 47(1)(b), § 47E(d) from the Company:

- (a) if the ABC has registered a security interest in SD2 on the Personal Property Securities Register it undertakes to withdraw that registration within 7 days of the date referred to herein; and
- (b) this clause 9 will expire and cease to have any further effect.

## 10. Liability & indemnity

### 10.1 Indemnity to the ABC

The Company hereby releases and indemnifies the ABC from and against any and all liability (including, to the extent permitted by law, liability for statutory fines or penalties), costs, losses, claims, proceedings brought or threatened, damages and other expenses and charges (including reasonable legal fees) which it may suffer or incur in connection with:

- (a) any breach of this Agreement (including any warranty), or act or omission in connection with this Agreement or the Equipment, by or on behalf of the Company;
- (b) any breach of a statutory obligation or any unlawful, negligent or wilfully wrongful act or omission by or on behalf of the Company or any breach of the ABC's statutory obligations wholly or substantially caused by the Company;
- (c) any matter that relates to personal injury, death or property damage in connection with the Equipment (including without limitation any goods or services provided in or using the Equipment) on or before the Completion Date; and
- (d) any transportation, storage, operation or use or disposal of the Equipment (including without limitation any goods or services provided in or using the Equipment, any registration/roadworthiness requirements, licences, taxes and fines).

The Company must, at the ABC's request, defend at the Company's expense, any action against the ABC which is the subject of an indemnity under the Agreement.

10.2 To the extent permitted by law, the Proportionate Liability Legislation is excluded and does not apply to any claim, allegation or cause of action which arises from or relates to the Agreement that is asserted by a person against another person, and if successful would entitle the first person to a remedy.

10.3 The Company acknowledges and agrees it is liable for any use of the Equipment and/or breach of this Agreement by the Company or the Company's employees, servants or agents.

10.4 The right of the party to be indemnified under this clause 10 is in addition to, and not exclusive of, any other right, power or remedy provided by law.

10.5 This clause 10 survives termination or expiry of this Agreement

## 11. Dispute resolution

11.1 If a dispute arises from this Agreement, a party to the Agreement must not commence court or arbitration proceedings relating to the dispute unless that party has participated in a mediation in accordance with this clause 11.

11.2 This clause 11 does not apply to an application for urgent interlocutory relief.

11.3 A party to this Agreement claiming that a dispute has arisen from or related to the Agreement ("**Dispute**") must give written notice specifying the nature of the Dispute ("**Dispute Notice**") to the other

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- party to the Agreement. The parties must then participate in mediation in accordance with this clause 11.
- 11.4 If the parties do not agree, within seven days of receipt of the Dispute Notice (or within a longer period agreed to, in writing, by the parties) on:
- (a) the procedures to be adopted in a mediation of the Dispute; and
  - (b) the timetable for all the steps in those procedures; and
  - (c) the identity and fees of the mediator;
- then:
- (d) the President of The Law Society of New South Wales will appoint the mediator and determine the mediator's fees and determine the proportion of those fees to be paid by each party (to be in equal shares unless otherwise agreed by the parties);
  - (e) the parties must mediate the Dispute:
    - (i) with the mediator appointed under paragraph (d);
    - (ii) with a genuine commitment to participate; and
    - (iii) in accordance with the Mediation Guidelines of The Law Society of New South Wales.
- 11.5 If a party commences proceedings relating to the Dispute other than for urgent interlocutory relief, that party must consent to orders under section 26 of the Civil Procedure Act 2005 that the proceedings relating to the Dispute be referred to mediation by a mediator.
- 11.6 If the parties do not agree on a mediator within seven days of the order referred to in paragraph 11.5, the mediator appointed by the President of the Law Society of New South Wales will be deemed to have been appointed by the Court.
- 11.7 If a party:
- (a) refuses to participate in a mediation of the Dispute to which it earlier agreed; or
  - (b) refuses to comply with clause 11.4(e), a notice having been served in accordance with clause 11.3; then
    - (i) that party is not entitled to recover its costs in any court proceedings or arbitration relating to the Dispute, even if that party is successful; and
    - (ii) that party is deemed to have consented to a decree of the Supreme Court of New South Wales that it will specifically perform and carry into execution clause 11.4(e).

## 12. Termination

- 12.1 The ABC may terminate this Agreement immediately by a written notice if the Company breaches this Agreement in a material way and (if the breach is capable of remedy) fails to remedy it within 14 days after receipt of a written notice to do so. The notice must give particulars of the breach. A breach is considered capable of remedy if it can be remedied in all respects other than as to the original time of performance (if time for performance is not essential).
- 12.2 The Company is deemed to breach this Agreement in a material way (in addition to any other material way it might do so) if:
- (a) it suspends payment of its debts or is insolvent;
  - (b) a receiver or a manager or a receiver and manager is appointed for the whole or part of the party's undertaking or assets;
  - (c) an encumbrancer takes possession of the whole or part of the party's undertaking or assets or appoints an agent to exercise its rights;
  - (d) the party is subject to an administration order or makes any voluntary arrangement with its creditors;
  - (e) the party goes into liquidation (except for an amalgamation or reconstruction where the new company takes over the party's responsibilities); or
  - (f) the party ceases to carry on business.
- 12.3 No waiver by either party of a provision or breach of this Agreement operates as a waiver of any other provision or breach unless in writing and signed by the party against whom it is sought to be enforced.

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- 12.4 The rights to terminate in this clause 12 do not prejudice any other right or remedy of the ABC in respect of any breach.
- 12.5 Termination does not affect any accrued rights or liabilities of either party nor does it affect any provision which is expressly or by implication intended to operate after termination.

### **13. Consequences upon Completion Date**

- 13.1 Provided the ABC is in receipt of the full Fee, it will within seven (7) days of the Completion Date or as otherwise agreed:
- (a) complete and sign the seller's section of the *Application of Transfer of registration* form as provided by the Company; and
  - (b) provide the original Transfer form to the Company.
- 13.2 The Company will send through to the ABC the vendor's copy of the *Application of transfer of registration* form as processed by VicRoads within 5 days of receipt of same.

### **14. Confidential Information**

- 14.1 A Receiving Party will not use Confidential Information except for the purposes of enabling a party to comply with its obligations, enjoy its benefits or exercise its rights under this Agreement.
- 14.2 A Receiving Party will not disclose Confidential Information to any person except:
- (a) to its Representatives requiring the Confidential Information for the Approved Purpose;
  - (b) with the written consent of the Disclosing Party, which consent may be given or withheld in its absolute discretion;
  - (c) if and to the extent required to do so by Law, or requested to do so by any stock exchange, judicial body, parliamentary body or government agency;
  - (d) if and to the extent required in connection with legal proceedings relating to this Agreement; or
  - (e) to its financial, corporate or legal advisers strictly in confidence for the purpose of obtaining advice.
- 14.3 Before a Receiving Party discloses any Confidential Information under Clause 14.2(c) or Clause 14.2(d) it will provide the Disclosing Party with:
- (a) sufficient notice to enable the Disclosing Party to seek a protective order or other remedy; and
  - (b) assistance and cooperation which the Disclosing Party reasonably considers necessary to prevent or minimise the disclosure of the Confidential Information.
- 14.4 Ensuring equivalent protection
- (a) A Receiving Party disclosing Confidential Information under Clause 14.2 will use all reasonable endeavours to ensure that a Person receiving Confidential Information from it does not use or disclose the Confidential Information except as permitted in Clause 14.2.
  - (b) The Contractor will ensure that every Person performing work on its behalf under or in relation to this Agreement complies with this Clause 14.
- 14.5 Neither party will disclose to the media any information regarding the Agreement or Equipment without the written consent of the other party.
- 14.6 A Receiving Party must, on the request of the Disclosing Party or at termination or expiry of the Agreement, immediately deliver to the Disclosing Party all documents or other materials containing or

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referring to Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under Clause 14.2.

14.7 This Clause 14 survives the termination or expiry of this Agreement.

### 15. Notice

15.1 All notices or other communication given under this Agreement must be in writing and directed to the recipient specified for notice in Contract Details, as varied by any notice, and marked for the attention of the recipient's contact person. A notice or other communication is properly given if it is:

- (a) delivered by hand;
- (b) sent by ordinary or registered post; or
- (c) transmitted by electronic mail to the address of the intended recipient stated in Contract Details (or such other address that the recipient has notified the sender in writing), and will be taken to have been received by the recipient:
- (d) in the case of hand delivery, on the date of delivery;
- (e) in the case of registered post, 48 hours after being sent by registered post, or in the case of ordinary post, 4 days after the day of posting; or
- (f) in the case of an email sent:
  - (i) before 5pm on a Business Day, on the date of transmission; or
  - (ii) sent after 5pm on a Business Day or at any time on a day other than a Business Day, on the commencement of the next Business Dayprovided that an "out of office" email is not issued from the recipient's email account to the sender.

### 16. Miscellaneous

- 16.1 No waiver by a party of any breach of any of the provisions of this Agreement will be construed as a waiver of any preceding or succeeding breach of any provision of the Agreement.
- 16.2 This Agreement is the entire agreement between the parties and supersedes any prior or contemporaneous agreement, oral or in writing. There are no promises, terms, conditions or obligations, oral or written, expressed or implied other than those contained in this Agreement.
- 16.3 This Agreement may only be amended in writing signed by the parties.
- 16.4 If any provision of this Agreement is determined by any statute or court having jurisdiction to be illegal, invalid, void or voidable that provision will be deemed to be deleted to the same extent and effect as if it was never incorporated, and the remainder of this Agreement will continue in full force and effect.
- 16.5 The Company may not assign or novate this Agreement, or any part of it, or any rights or obligations under it without ABC's prior written consent which may be provided or withheld in ABC's absolute discretion.
- 16.6 This Agreement will be binding upon and will continue for the benefit of the parties, and their respective successors (including but without limitation, in the case of natural persons, their legal personal representatives) and permitted assigns.
- 16.7 Nothing in this Agreement will be construed as constituting a partnership, joint venture, employment or agency relationship between the parties.
- 16.8 This Agreement is governed by the laws of the State of New South Wales, Australia and the parties agree to submit to the non-exclusive jurisdiction of courts of that State.
- 16.9 Each party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement.

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- 16.10 No provision of this Agreement may be construed adversely to a party on the ground that such party was responsible for the preparation of this Agreement or that provision.
- 16.11 This Agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument. The parties acknowledge and agree that signature by electronic communication will constitute both writing and signing of this Agreement and the date of the Agreement will be the date on which it is executed by the last party.
- 16.12 The Company acknowledges that this Agreement is not binding on the ABC unless this Agreement is executed on behalf of the ABC by an ABC employee who holds the appropriate delegated power to execute this Agreement on behalf of the ABC pursuant to the ABC Delegations Policy.













