Expression of Interest Brief
Melbourne Metropolitan Tram (MR3 014) and Train (MR3 015) Franchises
Message from the Minister for Public Transport

This request for expressions of interest marks the beginning of the competitive tender announced by the Victorian Government in August 2007 for the operation of Melbourne’s tram and train networks. The tender is an important part of the Government’s plan to improve public transport services across metropolitan Melbourne.

Melbourne is one of the world’s best cities to live and work in and Victoria’s economy is growing strongly. With a reputation for the arts, culture and great sporting events, Melbourne’s population is growing as are the demands placed upon its public transport system.

The demand for safe, reliable and efficient public transport for Melbourne has never been stronger and wherever Melburnians live or work, they must have access to the best public transport that can be delivered.

The Government requires operators to improve the day-to-day operations of the tram and train networks and to meet the challenges facing public transport, especially with respect to delivering infrastructure capacity improvements. The Government has committed AUD$10.5 billion for transport infrastructure, through Meeting Our Transport Challenges, including approximately AUD$7 billion to improve capacity on the public transport network.

As the Government embarks on implementing major infrastructure projects, Melbourne’s tram and train networks must continue to run smoothly and efficiently. It is important for the Government to partner with the best operators to deliver these requirements.

The challenges surrounding Melbourne’s public transport network present tremendous opportunities for operators to contribute their experience and expertise. In partnering with the Victorian Government for the long term, operators will have the opportunity to shape Melbourne’s public transport system while sharing in the benefits of their innovation, investments and efforts.

The Government is committed to ensuring that the process undertaken for securing the future operators of Melbourne’s tram and train network is transparent and competitive, results in a sustainable outcome for all parties and promotes the delivery of the best services possible for public transport users.

The Hon. Lynne Kosky, MP
Minister for Public Transport
Important Notice

The Department of Transport (‘DOT’) has prepared this Expression of Interest (‘EOI’) Brief. The Brief provides information on the Franchises. Whilst DOT has taken care in the preparation of the information contained herein and believes it to be accurate, neither the State nor the State’s Associates gives any warranty or makes any representations, expressed or implied, as to the completeness or accuracy of the information contained in this document or any information which may be provided in connection with it.

The information in this EOI Brief is not intended to be exhaustive. The Recipient is required to make its own independent review, investigations and analyses of the Franchises. The Respondent will be required to confirm in writing that it has done so, and that it has not relied upon the information in this EOI Brief in submitting its EOI Response. The information in this EOI Brief is provided on the basis that it is not binding upon the State or the State’s Associates.

The State reserves the right without assigning any reasons, at any time, to:

- terminate further participation in the Transaction Process by any party or decline to discuss the Project further with any party;
- not shortlist any Respondent;
- not proceed with the Transaction Process or the Project;
- terminate the Transaction Process or alter any aspect of the Transaction Process including, without limitation, the objectives, evaluation process, the evaluation criteria, timetable or any proposed contractual arrangements; and /or
- cancel, vary, supplement or supersede this EOI Brief or any matter set out in it.

Under no circumstances will the State reimburse any charges, costs, expenses or fees that may be incurred by any Recipient in relation to reviewing and/or investigating this EOI Brief, irrespective of whether the Recipient elects to submit an EOI Response or not.

The Recipient should review the terms and conditions set out in this EOI Brief.
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## Glossary

The following terms have been used within this document and singular includes the plural and conversely, if a word or phrase is defined its other grammatical forms have a corresponding meaning.

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidentiality Deed</td>
<td>The confidentiality deed, executed by the Recipient prior to receiving this EOI Brief</td>
</tr>
<tr>
<td>Current Franchisees</td>
<td>Metrolink Victoria Pty Ltd (known as Yarra Trams) for the tram Franchise and Connex Melbourne Pty Ltd (known as Connex) for the train Franchise</td>
</tr>
<tr>
<td>DOI</td>
<td>Department of Infrastructure – renamed Department of Transport from 30th April 2008</td>
</tr>
<tr>
<td>DOT</td>
<td>Department of Transport – formerly known as Department of Infrastructure up to 30th April 2008</td>
</tr>
<tr>
<td>EOI Brief</td>
<td>This brief inviting EOI Responses, including Appendices, Schedules and Attachments</td>
</tr>
<tr>
<td>EOI Process</td>
<td>The process from the advertisement seeking expressions of interest to the announcement of the Shortlist of Respondents</td>
</tr>
<tr>
<td>EOI Response</td>
<td>The expression of interest in the relevant Franchise submitted by a Respondent in accordance with the requirements of this EOI Brief</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td>The document described in Section 4.2 of Appendix B</td>
</tr>
<tr>
<td>Franchisee</td>
<td>The party responsible for operating a Franchise</td>
</tr>
<tr>
<td>Franchises</td>
<td>Contracts with the State for operation of the tram and train networks which involves passenger service delivery, infrastructure maintenance, and rolling stock maintenance</td>
</tr>
<tr>
<td>Government Information</td>
<td>Information contained in this EOI Brief or any information which may be provided in association with it, including estimates, predictions or the assumptions upon which they may be based</td>
</tr>
<tr>
<td>Infrastructure Lease</td>
<td>The document described in Section 4.2 of Appendix B</td>
</tr>
<tr>
<td>ITT Documentation</td>
<td>The documentation for each of the new Franchises issued to Shortlisted Respondents which may include:</td>
</tr>
<tr>
<td></td>
<td>• general information and instructions;</td>
</tr>
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<td></td>
<td>• operational and technical specifications;</td>
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<td>• a commercial framework summary;</td>
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<td>• an information memorandum;</td>
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<td>• the evaluation criteria and response schedules;</td>
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<td>• due diligence information; and</td>
</tr>
<tr>
<td></td>
<td>• the draft Transaction Documents</td>
</tr>
<tr>
<td>ITT Process</td>
<td>The process from release of the ITT Documentation to Shortlisted Respondents, up to execution of the Transaction Documents for the relevant Franchise</td>
</tr>
<tr>
<td>ITT Response</td>
<td>The document submitted in response to the ITT Documentation, being a fully priced binding offer to undertake the relevant Franchise</td>
</tr>
<tr>
<td>Personal Information</td>
<td>As defined under the Privacy Act 1988</td>
</tr>
<tr>
<td>Project</td>
<td>Melbourne’s metropolitan rail franchising (‘MR3’) project, being the competitive re-tendering of Melbourne’s train and tram franchises</td>
</tr>
<tr>
<td>Recipient</td>
<td>Any person who receives a copy of this EOI Brief having executed and returned to the State the Confidentiality Deed</td>
</tr>
<tr>
<td>Related Party</td>
<td>Has the meaning given to the expression ‘related entity’ by section 9 and the meaning given to the expression ‘related body corporate’ by section 50 of the Corporations Act 2001 and includes any Associate (as defined by sections 10 to 17 of the Corporations Act 2001) of a person</td>
</tr>
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## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respondent</td>
<td>Any party or parties that respond to this EOI Brief in accordance with the requirements of this document</td>
</tr>
<tr>
<td>Respondent’s Associates</td>
<td>A Respondent, its consortium members (if applicable), its Related Parties and its respective officers, employees, agents and advisers</td>
</tr>
<tr>
<td>Shortlist</td>
<td>The list of those Respondents who will be invited to submit an ITT Response for a particular Franchise</td>
</tr>
<tr>
<td>Shortlisted Respondents</td>
<td>Those Respondents that are invited by the State to submit an ITT Response for a particular Franchise</td>
</tr>
<tr>
<td>State</td>
<td>The State of Victoria</td>
</tr>
<tr>
<td>State’s Associates</td>
<td>A department, agency or regulatory authority of the State or an officer, employee, agent, contractor, adviser or consultant of any of them</td>
</tr>
<tr>
<td>Transaction Documents</td>
<td>The contractual documents for the new Franchises to be entered into by the Franchisees</td>
</tr>
<tr>
<td>Transaction Process</td>
<td>The process from the commencement of this EOI Process to the execution of the Transaction Documents and transition to the commencement of the new Franchises</td>
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</tbody>
</table>
Introduction
1 Introduction

1.1 The Opportunity

The Department of Transport (‘DOT’), on behalf of the State, is undertaking the competitive re-tendering of Melbourne’s metropolitan tram franchise and, separately, Melbourne’s metropolitan train franchise. This Project represents the most significant opportunities for public transport operators in Australia.

Melbourne has well-established tram, train and bus networks. All transport modes are experiencing strong patronage growth and this is expected to continue as the State is committed to investing in infrastructure and services to ensure that Melbourne retains its world class public transport system.

The tram and train networks are franchised as separate businesses. The franchise model has been in place since 1999 and the State will be retaining this model as it considers that this is the best way to partner with the private sector.

The State is looking to the expertise and experience of qualified operators to deliver innovative and cost effective approaches to identified challenges facing Melbourne’s tram and train networks.

The State is offering Franchises with a duration of up to 15 years for Franchisees who develop a strong partnership with the State and demonstrate value for money in service delivery, asset maintenance and network development.

1.2 Purpose of this EOI Brief

The purpose of this EOI Brief is to seek EOI Responses from operators who have the capacity, capability and commitment to successfully operate the new Franchises.

The EOI Brief sets out the State’s expectations for EOI Responses, including the criteria by which they will be evaluated. Each EOI Response will need to:

- establish the safety and financial credentials of the Respondent;
- demonstrate that the Respondent understands the challenges and opportunities presented by the Melbourne environment for either the tram or train operations;
• clearly and concisely announce the Respondent’s vision, philosophy and approach to address those challenges and opportunities; and

• demonstrate how the Respondent can translate their experience, skills and capability to the Melbourne context in support of their vision, philosophy and approach.

An EOI Response needs to clearly set out the Respondent’s plans and intentions if they were to be ultimately successful. From the responses, the State will formulate a Shortlist of Respondents to be invited to submit a detailed response to an Invitation to Tender (ITT). This is a competitive process and the State will only be Shortlisting Respondents who submit the best EOI Responses.

To assist Respondents in the preparation of their EOI Response, this EOI Brief sets out the details of the Transaction Process. The EOI Brief also contains information in the form of:

• Appendix A – Melbourne and its Public Transport Network – which provides information regarding the operating environment for the Franchises and background information about Melbourne and Victoria; and

• Appendix B – Statutory and Contractual Framework – which sets out a high level overview of the statutory and contractual framework relating to the new Franchises.

1.3 Descriptions of the Franchises

1.3.1 Nature of the Franchises

Melbourne’s metropolitan tram and train networks are the largest privately operated public transport systems in Australia. The tram and train networks are vertically integrated, in that each Franchisee is responsible for:

• passenger service delivery;

• infrastructure maintenance; and

• rolling stock maintenance.

The State considers that the Franchises are best managed as vertically integrated operations so that maintenance activities better support overall safety, service delivery and performance requirements.

There are separate Franchises for the tram and train networks. The tram Franchise is currently operated by Metrolink Victoria Pty Ltd (trading as Yarra Trams) and the train Franchise is currently operated by Connex Melbourne Pty Ltd (trading as Connex).

The Franchises do not include the operation of metropolitan and regional bus services or regional rail services. Some features of the Franchises are outlined briefly below and are described in further detail throughout this EOI Brief.
1.3.2 Features of the Franchises

Melbourne's tram network is one of the world's largest. Melbourne's train network is the second largest metropolitan train network in Australia. Particular characteristics of the networks are: (refer above table 1.1)

The tram network also provides free City Circle trams offering tourists and locals a convenient loop service around the Melbourne central business district and the Docklands precinct.

1.3.3 Common areas of the Franchises

The Franchises are separate businesses; however they share certain features including:

- central revenue collection and distribution arrangements;

- shared ownership of Metlink, an independent body with a board containing representatives from the industry and responsible for network wide functions such as marketing, passenger information, complaints handling, coordination of revenue protection and market intelligence; and

- common Franchise conditions, including:

  - incentive mechanisms relating to performance in service delivery, infrastructure maintenance and customer experience;

  - participation in network development activities and in some cases, responsibility for procurement and project delivery; and

  - allocation of certain responsibilities between the State and the Franchisees.

1.4 The State's Requirements

1.4.1 Safety of the Network

The State's primary requirement of Franchisees is their ability to implement a progressive safety regime reinforced by a culture of continuous safety improvement. The State's commitment to ensuring a safe operational environment on the tram and train networks is demonstrated through the operation of the Rail Safety Act 2006 (Victoria) (‘Rail Safety Act’).

Safety is the fundamental principle underpinning the objectives described below.
1.4.2 State’s Public Transport Objectives

The Franchises are operated as part of a multi-modal, coordinated and integrated public transport network. The State is ultimately responsible for providing public transport for Melbourne and the Franchises must support the State’s objectives for a public transport system that is:

- safe and secure – providing for the safe and secure movement of public transport users, public transport staff and other members of the public;
- integrated and coordinated – with excellent integration and coordination between all agencies on matters such as planning, land use and projects;
- efficient and reliable;
- capable of supporting major project delivery;
- equitable and accessible – remembering the needs of mass transit, social transit and interconnection; and
- environmentally sensitive – reducing environmental impacts and emissions.

1.4.3 State’s Expectation of the New Franchisees

Franchisees will be expected to provide value for money to the State by delivering the best day-to-day services possible and working with the State to develop the network to serve the current and future needs of the Melbourne community.

The State has high expectations for the new Franchisees. The Respondents who are ultimately successful will have put forward propositions that best meet the State’s expectations in the areas of:

- service delivery which is safe, reliable, punctual, clean and convenient as part of an integrated multimodal transport network;
- developing productive long-term relationships between the State, Franchisees, employees and other public transport stakeholders;
- promoting financial and operational sustainability;
- offering cost efficiency in service delivery;
- delivering major projects within the constraints and requirements of an operating transport network;
- effectively and efficiently maintaining rolling stock and infrastructure; and
- customer satisfaction while increasing patronage growth.
Governance and the Transaction Process
2 Governance and the Transaction Process

2.1 Purpose

The Purpose of this section of the EOI Brief is to:

• explain the probity framework for the Project;
• explain the governance structure of the Project;
• set out the details of the transaction process, including timelines; and
• explain certain key governing principles for the Project.

2.2 Probity

The State has appointed Deloitte to act as the Probity Auditor for the Transaction Process. The Probity Auditor will be directly accountable to the Secretary of DOT. The role of the Probity Auditor is to monitor procedural integrity (probity) and provide assurance throughout all phases of the Transaction Process. The Probity Auditor may attend and observe throughout the evaluation process and will report to the Secretary of DOT on the conduct of the process at its conclusion.

A Recipient or Respondent must immediately advise the Probity Auditor (whose contact details are set out below) of any concerns about the probity or integrity of the EOI Process, so that the matter may be considered and remedied where appropriate. The Recipient or Respondent must set out the issues in question and how they impact on the Recipient’s or Respondent’s interests, any relevant background information and the outcome they desire. Because any delay in notifying the Probity Auditor may prejudice the rights of other Recipients or Respondents, the Recipient or Respondent agrees that unreasonable delay in notification of any concerns precludes the Recipient or Respondent taking action, legal or otherwise, based upon those concerns.

The contact details for the Probity Auditors are as follows:

Mr Rory O’Connor
Deloitte
Telephone:+61 (0) 2 9322 7627
roroconnor@deloitte.com.au

or

Ms Leena Pradhan
Deloitte
Telephone:+61 (0) 437 592 656
lpradhan@deloitte.com.au
2.3 Project Governance

The Minister for Public Transport is the lead Minister for the Project. DOT, reporting to the Minister, is the Project Sponsor.

The Project team reports to a steering committee chaired by the Director of Public Transport, the statutory officer within DOT responsible for public transport services across Victoria.

The Project Director of the Project team is Mr Ross Alexander, Deputy Director of Public Transport – Commercial, DOT. The Project team includes representatives from DOT, DTF and the following specialist advisers: (refer above Table 2.1)

2.3.1 Project Stakeholders

There are a number of key stakeholders in the Project, reflecting the many areas of the community affected by and involved in public transport.

The Project team will be consulting with these stakeholders and will be considering their interests throughout the Project. These stakeholders include:

- the public, particularly the users of Melbourne’s public transport network;
- employees of the incumbent operators;
- relevant unions, including the Rail Tram and Bus Union and the Electrical Trades Union;
- Members of Parliament;
- Department of Premier and Cabinet (‘DPC’);
- Department of Treasury and Finance (‘DTF’);
- other divisions within DOT including Infrastructure Projects, Policy and Intergovernmental Relations and Integrated Transport Planning.
- Public Transport Safety Victoria;
- Victorian Rail Track (‘VicTrack’); and
- Transport Ticketing Authority (TTA).

<table>
<thead>
<tr>
<th>Area</th>
<th>Adviser</th>
</tr>
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<tbody>
<tr>
<td>Commercial and Financial Advisor</td>
<td>KPMG Corporate Finance</td>
</tr>
<tr>
<td>Commercial Advisor</td>
<td>SAHA International Ltd</td>
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<tr>
<td>Transaction Advisor</td>
<td>The Peron Group Pty Ltd</td>
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<tr>
<td>Legal Advisor</td>
<td>Allens Arthur Robinson</td>
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<tr>
<td>Infrastructure Advisor</td>
<td>Connell Wagner Pty Ltd</td>
</tr>
<tr>
<td>Rolling Stock Advisor</td>
<td>Interfleet Technology Pty Ltd</td>
</tr>
<tr>
<td>Operations Advisor</td>
<td>Transnet Logistics Pty Ltd</td>
</tr>
</tbody>
</table>

Table 2.1
2.4 **Transaction Process**

The Transaction Process will be divided into the following phases as outlined below:

**Phase 1: Expressions of Interest (‘EOI’)**

The Respondent will be assessed based on the evaluation criteria outlined in this EOI Brief. The State expects, but is not obliged to, shortlist approximately three Respondents for each Franchise who will then be invited to proceed to phase 2.

**Phase 2: Invitation to Tender (‘ITT’)**

The ITT Documentation, upon which detailed tender submissions are to be based, will be issued to Shortlisted Respondents. The ITT Documentation issued to Shortlisted Respondents may include:

- general information and instructions;
- operational and technical specifications;
- a commercial framework summary;
- an information memorandum;
- the evaluation criteria and response schedules;
- due diligence information, and
- the draft Transaction Documents.

Phase 2 will require the submission of a fully priced, binding and conforming offer, including a plan for transition, based on the requirements outlined in the ITT Documentation. A comprehensive data room will be established to support this process.

Further details are provided in Section 6 of this EOI Brief.

**Phase 3: ITT Evaluation, Clarification and Contract Finalisation**

The State will evaluate ITT Responses in accordance with the ITT evaluation process. The State may seek to clarify aspects of the ITT Responses. Based on the outcome of the ITT evaluation process and the quality of ITT Responses received, the State intends to proceed to negotiate and finalise the Transaction Documents, however the State reserves all of its rights in relation to the execution of the Transaction Documents.

**Phase 4: Transition**

A transition plan is required to be included in the ITT Response and will be implemented following contract finalisation and leading up to the commencement of each new Franchise.
Table 2.2

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td><strong>Phase 1</strong></td>
<td></td>
</tr>
<tr>
<td>Release EOI Brief</td>
<td>9 May 2008</td>
</tr>
<tr>
<td>Submission of EOI Responses</td>
<td>1 July 2008</td>
</tr>
<tr>
<td>Respondent Presentations (see Section 4.6)</td>
<td>Mid July 2008</td>
</tr>
<tr>
<td>Announce Shortlisted Respondents</td>
<td>August 2008</td>
</tr>
<tr>
<td><strong>Phase 2</strong></td>
<td></td>
</tr>
<tr>
<td>Release ITT Documentation to Shortlisted Respondents</td>
<td>September 2008</td>
</tr>
<tr>
<td>Submission of ITT Responses</td>
<td>First quarter 2009*</td>
</tr>
<tr>
<td><strong>Phase 3</strong></td>
<td></td>
</tr>
<tr>
<td>Execution of Transaction Documents</td>
<td>Mid 2009</td>
</tr>
<tr>
<td><strong>Phase 4</strong></td>
<td></td>
</tr>
<tr>
<td>Transition to new Franchises</td>
<td>To be completed by 30 November 2009</td>
</tr>
</tbody>
</table>

* Note: it is intended ITT Responses for the tram and train Franchises will be staggered by approximately six to eight weeks and the ITT Responses for trams will be required to be submitted first.

2.5 Timetable

The indicative timeframes for the Transaction Process are shown above. (refer above table 2.2)

2.6 Governing Principles

2.6.1 Bidding for Both Tram and Train – Cross Ownership and Service Provision

The State encourages suitably qualified operators to submit EOI Responses for both the tram and train Franchises.

In awarding the new Franchises, the State is unlikely to award both Franchises to a single operator. However, the State will consider allowing one organisation to have both a controlling interest in one Franchise and a minority interest in the other Franchise. Any such proposal would need to demonstrate how it would benefit the State and public transport users and set out appropriate governance arrangements.

2.6.2 Operators and Consortium Structure

The State is seeking responses from operators at the EOI stage and therefore does not require Respondents to form consortia, incorporating infrastructure and/or rolling stock maintainers, as part of an EOI Response. However, the Respondent should describe as part of its EOI Response:

- how it will acquire the balance of the skills and service requirements to deliver the Franchises requirements; and
• its preferred consortium structure including commercial or contractual arrangements being considered for any equity or key sub-contractor relationships.

Despite it not being required, where the Respondent elects to submit an EOI Response as a consortium, the Respondent should describe as part of its EOI Response:

• full details of consortium members and an outline of the roles and responsibilities each will undertake within the Franchise; and

• the structure of the consortium including the commercial or contractual arrangements for any equity or key sub-contractor relationships.

The State will permit a maintainer to be part of a consortium in both the tram and the train tenders (with the same or different operators). The State will not permit a maintainer to be a major part of two different consortia for a single mode (for example, in two different train tenders).

The State will require a fully formed consortium as part of a Shortlisted Respondent’s ITT Response.

The Respondent may be privately or publicly owned, however the State is not seeking EOI Responses from government owned Australian operators.

2.6.3 Reimbursement of Tender Costs for the Tram Franchise (ITT Only)

The State will, subject to the satisfaction of the conditions below, reimburse 75 percent of ‘Tender Costs’, up to a maximum of AUD$5,000,000 to each Shortlisted Respondent that submits an ITT Response for the tram Franchise, but fails to be awarded the tram Franchise.

Tender Costs means the demonstrable, direct and ascertainable costs incurred whilst preparing an ITT Response, limited to legal and other advisory fees, document productions costs and other third party costs incurred in preparing an ITT Response. The State will not reimburse internal cross charges and disbursements or travel expenses such as flights, hotels or meals.

Tender Costs do not include direct or indirect costs incurred by the Respondent as part of the EOI Process.

The conditions precedent to the reimbursement of Tender Costs for the tram Franchise are:

• submission of an ITT Response in accordance with the terms and conditions of the ITT Documentation; and

• an ITT Response remaining capable of acceptance by the State until the completion of the Transaction Process.

It should be noted that there will be no reimbursement of costs associated with preparing and submitting an ITT Response for the train Franchise.

A more detailed process for the reimbursement of Tender Costs will be provided prior to the release of the ITT Documentation.
The New Franchises
3 The New Franchises

3.1 Purpose

The purpose of Section 3 of the EOI Brief is to:

- explain the environment in which the Franchises operate;
- explain the high level franchise proposition, including allocation of responsibilities between the Franchisees and the State; and
- explain the operational and commercial principles the State proposes be applied to the new Franchises.

The operational and commercial principles for the new Franchises are based upon the following:

- the Franchisees are responsible for the safe operation of the network under the Rail Safety Act;
- the tram and train Franchisees will be separate transport operators;
- the tram and train Franchises will remain vertically integrated; and
- the assets required to operate the tram and train networks will be provided by the State to the Franchisees through leasing arrangements.

The State is providing the operational and commercial principles in order to describe to Recipients the general framework of the proposed new Franchise arrangements and seek their feedback on these principles. The State is keen to ensure that the framework for the new Franchises is as robust, sustainable and attractive to the market as possible. Through the EOI Responses, the State is keen to receive any market feedback that adds value to the overall proposition.

Based on this feedback, and the State’s further detailed analysis of the overall contract design, these operational and commercial principles may change. The arrangements for the entire Franchises will be set out in the ITT Documentation.
3.2 The Franchising Environment in Melbourne

3.2.1 Franchise Evolution

In 1999 the State undertook a competitive tender process to implement franchise arrangements for the operation and maintenance of Melbourne’s metropolitan tram and train networks.

The franchise arrangements were renegotiated with the Current Franchisees in 2004. These current arrangements are due to expire on 30 November 2009.

Contracting with private sector operators has allowed the State to focus on core responsibilities such as public transport policy, building network capability, expanding services and undertaking infrastructure investment. Further information about Melbourne, the history of rail franchising and the operational environment is provided in Appendix A – Melbourne and its Public Transport Network.

In August 2007, the State announced its decision to continue with the franchising regime and that the two Franchises would be separately and competitively re-tendered. The new Franchises will commence at the expiry of the current arrangements.

The State considers that continued private sector operation of Melbourne’s tram and train networks will provide further operating improvements, innovation and value for money and it remains committed to the franchising model.

While the general principles underlying the current franchise arrangements will be retained, some adjustments will be made to respond to the demands of the current and future operating environment.

3.2.2 The Operating Environment – Opportunities and Challenges

Melbourne’s recent operational environment has been characterised by surging patronage and considerable pressures on service delivery. Developing the network to accommodate growth presents opportunities and challenges for both the State and the Franchisees.

The State’s commitment to network development is reflected by the Meeting Our Transport Challenges (‘MOTC’) programme, representing approximately AUD$7 billion of investment in public transport infrastructure improvements over the coming years.

In addition, the implementation of the new ticketing system and the procurement of new rolling stock will present additional operational challenges for both the State and the Franchisees during the Franchise terms.

The Franchisees have a vital role in ensuring the network continues to operate efficiently throughout this period of network investment. Importantly Franchisees will also be required to contribute their expertise to the process of developing and implementing capital projects and other initiatives.
In recognition of patronage growth and the network investment required to alleviate network capacity constraints to support demand, the Franchises will be characterised by:

- significant project activity on the train and tram networks during the Franchise term;
- an emphasis on partnering between the State and Franchisees with respect to strategic and tactical planning for operations;
- long Franchise terms designed to consolidate the partnering approach to allow both the State and the Franchisees the opportunity to realise the benefits of their innovation and investments;
- increased participation from the Franchisees in planning and implementing infrastructure and rolling stock projects; and
- contractual mechanisms to allow for changing operational circumstances throughout the Franchise terms and to support Franchisees’ financial sustainability.

3.2.3 Legislative and Contractual Framework

Victoria’s rail transport legislation is comprised primarily of the following Acts:

- Rail Safety Act (see Section 1.4.1);
- Transport Act 1983 (Victoria) (the ‘Transport Act’); and
- Rail Corporations Act 1996 (Victoria) (the ‘Rail Corporations Act’).

These Acts (and their associated Regulations) together establish the primary legislative and regulatory framework applicable to the Franchises.

The contractual arrangements include:

- Franchise Agreements, Projects Agreements and Infrastructure Leases governing the primary relationship between the State and the Franchisees;
- Direct Agreements governing the relationship between the State and the Franchisees’ key suppliers or contractors, most notably the suppliers and maintainers of rolling stock;
- Inter-operator Agreements governing the inter-relationship between the Franchisees and other industry participants to support network-wide services;
- Third Party Agreements governing the relationship between the Franchisees and their service providers and suppliers;
- Metlink Agreements governing the ownership, governance and funding of Metlink and its operational relationships with the State and other key stakeholders; and
- TTA Agreements governing the relationships between the Franchisees and the State with respect to revenue sharing and transitioning to the new ticketing system.

Appendix B – Statutory and Contractual Framework provides an overview of the relevant legislation and the contractual arrangements under which the new Franchises will operate.
### 3.3 Franchise Proposition

#### 3.3.1 Allocation of Responsibilities in the New Franchises

The State’s partnering approach with Franchisees means that the State will play an important part in the new Franchises. This role will be characterised by an overarching responsibility for regulation and network planning, which includes safety regulation, the coordination of timetables across all public transport modes and long-term network and strategic planning.

Table 3.1 above provides a high level overview of the allocation of responsibilities in the new Franchises.

The operational and commercial principles that support the new Franchises have been modelled on the concepts contained in the current Franchises and developed to take into account the opportunities and challenges outlined in Section 3.2.2. The operational and commercial principles are outlined below.

<table>
<thead>
<tr>
<th>Type of Responsibility</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance with the Rail Safety Act including accreditation requirements</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Strategic and operational planning</td>
<td>Shared between the State and the Franchisee</td>
</tr>
<tr>
<td>Operational performance</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Customer experience</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Infrastructure performance</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Rolling stock maintenance</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Rolling stock procurement</td>
<td>State and Franchisee</td>
</tr>
<tr>
<td>Marketing the public transport system</td>
<td>Metlink and Franchisee</td>
</tr>
<tr>
<td>Branding - brand names, logos, staff uniforms, rolling stock livery, tag lines and value statements supporting the brand</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Capital Requirements - maintenance of minimum equity and performance bonds</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Revenue – farebox</td>
<td>Franchisees and bus operators</td>
</tr>
<tr>
<td>Revenue – fare policy</td>
<td>State</td>
</tr>
<tr>
<td>Revenue – other commercial opportunities</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Cost – employee accrued entitlements</td>
<td>State</td>
</tr>
<tr>
<td>Cost - insurance</td>
<td>Shared between the State and the Franchisee</td>
</tr>
<tr>
<td>Cost – traction energy</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Projects – State Rail Projects and Major Non Rail Projects</td>
<td>Shared between the State and the Franchisee</td>
</tr>
<tr>
<td>Projects – Franchisee Projects</td>
<td>Franchisee</td>
</tr>
</tbody>
</table>
3.4 Operational Principles

3.4.1 Safety
The Franchisee must comply with the Rail Safety Act. Under this Act, the Franchisee is responsible for the safe operations of the network. In performing its obligations to carry out maintenance and renewal activities, its role in project delivery and other operational activities, the Franchisee must ensure its ongoing compliance with this Act.

3.4.2 Strategic and Operational Planning
While the Franchisee is responsible for safe operations of the network and takes responsibility for day-to-day service delivery, the State will continue to play a role in strategic and tactical operations planning. Balancing the demands of significant infrastructure investment and project activity whilst optimising services delivered to the public in a capacity constrained operating environment will require a close and effective working partnership between the State and the Franchisees.

The Franchise Agreements will establish a new regime regarding capacity and operational planning. The important features of the proposed new regime include the following:

(i) Network Development Partnership (‘NDP’)
The NDP will be formally established and be the key forum for the State and the Franchisees to share information, discuss strategic issues and agree on capacity and operational plans.

(ii) Operational Service Plan (‘OSP’)
The OSP will be an output of the NDP. The OSP will be an important strategic planning document for the State and the Franchisee. It will reflect the State’s long term policy objectives (in areas such as rolling stock procurement and major infrastructure works) and more immediate State or Franchisee initiatives to address the priorities of the day (such as disruption management and timetable changes).

(iii) Business Plan
The Franchisee’s business plan will need to reflect and implement the OSP. The business plan will be prepared by the Franchisee annually and sets out the operational plans for the next year.

3.4.3 Infrastructure Maintenance and Renewal (M&R) Regime
The M&R regime is one of the core aspects of the Infrastructure Lease and in addition to the Rail Safety Act, establishes the obligations on the Franchisees for maintaining rail infrastructure.

As the State is the long term custodian of infrastructure assets, it has an interest in ensuring that the long term condition of the infrastructure is maintained. The State will develop an asset management strategy that complements the asset management plan. The asset management plan will set out the State’s long term objectives for the rail infrastructure, against which the Franchisee will be required to perform M&R activities over and above those required to ensure the safe operation of the network.
Franchisees will be reimbursed for infrastructure maintenance and renewal through an escrow account for performing the works to the satisfaction of the State.

3.4.4 Rolling Stock

The rolling stock fleets required to operate the tram and train networks will be made available to the Franchisees through leasing arrangements. As such there will be no upfront acquisition cost associated with rolling stock.

Franchisees will be responsible, as the Current Franchisees are now, for the maintenance of rolling stock in accordance with prescribed overhaul standards and preventative maintenance schedules. They will also be required to ensure that rolling stock meets minimum condition requirements throughout the Franchise term.

Table 3.2

<table>
<thead>
<tr>
<th>Make</th>
<th>Fleet Size</th>
<th>Lessor</th>
<th>Lease Expiry</th>
<th>Current Maintainer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alstom Citadis (C-Class low floor trams)</td>
<td>36</td>
<td>Alco</td>
<td>Jan to Aug 2017</td>
<td>United Group Melbourne Transport Ltd ('UMTL')</td>
</tr>
<tr>
<td>Siemens Combino: (D1 Class 3 section low floor trams)</td>
<td>38</td>
<td>CBA</td>
<td>Nov 2017 to Nov 2019</td>
<td>Siemens Rail Services Swanston Pty Ltd</td>
</tr>
<tr>
<td>Siemens Combino: (D2 Class 5 section low floor trams)</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: further detail of the fleet size has been provided in Appendix A – Melbourne and its Public Transport Network.

(i) Tram Rolling Stock

The rolling stock specified above in table 3.2 is subject to third party leases established as part of the 1999 franchising process. Each unit of rolling stock is subject to a 15 year lease from the date of its delivery acceptance.

The rolling stock that will be leased to the Franchisees by the State comprises:

- 51 W-Class heritage trams (including restaurant trams);
- 145 Z-Class trams;
- 70 A-Class trams; and
- 132 B-Class trams.
(ii) Train Rolling Stock

The rolling stock specified above in table 3.3 is subject to third party leases established as part of the 1999 franchising process. Each unit of rolling stock is subject to a 15 year lease from the date of its delivery acceptance.

The rolling stock that will be leased to the Franchisees by the State comprises:

- 187 Comeng three car sets;
- 14 Hitachi three car sets; and
- 10 Siemens Nexus three car sets (note: these are maintained by Siemens Rail Services Bayside Pty Ltd in line with the table 3.3).

(iii) Maintenance Arrangements for the Siemens and Alstom Trams and Trains

The Siemens and Alstom trams and trains are subject to third party maintenance contracts established as part of the 1999 franchising process. The maintenance contracts for the Siemens trams and trains are with the Siemens group. The maintenance contracts for the Alstom trams and trains are with the UMTL. The State is still considering its preferred position with respect to these maintenance agreements.

(iv) Maintenance Arrangements for all other Rolling Stock (including Comeng and Hitachi)

No external maintenance arrangements are in place for the other trams as they are currently maintained in house. Maintenance contracts with respect to all other trains expire at the end of the current Franchise.

In each case, a mechanism exists for the transfer of maintenance assets and employees from the incumbent Franchisee or maintainer to the new Franchisee.

(v) Rolling Stock Procurements

The State has contracted for the purchase of 18 additional Alstom X'Trapolis trains (six car sets) with options to purchase up to 20 further trains. The 18 trains are expected to be delivered in the early part of the Franchise term and will be subject to the same maintenance arrangements as the existing X'Trapolis trains.

The train Franchisee will, at a minimum, be required to provide delivery assistance (including acceptance testing and commissioning) for this new rolling stock.

Table 3.3

<table>
<thead>
<tr>
<th>Make</th>
<th>Fleet Size (3 car set)</th>
<th>Lessor</th>
<th>Lease Expiry</th>
<th>Current Maintainer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Siemens Nexus</td>
<td>62*</td>
<td>CBA</td>
<td>Feb 2018 to Feb 2020</td>
<td>Siemens Rail Services Bayside Pty Ltd</td>
</tr>
<tr>
<td>Alstom X’Trapolis</td>
<td>58</td>
<td>CBA</td>
<td>Dec 2017 to Dec 2019</td>
<td>UMTL</td>
</tr>
</tbody>
</table>

Note: further detail of the fleet size has been provided in Appendix A – Melbourne and its Public Transport Network.
The State envisages further rolling stock procurements and/or refurbishment of the existing tram and train rolling stock during the Franchises. The role of the Franchisees in these future procurements and refurbishments will be determined when there is greater certainty regarding the structure and timing of these processes. It is expected that the Franchisees will, at a minimum, provide assistance in relation to procurement and delivery of any future rolling stock.

(vi) Additional Alstom Citadis Trams

Arrangements are in place for the leasing of five additional 5 section Citadis trams. Transdev has sourced these trams through the transport authority in the French municipality of Mulhouse (‘Sitram’). Transdev is leasing the trams from Sitram and then providing them to Yarra Trams under a rental agreement. These trams will be progressively rolled out for operations during 2008 and will be available to the successor tram Franchisee until the end of 2011.

The trams will be maintained by Yarra Trams for the remainder of the current franchise, with this responsibility to be passed on to the successor tram Franchisee.

3.4.5 Marketing

The responsibility for the marketing of the public transport system is shared between Metlink and the Franchisees.

Metlink is responsible for delivering all network marketing effort as well as all other mass media marketing. This is to ensure there is a commonality of tone and message in the public sphere, as well as a clear unifying voice on network issues. The areas of marketing covered by Metlink include:

- encouraging the use of public transport;
- fares and ticketing;
- fare compliance;
- general travelling behaviours and etiquette;
- multi-modal issues; and
- special events.

Metlink is the face of public transport in Melbourne and provides customers with a ‘one-stop-shop’ for information about services, fares and ticketing.

Metlink is also responsible for the provision of customer information for the transport system through its Journey Planner website and call centre which supports all transport modes.
Franchisees are responsible for some mode specific marketing including information tools related to operational data, sponsorship activity, community care activity, brand reputation and notices relating to disruptions on the network. In general, most Franchisee marketing will need to be approved by Metlink.

Each year, Metlink develops and implements a 12-month network marketing plan to give practical effect to the high level directions in the 3-year network marketing strategy developed by Metlink and the Franchisees. In addition, Metlink maintains a master style guide, which prescribes the designs, layouts and branding standards to be adopted by metropolitan public transport operators and Metlink itself in the provision of passenger information.

3.4.6 Branding

Each Franchisee will be required to adopt and deliver a branding package that can be implemented at the commencement of the new Franchise Agreements. Branding packages should include brand names, logos, staff uniforms, rolling stock livery, tag lines and value statements supporting the brand.

At present, the tram Franchisee operates under the brand Yarra Trams which is owned by the State, whereas the train Franchisee operates under its entity name, Connex, which is not owned by the State. The Current Franchisees’ respective brands co-exist with the branding and marketing activities conducted by Metlink as the coordinating entity with respect to the marketing of Melbourne’s tram, train and bus services.

The State is seeking the Respondent’s feedback on the treatment of branding in the new Franchises, including the ownership and management of intellectual property and how it will best meet the State’s requirements. For example, while the State will consider making the Yarra Trams brand available to the tram Franchisee, it will also consider allowing a Franchisee to use or develop its own brand. The Respondent is encouraged to demonstrate to the State through its EOI Response how it would prefer to brand its operations having regard to the activities of Metlink and its brand and the overall benefits this approach would provide to the State.

3.4.7 Intellectual Property

The Current Franchisees are required to licence to the State, all intellectual property that is required to operate the tram and train Franchises including the Safety Management Systems. These licences are irrevocable and transferable. The State will make this intellectual property available to the new Franchisees. The current Franchise Agreements make provision for the transfer of intellectual property to the new Franchisees. The State is still considering its position in respect of intellectual property transfers. Any intellectual property which is owned by the new Franchisees and used in operation of the Franchise Business must be licensed to the State and these licences must be irrevocable, royalty free and transferable.

The new Franchisee will, at the State’s request, be permitted to use for a designated transition period, trade marks which are owned by the Current Franchisees and affixed to franchise assets but not transferred to the new Franchisee, for the purpose of operating the Franchises.
3.5 Commercial Principles

3.5.1 Franchise Terms

The new Franchise will have an initial term of eight years with a priced option, exercisable by the State, for up to a further three years.

Towards the end of the initial eight year term, each Franchisee will have a right to negotiate a subsequent term of seven years provided it has met specified performance criteria during the initial term. If this negotiation is successful, the seven year term will supplant the three year option. The maximum duration for each Franchise is therefore 15 years.

The Franchise terms are designed to allow both the State and the Franchisees the opportunity to realise the benefits of their innovation, investments and efforts.

3.5.2 Capital Requirements

The State will require the following financial commitments from the Franchisees and accordingly, capability to meet these requirements must be demonstrated by the Respondent.

(i) Initial Equity Amounts and Minimum Shareholders Funds

Franchisees will be required to meet prescribed initial equity amounts at the commencement of the Franchises and maintain minimum shareholder funds requirements during the Franchise terms. This requirement is designed to ensure that the Franchisees have the financial resources to meet day-to-day working capital requirements and also provide the capacity to deal with any short term deterioration in financial performance. Franchisees will be required to inject additional funds if shareholder funds fall below threshold amounts.

The initial equity amounts and minimum shareholders funds values are as follows: (refer table 3.4 above)

The State reserves the right to review initial equity amounts and minimum shareholder funds based on the consortium and corporate structure proposed by Respondents.

<table>
<thead>
<tr>
<th></th>
<th>Initial Equity Amount ($M)</th>
<th>Minimum Shareholders Funds ($M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tram</td>
<td>25.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Train</td>
<td>65.0</td>
<td>45.0</td>
</tr>
</tbody>
</table>
(ii) **Performance Bonds**
Franchisees will be required to provide a performance bond to the State guaranteeing the performance of obligations under the Transaction Documents. The form and conditions associated with the provision of the performance bond will be provided to Shortlisted Respondents as part of the ITT Documentation. The performance bond values are set out below in table 3.5.

<table>
<thead>
<tr>
<th>Performance Bond ($M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tram</td>
</tr>
<tr>
<td>35.0</td>
</tr>
<tr>
<td>Train</td>
</tr>
<tr>
<td>75.0</td>
</tr>
</tbody>
</table>

The State reserves the right to review performance bond requirements based on the consortium and corporate structure proposed by Respondents.

(iii) **Parent Company Guarantees**
The State reserves the right to require that Franchisees procure parent company guarantees to an agreed capped liability.

3.5.3 **Franchisee Income**
The Franchisees’ revenue comprises of a subsidy payment from the State, a proportion of farebox revenue and income from advertising and retail opportunities. It may also comprise other potential sources of income.

(i) **Subsidy**
The Franchises are not self funding businesses and therefore Shortlisted Respondents will need to bid a subsidy line as part of their ITT response. The subsidy will be paid monthly in arrears and indexed annually using a set of multiple indices that reflect the cost structure of the business (e.g. Average Weekly Earnings, Consumer Price Index).

(ii) **Farebox revenue**

*Fixed Factors*
Melbourne operates a multi-modal ticketing system with all farebox revenue collected going to a central clearing house for distribution. Variable revenue allocation mechanisms for such systems require complex algorithms and verifiable data to support calculations. Previous attempts to implement variable revenue allocation in Melbourne led to major disputes between operators and Government. In 2003, the State put in place a simple fixed allocation mechanism, and this has worked well. Accordingly, the State will retain the fixed allocation method for the new Franchises but proposes to adjust revenue allocation to one third of revenue for each of tram, train and bus operators. The bus proportion of fare revenue goes to the State.

*Implications of Equal Allocations*
The equal distribution of revenue is designed to promote collaboration between operators. Operators benefit by maximising the revenue generated by the network, aligning interests in getting the best value from network marketing and through joint efforts to prevent fare evasion. Many of these discussions will take place at Metlink, and each Franchisee will have an equal nominal benefit from these activities.
However, the revenue allocation model will result in a proportionally different outcome for Franchisees stemming from changes in farebox revenue. That is, an increase in farebox revenue will proportionally benefit the tram Franchisee more than the train Franchisee due to the difference in cost base size. This is the converse if farebox revenue falls below forecasts.

Risk Sharing

Although the Franchisee will take a proportion of farebox revenue risk, there are many factors outside the control of the Franchisee which will have medium to long term impacts on patronage and revenue growth; including petrol prices, economic activity levels and population growth. Projects and increased crowding may also have negative impacts on revenue growth. In recognition of this, the new Franchise will have a risk sharing mechanism which involves a three year reset to deal with the potential volatility in the operating economic environments.

The mechanism will operate as follows:

- as part of its bid, the Franchisee will be required to forecast base farebox revenue and growth in farebox over the initial Franchise term and the three year option (eleven years);
- the Franchisees will take all upside benefit and downside risk generated by actual farebox revenue performance against the forecast bid within each successive three year period;
- at the completion of each successive three year period (that is, end year three, end year six and so on), the State will share a proportion of the difference between the forecast line and actual farebox revenue by making a reset adjustment to the subsidy levels of the Franchisee; and
- growth will not be reset during the Franchise term and will remain in line with that originally bid;

For example, if the reset proportion was 50 per cent, where actual farebox revenue is greater than the forecast line by AUD$2 million, the subsidy will be reduced by AUD$1 million for each year until the next reset.
Conversely, where actual farebox revenue is less than the forecast line by AUD$2 million, the subsidy will be increased by AUD$1 million for each year until the next reset.

**Fare Policy**

The State will retain primary responsibility for setting fare policy with the Franchisee held harmless for any decisions by the State that reduce farebox revenue.

(iii) **Advertising**

Franchisees will be granted prescribed rights to develop advertising opportunities.

**Tram**

The tram Franchises rights will include tram shelter advertising, tram wrapping and rights in relation to the platforms on the light rail routes.

The Respondent should note that there are existing arrangements in place with third parties in relation to many of these opportunities.

(iv) **Retail Opportunities**

A number of retail premises and vending machines exist within train stations. The train Franchisee will be granted the right to sub-lease such retail premises to others.

(v) **Other Potential Sources of Income**

The State is considering the appropriateness of a variety of other commercial opportunities within the network, including external advertising on trains.

---

**Farebox Revenue**

<table>
<thead>
<tr>
<th>Year</th>
<th>Actual Farebox Revenue</th>
<th>Forecast Revenue Line</th>
<th>New Forecast Revenue Line</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Y5</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.5.4 Cost Risk

The Franchisees will be required to manage the cost risk associated with performing the Franchise obligations. The following outlines the arrangements for the key areas of employee entitlements, insurance and traction energy.

(i) Treatment of Employees in the New Franchises (Excluding Executives)

The State will retain the long term liabilities (such as annual and sick leave) with respect to employee entitlements up to an agreed liability forecast. The Franchisee takes risk on movements in entitlements from the liability forecast during the Franchise term. The State will retain the risk on long service leave.

The Franchisees will be required, as part of transition, to make offers to existing Franchise employees on terms and conditions that are at least equal to an employees existing arrangement.

(ii) Insurance

In respect of insurance for infrastructure (that is, tracks, stations, depots etc), rolling stock and public liability, risks will be shared between the State and the Franchisee. The State will take price risk on infrastructure, rolling stock and public liability premiums with a portion of the risk to be borne by the Franchise in the form of deductibles which will be set to pre-agreed levels.

Exposure to risks in operational premiums such as Work Cover, motor vehicles and related business insurance will resides with the Franchisee.

(iii) Traction Energy

The State will transfer the energy price risks and volume risk associated with traction energy to the Franchisees.

3.5.5 Operational Performance Regime

The Operational Performance Regime (‘OPR’) is a mechanism designed to provide incentives to the Franchisees to deliver services that run on time, with minimal service cancellations. Franchisees will be paid a bonus or incur a penalty depending on their performance against defined performance targets.

The State seeks to ensure that the OPR reflects the current operational environment and is sufficiently flexible to remain responsive to changes in the operating environment over the Franchise terms. To this end, the mechanism will:

- have targets established at commencement of the new Franchises that will be calibrated to reflect the environment in which the Franchisee will operate;
- be calibrated to 1-2% of total revenue through a threshold mechanism that reduces the incremental size of penalties/bonuses once they reach a particular level in a given year;
- include mitigation for penalties that are incurred by the Franchisee for events that are outside of the Franchisee’s control (e.g. Force majeure events, service disruptions from projects); and
- include an adjustment mechanism that will amend targets to reflect long term impacts that affect performance and are beyond the Franchisee’s control. Adjustment events will be subject to a materiality test.
3.5.6 Project Delivery Regime

The State is responsible for developing and implementing long-term transport planning. The ITT Documentation will contain a list of projects scheduled to be implemented during the Franchise term. These projects may include investment in infrastructure, information technology and systems and rolling stock modification. It is expected that Franchisees will participate in the planning and delivery of projects.

(i) Rail Projects

Rail Projects will be delivered either as State Rail Projects or as Franchisee Projects as described below.

State Rail Project

Where the State elects to deliver a project as a State Rail Project, the Franchisee will be required to perform various obligations as determined on a project-by-project basis. Minimum obligations will include:

- managing safety accreditation;
- assisting the State with the planning, development and design of the project;
- assisting the State in its tendering process;
- assisting the State’s contractor during implementation, testing and commissioning of the project;
- assisting the State in procuring any materials or resources that are required; and
- assisting the State in developing customer service and communication plans.

The Franchisee may also be asked to perform other roles in the development and delivery of State Rail Projects.

The Franchisee will be entitled to a margin on their costs incurred, which will be placed at risk contingent on the successful performance of its obligations against agreed parameters.

Franchisee Project

Where the State and the Franchisee have agreed to deliver the project as a Franchisee project, the Franchisee will have overall responsibility for implementing the Franchisee project according to an agreed project brief. The parties will also agree other project components such as cost and works programme.

The Franchisee will take greater cost and time risk against the agreed project scope and timeframe as compared to State Rail Projects. These may be fully transferred or on a shared basis with the State and will be determined on a project-by-project basis.
(ii) **Major Non-Rail Projects**

Major non-rail projects are projects that are not primarily rail-related but impact on the rail corridor and are usually undertaken by, or on behalf of, a government agency or by private developers. In these cases the government agency or private developer will be required to work with the Franchisee and the State to achieve the best method of project delivery.

These projects will generally take the form of a State Rail Project.

3.5.7 **Infrastructure Performance Regime**

The Franchisees will be required to report against certain Key Performance Indicators (KPIs) under the Infrastructure Lease. The State is considering introducing an infrastructure performance regime for certain asset classes, such as track. Under this regime, part of the margin earned on the M&R work undertaken by the Franchisees may be subject to bonuses or penalties based on performance against the KPIs.

3.5.8 **Customer Experience Performance Regime**

The Customer Experience Performance Regime (‘CEPR’) is designed to improve the quality of the customer’s experience of Melbourne’s tram and train networks. The regime will measure the Franchisees’ performance against a set of measurable targets, for example through ‘mystery shopper audits’. Areas intended to be measured by the CEPR include passenger safety and security, customer information, station and rolling stock cleanliness and passenger comfort. The State is considering whether Franchisees will have the ability to earn financial bonuses or incur penalties contingent on their performance against established targets.
EOI Evaluation
4 EOI Evaluation

4.1 Purpose

The purpose of Section 4 of the EOI Brief is to:

• explain the evaluation process;

• set out the mandatory criteria, evaluation criteria and other considerations;

• inform Respondents that they may be required to present to the Project team; and

• inform Respondents of the State’s right to seek clarifications.

4.2 The Evaluation Process

The State has developed common criteria applicable to both the tram and train Franchises for the purposes of evaluation of the EOI Responses except where indicated otherwise. EOI Responses for each Franchise will be evaluated as follows: (refer over page table 4.1)

4.3 Mandatory Criteria

The Respondent must demonstrate to the satisfaction of the State its capacity to comply with the following mandatory criteria. The information required to respond to these criteria is set out in Schedule 2 of this EOI Brief. (refer over page table 4.2)

4.4 Evaluation Criteria

The Respondent should demonstrate its capabilities in respect of the evaluation criteria set out below. The information required to respond to these criteria is set out in Schedule 3 for both the tram and train Franchises. (refer over page table 4.3)
Mandatory Criteria
EOI Responses will be evaluated against the mandatory criteria set out in Section 4.3. This stage will essentially be a 'pass/fail' test. The mandatory criteria are considered essential thresholds by the State.

Evaluation Criteria
Using the evaluation criteria listed in Section 4.4, the State will evaluate and rank EOI Responses.

Additional Considerations
The State will evaluate EOI Responses against the additional considerations detailed in Section 4.5.

<table>
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<tr>
<th>Table 4.1</th>
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<tr>
<td><strong>Mandatory Criteria</strong></td>
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<td><strong>Evaluation Criteria</strong></td>
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<td><strong>Additional Considerations</strong></td>
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<th>Table 4.2</th>
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<td><strong>1 Safety</strong></td>
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<td><strong>2 Financial Status</strong></td>
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<th>Table 4.3</th>
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<tr>
<td><strong>1 Safety Record</strong></td>
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<td><strong>2 The Melbourne environment</strong></td>
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<td><strong>3 Philosophy, Vision and Approach</strong></td>
</tr>
<tr>
<td><strong>4 Relationship Management</strong></td>
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<tr>
<td><strong>5 Industrial Relations and Human Resource Management</strong></td>
</tr>
<tr>
<td><strong>6 Operational Capability &amp; Experience</strong></td>
</tr>
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<td><strong>7 Project Capability &amp; Experience</strong></td>
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<tr>
<td><strong>8 Vertically Integrated Capability &amp; Experience</strong></td>
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<tr>
<td><strong>9 Operational and Commercial Principles</strong></td>
</tr>
<tr>
<td><strong>10 Quality, Consistency and Completeness of the EOI Response</strong></td>
</tr>
</tbody>
</table>
4.5 Additional Considerations

The Respondent will also be required to demonstrate that it meets certain public interest and probity requirements. Only those Respondents who satisfy these requirements will be Shortlisted. The information required to respond to these additional considerations is set out in Schedule 4 of this EOI Brief.

The State reserves the right to consider any other matter which it deems relevant to the assessment of a Respondent’s EOI Response.

4.6 Respondent Presentations

As part of the evaluation process, the State may require Respondents to present the details of their Responses in person to the Project team. However, the Respondent should submit an EOI Response which is sufficient to enable evaluation by the State without the need for clarification and should not rely on being invited to present prior to the Shortlist being finalised.

4.7 State’s Right to Seek Clarification

The State reserves the right, in its absolute discretion, to conduct interviews with one or more of the Respondents, to seek clarification of EOI Responses and obtain additional information via written request and/or interview. However, the Respondent should submit an EOI Response which is sufficient to enable evaluation by the State without the need for clarification and should not rely on being invited to make further submissions prior to the Shortlist being finalised.

The Respondent must promptly respond, in writing, to any request by the State for additional information or clarifications. Where such information or clarifications are not provided within the timeframe nominated by the State, the State reserves the right to conclude its evaluation processes on the basis of the available information.
EOI Response
5 EOI Responses

5.1 Purpose

The Purpose of Section 5 of the EOI Brief is to set out the detailed process requirements that Respondents should be aware of in preparing and lodging their EOI Response.

5.2 Preparation of EOI Responses

The following matters should be taken into account by the Respondent in preparing the EOI Response:

- separate EOI Responses are required if the Respondent wishes to express interest in more than one Franchise;
- the EOI Response is to contain all information and details requested in this EOI Brief;
- the format of the EOI Response should be in accordance with and follow the order in which the information is requested in Schedules 1 to 4 of this EOI Brief;
- the State expects that the EOI Response should be no more than 150 pages long excluding attachments and, where attachments are used, that they contain information such as financial statements, CV’s and the like. Unnecessarily elaborate EOI Responses or presentations beyond that sufficient to present a complete and effective EOI Response are discouraged;
- Respondents are deemed to have examined all information relevant to risks, contingencies and other circumstances relevant to its EOI Response and which is accessible through reasonable inquiry; and
- Respondents must provide a warranty to the State in the form set out in Attachment 1 of Schedule 4.

The State is not seeking to receive pricing information for the Franchises during this EOI Process.
5.3 EOI Response Checklist

Before submitting an EOI Response, the Respondent for the relevant Franchise should check that all of the following information is included:

- Schedule 1 – Respondent’s name and contact details;
- Schedule 2 – Response to Mandatory Criteria;
- Schedule 3 – Response to the Evaluation Criteria; and
- Schedule 4 – Additional Considerations (including Attachment 1 – Warranties, Acknowledgement and Waiver).

5.4 Lodgement of EOI Responses

EOI Responses must be submitted by 2:00pm AEST on Tuesday 1 July 2008 to:

Department of Transport
Level 13 / 80 Collins Street
Melbourne VIC 3000
Australia

It is the complete responsibility of the Respondent to ensure that the EOI Response is received before the time and date set out above.

Each Respondent must submit one bound presentation copy, one unbound copy and one electronic copy (on a CD or DVD formatted to Microsoft Office 2002) of its EOI Response in a sealed package signed and dated by an authorised officer and marked for either the tram or train Franchise respectively as follows:

The State reserves the right, at its absolute discretion, to accept any EOI Response lodged after 2:00pm AEST on Tuesday 1 July 2008.
5.5 **Enquiries and Further Information**

5.5.1 **Enquiries**

All enquiries in respect of this EOI Brief are to be directed in writing to: mr3@doi.vic.gov.au. The Respondent should include their corporate name as the first word in the subject line.

5.5.2 **Submission of Questions**

Any questions that the Recipient may wish to raise in relation to this EOI Brief must be submitted in writing, not later than five working days prior to the closing date for EOI Responses.

All questions should be directed to: mr3@doi.vic.gov.au and be submitted in the question form provided on Volume 3 CD1.

The State may reply to questions from a Recipient by notice to that Recipient or all Recipients (together with the question). A Recipient may request that any question not be disclosed to other Recipients, but the State may determine in its absolute discretion whether it will disclose the question.

If the State decides that it will disclose the question to other Recipients, the Recipient will first be given the opportunity to withdraw the question.

5.5.3 **Discussions with the State**

Other than via the nominated Project email address set out in Section 5.5.1, the Recipient is prohibited from contacting any officer of DOT, DTF, DPC, the State (including any Government Ministers, Members of Parliament, and its officers) or members of the Project team to discuss any aspect of the Project, the Franchises or the Transaction Process except as provided for in this Section 5, or as authorised by the Project Director. At the sole discretion of the State, unauthorised communication with any officer of DOT, DTF, DPC, the State (including Government Ministers, Members of Parliament and its officers) or the Project team may lead to the disqualification of the Recipient from any further participation in the EOI Process, the subsequent ITT Process or any other related process. All Project team members and those DOT, DTF and DPC officers with any involvement in the Project have undertaken to formally report all communications regarding the Project to the Project Director.
Shortlisted Respondents
6 Shortlisted Respondents

6.1 Purpose
The purpose of Section 6 of the EOI Brief is to:

- inform Respondents of the steps that will be undertaken prior to Shortlisting;
- provide Respondents some information on the ITT Process; and
- make Respondents aware of certain State procurement policies that apply to the Project.

- that there has been no material change to the Respondent’s circumstances or the information contained in the Respondent’s EOI Response; or
- all actual or proposed changes to the Respondent’s circumstances or to the information contained in the Respondent’s EOI Response. Any material changes known or anticipated by the Respondent at the time of submitting an EOI Response should be indicated in the Respondent’s EOI Response.

In the event that there have been any material changes to a Respondent’s circumstances or to the information contained in the Respondent’s EOI Response, the State may, in its absolute discretion, remove the Shortlisted Respondent from the Shortlist.

6.2 Actions Prior to the Release of the ITT Documentation

6.2.2 Confirmation of Respondent’s Circumstance
In Shortlisting Respondents, the State will rely on information included in EOI Responses or provided subsequently in response to a request for clarification or for additional information. Prior to receiving the ITT Documentation, Shortlisted Respondents may be required to confirm in writing the following to the Project Director:
6.2.2 Execution of Probity and Process Deed

Shortlisted Respondents will be required to enter into a probity and process deed prior to receiving the ITT Documentation, gaining access to the data room or undertaking site visits. This deed will outline the probity and process requirements for the ITT Process. For further details refer to Section 7.1.14 of this EOI Brief.

6.3 ITT Process

6.3.1 Interactive Tender Process

The State is proposing an interactive tender process during the ITT response period. This is expected to include one-on-one workshops with Shortlisted Respondents, access to a comprehensive data room (online and physical), a Q&A process, site visits and management presentations. Respondents will be provided with details and protocols for accessing this information and interacting with the State and Current Franchisees.

6.3.2 ITT Evaluation

Recipients should note that the consistency of the ITT Response with the Shortlisted Respondent’s EOI Response will be evaluated.

6.4 State Purchasing Policies

6.4.1 Victorian Industry Participation Policy

The Victorian Industry Participation Policy (‘VIPP’) was introduced in April 2001 with the objectives of:

- boosting employment and business growth in Victoria by expanding market opportunities for local Small and Medium Enterprises (‘SMEs’) and supply chain partners;
- providing the main contractors for major projects with increased access to a wider range of companies that can deliver the best value for money;
- promoting a cultural change in Australian business, raising awareness of the world class capabilities of local SMEs;
- exposing Victorian companies to world-best practice in workplace innovation, e-commerce and use of new technologies and materials; and
- developing the international competitiveness and flexibility of local SMEs in responding to changing global markets, by ensuring Victorian SMEs have a fair opportunity to compete against overseas suppliers.

The intent of the VIPP is to foster industry development by encouraging tenderers to genuinely and systematically consider local (Australian and New Zealand) SME suppliers.
Shortlisted Respondents may be required to provide a VIPP Statement and a VIPP Implementation Plan as part of their ITT Responses. Further details regarding VIPP, including templates and typical examples, are available in the ‘VIPP Guidelines for Bidders’ at www.diird.vic.gov.au.

6.4.2 Industry Capability Network

The Industry Capability Network (‘ICN’) is an Australian & New Zealand wide network that assists businesses to maximise the opportunities that arise from purchasing requirements from both the government and private sectors. ICN has been established to assist companies to find buyers for their product, or a supplier that will deliver the goods and services that are required.

To assist Shortlisted Respondents in fulfilling their VIPP obligations as may be required as part of their ITT Responses (see Section 6.4.1), the State has invited consultants, contractors and suppliers (other than operators and maintainers) to register their details through the ICN website at www.icn.org.au (under the link to Project Gateway).

Shortlisted Respondents may be provided with access to ICN registrations.

6.4.3 Ethical Purchasing Policy

As part of their ITT Responses, Shortlisted Respondents may also be required to complete an Ethical Employment Statement demonstrating that they satisfy the ethical employment standard set out in the Victorian Government Ethical Purchasing Policy. This policy applies for purchases of goods or services valued at AUD$100,000 or more, or where the Shortlisted Respondent participates in a high risk industry. A Shortlisted Respondent to whom the policy applies will be required to meet and continue to meet the ethical employment standard for the duration of any contract ultimately entered into.

For further details see the Victorian Government Ethical Purchasing Policy at www.vgpb.vic.gov.au.
Terms and Conditions of the EOI Process
7 Terms and Conditions of the EOI Process

7.1 Terms and Conditions

7.1.1 Lodgement of EOI Responses

The EOI Response must be submitted in accordance with requirements set out in Section 5.4 of this EOI Brief.

7.1.2 Disclaimer

This EOI Brief has been prepared to assist the Recipient in making its own evaluation of the Project and does not purport to contain all the information that the Recipient may require. The Recipient should conduct its own independent review, investigations and analysis of the Project. The Respondent must rely entirely on its own reviews, investigations and analysis and not on this EOI Brief, in relation to its assessment of the Franchises and the submission of its EOI Response.

This EOI Brief has been delivered to the Recipient on the express understanding that the Recipient will use it only on the conditions set out in this EOI Brief.

No guarantee, representation or warranty (either express or implied) is given by or on behalf of the State or the State’s Associates or the Current Franchisees or their Related Parties as to the quality, accuracy, reliability or completeness of the Government Information or that reasonable care has been taken in compiling or preparing the Government Information. Any liability of the State, the State’s Associates, the Current Franchisees or their Related Parties, to any Recipient or to any other person or entity in relation to this EOI Brief, the Government Information or the Project is, to the maximum extent permitted by law expressly disclaimed and excluded.

7.1.3 Process

The State reserves the right, in its absolute discretion, to cancel, supplement or amend the information, terms, procedures and protocols contained in this EOI Brief without giving any reasons. The Recipient will have no claim against the State or the State’s Associates with respect to the exercise of, or failure to exercise, this right.
7.1.4 Queries relating to the EOI Brief or Project

The Recipient must not contact any Current Franchisees either directly or indirectly in relation to this EOI Brief or the Project without the prior written consent of the State. This restriction will not apply to the Current Franchisees and their prospective consortia members, if any.

All communications, inquiries or requests for information relating to this EOI Brief or the Project, are to be addressed to the State via the Project email address.

7.1.5 Restriction on Communication regarding the Project

Recipients must not use any media or any other communication channels in a way which might reflect adversely on the State or the Project. Until the award of the new Franchises, Recipients must not comment to any media or third party about matters connected with the Transaction Process. If Recipients consider that they must make a public statement or comment then, so far as practicable, Recipients must discuss the content of such statements or comments with the State prior to the release of such statements or comments and comply with the State’s requirements.

7.1.6 Costs to be borne by the Recipient and Respondent

All costs or expenses incurred by any Recipient in reviewing, investigating or analysing this EOI Brief, or any Respondent in preparing or lodging an EOI Response or otherwise in connection with the Project will be borne by the Recipient, Respondent and Respondent’s Associates. Neither the State nor any of the State’s Associates will be liable to compensate or reimburse the Recipient, Respondent or Respondent’s Associates for such costs or expenses.

7.1.7 Confidentiality and Proprietary Information

The Recipient and its consortium members (if applicable) have executed a Confidentiality Deed prior to obtaining this EOI Brief. This EOI Brief and all information obtained in connection with it is subject to the Confidentiality Deed.

Upon submission, all EOI Responses will become the property of the State and will not be returned to the Respondents. Any copyright or intellectual property rights that may exist in an EOI Response will remain the property of the Respondent.

It is recognised that the Respondent may consider some information it submits during the EOI Process to be proprietary and accordingly should not be communicated to other Respondents. The Respondent should approach the State in advance about information which the Respondent considers to be proprietary with a view to confirming, or otherwise, the status of the information and for what period it will remain proprietary. In the absence of written agreement to the contrary from the State, information submitted by the Respondent will not be considered proprietary.
Any Personal Information collected as part of the EOI Process will be handled in accordance with the Information Privacy Act 2000 (Vic).

Subject to the State’s rights under this Section 7.1.7, the State will hold all EOI Responses in confidence so far as the law permits.

Notwithstanding any copyright or intellectual property rights that may exist in the EOI Response, by lodging an EOI Response, the Respondent licenses the State to copy, adapt, modify, disclose or do anything necessary in the State’s sole discretion, to all material (including that material which contains any intellectual property rights of the Respondent or any other person) contained in the EOI Response for the purposes of:

- evaluating or clarifying the EOI Response;
- evaluating any subsequent offer;
- developing any of the Transaction Documents;
- negotiating any of the Transaction Documents;
- managing any of the Transaction Documents following their execution;
- referring any material suggesting any collusion by Respondents to the Australian Competition and Consumer Commission (‘ACCC’) and the use by the ACCC of that material to conduct any review it deems necessary; or
- anything else related to the above purposes, including audit requirements, compliance with Government and Ministerial reporting requirements and responding to any challenge to the EOI Process or audit.

The State reserves the right to publish the names of Respondents and Shortlisted Respondents.

7.1.8 Freedom of Information

The Freedom of Information Act 1982 (Vic) (‘FOI Act’) applies to the information provided by the Respondent in its EOI Response. The Respondent should note that the FOI Act grants members of the public rights of access to information in the possession of the State and its agencies.

All or part of the information provided by the Respondent may be disclosed to third parties if there is a requirement to do so under the provisions of the FOI Act. Any information that is commercially sensitive or confidential must be marked ‘commercial and confidential’. This special notation must not be used unless the information is genuinely confidential. Marking information as ‘commercial and confidential’ will not necessarily prevent disclosure of the information in accordance with the FOI Act. Any decision to release information will be determined by the requirements of the FOI Act. The Respondent will not be entitled to make any claim in relation to any actions taken in relation to, or under, the FOI Act.

7.1.9 Evaluation Process

The State is not required, and does not intend, to release any details regarding the evaluation process beyond the information described in this EOI Brief. Any Respondent may make a formal request to the Project Director via the Project email address for a debrief meeting. The Project Director will, in his absolute discretion, determine the nature and extent of any debrief.
7.1.10 Collusive Conduct

Recipients or Respondents must not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any other Recipient, Respondent or any other person in relation to the preparation or lodgement of an EOI Response. Evidence of such conduct may lead to the rejection of the EOI Responses of all Recipients or Respondents involved.

7.1.11 Related Parties

The State will require the Respondent as part of its EOI Response to identify any consortium member that is a Related Party of another Respondent, its consortium members or their advisers. Failure to do so may result in a Shortlisted Respondent being disqualified as a Shortlisted Respondent.

7.1.12 Probity

The Respondent’s Associates must not offer any incentive to, or otherwise attempt to influence any of the persons who are either directly or indirectly involved in the evaluation of the EOI Responses, or in awarding any subsequent contract. If the State determines that the Respondent’s Associates have violated this condition, the Respondent may be disqualified from further consideration.

7.1.13 Probity Checks

By submitting an EOI Response, the Respondent consents to the State performing such probity and financial investigations and procedures as the State may determine as necessary in relation to the Respondent or Respondent’s Associates. Such checks may include investigations into commercial structure, business and credit history, prior contract compliance and any criminal records or pending charges. The probity checks may also include interviews with any referees nominated and research into any relevant activity that is or might be expected to be the subject of criminal or other regulatory investigation.

The Respondent agrees, if requested by the State, to seek such consents from individuals as are required by law to be obtained to such probity checks and criminal investigations.

7.1.14 Probity and Process Deed

Shortlisted Respondents will be required to enter into a probity and process deed. This deed will regulate the terms and conditions under which confidential information is disclosed by the State to Shortlisted Respondents and will outline the probity requirements and process which will apply in respect of the ITT Process.
7.1.15 Foreign Investment Review Board Approval

Each Respondent should review the requirements of the Foreign Acquisition and Takeovers Act 1975 (Cth) and ascertain whether the proposed transaction is examinable by the Foreign Investment Review Board. Each Respondent should indicate in its EOI Response in Schedule 4 whether or not Foreign Investment Review Board approval is required and the reasons for that indication, together with a summary of the Respondent’s preliminary discussions, if any, with the Foreign Investment Review Board.

7.1.16 Exclusions of Australia Government Owned Corporations

An entity which is wholly or partially owned or controlled by any Australian government will be precluded from holding any equity in, or having control, or operational control, of any Respondent tendering for, or acquiring a Franchise.

However, the State reserves the right to consider an EOI Response from a Respondent which intends to use a government-owned entity as a subcontractor, provided that this arrangement does not provide the government-owned entity with control or operational control of the Respondent.

7.1.17 Return of Government Information

The State reserves the right, at its absolute discretion, to require that all Government Information, other than publicly available Government Information, provided to Recipients by the State or the State’s Associates, and copies of such Government Information, be returned to the State or, at the option of the State, be destroyed at any stage.

7.1.18 Legislation

References to, and explanations of, legislation and regulatory issues which appear in this EOI Brief are indicative only. They do not purport to summarise all relevant legislation or to be a full explanation of any particular matter. Each Recipient should obtain its own legal advice in relation to such legislation and regulations. References to legislation refer to currently enacted legislation as at the release of this EOI Brief.

7.1.19 Projections

Any projections as to future events or other forward looking statements contained in this EOI Brief represent estimates only. These projections are based on various assumptions and are subject to significant uncertainties and contingencies, many of which are outside the control of the State. Actual future events may vary significantly from the assumptions behind the projections and no representation is made that any of the projections will be achieved.
7.1.20 No Legal Relationship

This EOI Brief is not intended to form the basis of any investment decision. No part of this EOI Brief constitutes a recommendation, offer, invitation or solicitation in relation to the Project. The State has no contractual or other legal obligation to the Recipient, Respondent or the Respondent’s Associates arising out of the EOI Brief with respect to the consideration, the evaluation, the acceptance or the rejection of any EOI Response or the failure to consider, evaluate or accept any EOI Response. Except as specifically stated, no contract exists or will arise between the State and any person in respect of the Project by reason of this EOI Brief, an EOI Response or any part of the Transaction Process unless and until the new Transaction Documents are executed between the State and the Franchisees.

A declaration is required to be made by the Respondent and submitted with the EOI Response, as to any actual or potential conflict of interest in relation to its potential involvement in the Project identified at the date of submission of the EOI Response, and an undertaking given to inform the State of any actual or potential conflicts that may arise after the date of submission of the EOI Response. The form of the declaration and undertaking to be given by the Respondent is contained in Schedule 4.

7.1.21 Conflict of Interest

Any party with a real or perceived conflict of interest must declare that interest to the State as soon as the conflict is identified. Where a conflict of interest arises, it must be assessed and resolved in favour of the public interest by the relevant parties. All parties are required to ensure that their performance in respect of identifying, declaring and resolving any conflict of interest is beyond reproach.

The State’s rights under this Section 7.1.22 are without prejudice to any other rights or remedies which it may have in connection with the breach.

To the extent permitted by law, the Respondent will have no claim against the State arising out of its exercise, or failure to exercise, its rights under this Section 7.1.22.
7.1.23 Other State's Rights

Without limitation, the State reserves the right, in its absolute discretion at any stage of the Transaction Process, to:

- require additional information from the Respondent;
- terminate further participation in the Transaction Process by the Respondent;
- change the structure or timing of the Transaction Process and the basis on which EOI Responses are required, evaluated or accepted;
- change the basis on which the Recipient may, or is required to, participate in the EOI Process;
- re-advertise for new EOI Responses;
- accept or reject any or all EOI Responses at any time for any reason;
- accept late EOI Responses;
- accept non-conforming EOI Responses, including an incomplete EOI Response;
- publish the names of Respondents and Shortlisted Respondents;
- rely on information relating to the Respondent as part of the evaluation process;
- not select any Respondent to be Shortlisted;
- undertake the Project with a person other than a Respondent;
- change the scope of the Project;
- not proceed with the Transaction Process or the Project;
- not attribute any reasons for any actions or decisions taken including in respect of the exercise of any or all of the above mentioned rights; and
- undertake such other actions, as it considers in its absolute discretion, appropriate in relation to the Transaction Process.

No Recipient or Respondent is entitled to enquire into the State's decisions under this Section 7.1.23.
Schedule 1 – Respondent’s Name and Contact Details

The Respondent should provide its response to this Schedule in accordance with the table below (please refer to CD1 for an electronic copy).

<table>
<thead>
<tr>
<th>RESPONDENT DETAILS</th>
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<tbody>
<tr>
<td>RESPONDENT NAME(S)</td>
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<tr>
<td>REGISTERED ADDRESS</td>
</tr>
<tr>
<td>AUSTRALIAN BUSINESS NUMBER (ABN) OR EQUIVALENT</td>
</tr>
<tr>
<td>NAME OF BENEFICIAL OWNER (IF APPLICABLE)</td>
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<tr>
<td>ADDRESS OF BENEFICIAL OWNER (IF APPLICABLE)</td>
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<table>
<thead>
<tr>
<th>CONTACT DETAILS</th>
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<tbody>
<tr>
<td>KEY CONTACT</td>
</tr>
<tr>
<td>NAME</td>
</tr>
<tr>
<td>TITLE</td>
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<tr>
<td>ORGANISATION</td>
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<td>PHONE</td>
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<td>EMAIL</td>
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<td>ADDRESS</td>
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<th>ALTERNATE CONTACT</th>
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<tbody>
<tr>
<td>NAME</td>
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<tr>
<td>TITLE</td>
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<td>ORGANISATION</td>
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<td>PHONE</td>
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<td>EMAIL</td>
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<td>ADDRESS</td>
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</table>
**Schedule 2 – Response to Mandatory Criteria**

The Respondent should prepare its response to the criteria in the order set out in the tables below. In addressing each criterion, the Respondent should note the guidance provided by the State under each criterion.

<table>
<thead>
<tr>
<th>1 Safety</th>
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<tbody>
<tr>
<td>Demonstrated evidence that the Respondent is entitled to operate passenger transport services under a permissioning regime.</td>
<td>The Respondent should provide details of safety accreditation(s) or equivalent, such as safety certification(s) or safety case(s), it currently holds and indicate the industry structures relevant to the examples provided (e.g. vertical integration, nature of corporate structure or contractual arrangements or sub-contracting).</td>
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<tr>
<th>2 Financial Status</th>
<th></th>
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</table>
| Demonstrated evidence that the Respondent (and where applicable its equity participants) has the financial capacity to operate the Franchise including the capacity to meet the capital requirements described in Section 3.5.2. | The Respondent should provide the following:  
  a. copies of the latest audited and unaudited financial statements and supporting documentation and any material change in financial position of the Respondent since the date of the last audited financial statements;  
  b. details of each entity's current ownership structure, ABN or equivalent, names and addresses of beneficial owners, company profile and historical trading position;  
  c. mergers/acquisitions as can be notified to the extent permitted by law (either recent or which are imminent), material contingent liabilities of the Respondent and any liquidation or deregistration proceedings against the Respondent or related organisations; and  
  d. letter of provisional support from Board and financiers of the Respondent and its consortium members (if applicable) demonstrating capacity to meet the capital requirement described in Section 3.5.2 and commitment to the Transaction Process. |
Schedule 3 – Response to Evaluation Criteria

The Respondent should prepare its response to the criteria in the order set out in the tables below. In addressing each criterion, the Respondent should note the guidance provided by the State under each criterion.

### 1 Safety Record

The demonstrated capability and track record of the Respondent in relation to the effective development, management and continuous improvement of safety management systems in respect of heavy or light rail operations.

The Respondent should provide the following in relation to every jurisdiction in which it operates:

a. details of its current and recent safety performance;

b. a description of the Respondent’s current policies and processes relating to safety management;

c. a copy/overview of the Respondent’s safety management system; and

d. evidence of continuous improvements made to the safety culture within the Respondent’s operations.

In addition to the above, the Respondent should demonstrate its understanding of the accreditation regime in Melbourne and how it would achieve accreditation and manage safety of the network.

### 2 The Melbourne Environment

For the Tram Franchise:
The extent to which the Respondent demonstrates its understanding of and provides indicative solutions to the challenges and opportunities facing Melbourne’s tram system.

OR

For the Train Franchise:
The extent to which the Respondent demonstrates its understanding of and provides indicative solutions to the challenges and opportunities facing Melbourne’s train system.

For the Tram Franchise:

The Respondent should provide an overview of its assessment of the key challenges and opportunities facing the Melbourne tram system, including indicative solutions, any evidence of how the Respondent has approached these similar challenges and opportunities in equivalent systems and how such approaches might be adapted to the Melbourne environment.

OR

For the Train Franchise:

The Respondent should provide an overview of its assessment of the key challenges and opportunities facing the Melbourne train system, including indicative solutions, any evidence of how the Respondent has approached these similar challenges and opportunities in equivalent systems and how such approaches might be adapted to the Melbourne environment.
### 3 Philosophy, Vision and Approach

The extent to which the Respondent’s stated philosophy, vision and approach to operating the Franchise addresses the State's objectives and expectations of the new Franchisee.

The Respondent should provide the following:

a. details of the Respondent's vision and approach to operating the relevant Franchise and how this relates to the Respondent's corporate philosophy; and

b. details of the quality, commitment and expertise of the Respondent's proposed management team for the Melbourne Franchise, including commitment of experienced members to spending time 'on the ground' in Melbourne.

### 4 Relationship Management

The extent to which the Respondent demonstrates its capability and track record in developing and maintaining productive relationships with all stakeholders.

The Respondent should provide the following:

a. partnering philosophy – a statement of the Respondent’s partnering philosophy, factors considered necessary to a successful partnership and associated arrangements in other jurisdictions for maintaining successful relationships with government and other relevant stakeholders;

b. working with government – a summary of the Respondent's capability and experience in working in partnership with government entities to plan services;

c. working with partners suppliers and contractors – examples of successful working relationships with consortium partners, key suppliers and sub-contractors particularly in respect of major project delivery, illustrated with specific reference to managing and sharing risks and rewards;

d. working with other operators – examples of working with other entities in providing integrated transport solutions for customers;

e. stakeholder management – examples of how differences of opinion are resolved between stakeholders; and

f. referees – names and contact numbers of referees in key government agencies which the Respondent has dealt with in recent years.
## 5 Industrial Relations and Human Resource Management

The extent to which the Respondent demonstrates its capability and track record in effective human resource management, change management and the promotion of productive industrial relations.

The Respondent should provide the following:

- a. examples of change management strategies implemented by the Respondent which have improved organisational behaviour;
- b. an overview of its human resources philosophy for the Melbourne environment;
- c. examples of industrial relations disputes which it has successfully managed; and
- d. details of its experience in managing issues such as staff training, staff retention and Franchise transition.

## 6 Operational Capability and Experience

The extent to which the Respondent demonstrates its capability and experience in managing passenger operations.

The Respondent should provide the following:

- a. experience – an outline of the Respondent’s current and recent passenger transport operations including authority, location, network size (i.e. route kilometres, annual cost base, number of passengers carried etc), length of tenure and nature of contract (i.e. vertically integrated etc) and Respondent’s role in the contract;
- b. performance outcomes – a summary description of the Respondent’s operations, including punctuality, service reliability, fleet availability, customer satisfaction and any other relevant performance indicators and the bases on which these are measured and reported;
- c. improvement initiatives – documented examples of initiatives the Respondent has introduced to improve productivity including data on any performance improvements achieved, such as driver deployment, fleet availability and service reliability;
- d. optimisation of network capacity – examples of how the Respondent has optimised available network capacity elsewhere such as reviewing and improving services and stopping patterns;
- e. customer experience – evidence of the Respondent’s experience and success in developing and implementing innovative approaches to improve customer experience in areas such as passenger information, customer satisfaction and complaints handling, customer safety and security, customer charters and training of customer facing staff;
- f. unplanned service disruptions – a high level summary of the Respondent’s past and intended strategies for dealing with unplanned service disruptions;
- g. patronage growth – details of how patronage growth has been fostered in other systems managed by the Respondent and how these might be adapted for the Melbourne environment;
- h. revenue protection – details of revenue protection strategies implemented by the Respondent with evidence of their impact (quantified as far as possible) and how these might be adapted for the Melbourne environment; and
- i. environmentally sustainable operations – details of how the Respondent has managed environmentally sustainable operations.
### 7 Project Capability and Experience

The extent to which the Respondent demonstrates its capability and relevant experience in the planning, development, implementation, commissioning and overall management of projects.

The Respondent should provide the following:

| a. | evidence to demonstrate the Respondent’s experience in managing or facilitating project delivery, focussing in particular on the use of practical strategies to reconcile project delivery imperatives with day-to-day operations; |
| b. | examples of projects the Respondent has managed or facilitated, including a description of the Respondent’s role in the project, successes, challenges and lessons learned. Reference should be made in each case to the extent of risk transfer and success in meeting project objectives (on time/budget) and how challenges such as service disruption were managed; and |
| c. | evidence of the Respondent’s involvement including experience and success in delivering or facilitating change in operations, infrastructure, rolling stock and systems, including the introduction of a new ticketing system, if applicable. |

### 8 Vertically Integrated Capability and Experience

The extent to which the Respondent demonstrates its capability and experience to meet the full requirements of a vertically integrated Franchise, specifically its approach to developing infrastructure and rolling stock maintenance capabilities in house, through sub-contractors, consortium partners or other arrangements.

The Respondent should provide the following (as relevant):

| a. | an overview of their own experience; |
| b. | evidence of experience in participation in consortia for franchises with maintenance requirements; and/or; |
| c. | how it will acquire the balance of the skills and service requirements to deliver the Franchise requirements; and |
| d. | its preferred consortium structure including commercial or contractual arrangements being considered for any equity or key sub-contractor relationships. |
| e. | Despite it not being required, where the Respondent elects to submit an EOI Response as a consortium, the Respondent should describe as part of its EOI Response: |
| f. | full details of consortium members and an outline of the roles and responsibilities each will undertake within the Franchise; and |
| g. | the structure of the consortium including the commercial or contractual arrangements for any equity or key sub-contractor relationships. |
9 Operational and Commercial Principles

The extent to which the Respondent accepts or demonstrates a constructive approach in identifying any alternatives and/or enhancements to the operational and commercial principles, and explains how they will manage that principle.

<table>
<thead>
<tr>
<th>For the following Operational Principles:</th>
<th>And for each of the following Commercial Principles:</th>
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<tbody>
<tr>
<td>3.4.2 – Strategic and Operational Planning</td>
<td>3.5.1 – Franchise Terms</td>
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<tr>
<td>3.4.3 – Infrastructure Maintenance and Renewal (M&amp;R) Regime</td>
<td>3.5.2 – Capital Requirements</td>
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<td>3.4.4 – Rolling Stock</td>
<td>3.5.3 – Franchisee Income: parts (i) to (v)</td>
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<td>3.4.5 – Marketing</td>
<td>3.5.4 – Cost Risk: parts (i) to (iii)</td>
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<td>3.4.6 – Branding</td>
<td>3.5.5 – Operational Performance Regime</td>
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<tr>
<td>3.4.7 Intellectual Property</td>
<td>3.5.6 – Project Delivery Regime</td>
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</tbody>
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The Respondent should provide:

a. an acceptance of the operational or commercial principle;

b. any enhancements to the principle that would support the State’s objectives and expectations for the new Franchises and/or improves value for money for the State; and

c. its approach to managing each principle;

OR

d. where the Respondent does not accept the operational or commercial principle, reasons for the non acceptance; and

d. its alternative principle and how this will be managed; and

f. how this alternative supports the State's objectives and expectations for the new Franchises and/or improves value for money for the State.

10 Quality, Consistency and Completeness of the EOI Response

The extent to which the Respondent's EOI Response addresses all requirements of the EOI Brief, is internally consistent, credible and of high quality.

There are no specific response requirements for this criterion.
Schedule 4 – Additional Considerations

The Respondent should provide the following:

a. details of any circumstance which may affect the ability of the Respondent to meet its contractual obligations in relation to the Project. Examples of circumstances which should be detailed are:
   i. regulatory or law enforcement agency investigations of the Respondent, Related Parties or principals;
   ii. contract termination for cause against the Respondent; and
   iii. significant current or pending litigation against the Respondent, Related Parties or principals;

b. details of whether any of the above considerations apply to the Respondent, or to the best of the Respondent’s knowledge, the Respondent’s Associates;

c. an indication of whether or not Foreign Investment Review Board approval is required and the reasons for that indication, together with a summary of the Respondent’s preliminary discussions, if any, with the Foreign Investment Review Board;

d. details of any consortium member that is a Related Party of another Respondent, its consortium members or their advisers;

e. confirmation that no probity issues have occurred in relation to the Respondent or consortium members (if applicable). The State may undertake investigations as it deems appropriate to satisfy itself that there are no probity issues which may preclude a Respondent from being included in the Shortlist. The Respondent is required to agree to give the necessary consents for this investigation in the Warranties, Acknowledgement, and Waiver contained in Attachment 1 of this Schedule;

f. a statement that the Respondent, and to the best of its knowledge after making diligent enquiries, the Respondent’s Associates, do not have and is not aware of any actual or potential conflicts of interest which may arise between the State and the Respondent, unless indicated otherwise; and

g. if indicating that actual or potential conflicts may exist or arise, please provide:
   i. details of any engagements, obligations or commitments that the Respondent or any of its partners, staff or consultants has or are likely to acquire which may give rise to any actual or perceived conflict of interest with any of the services that may be required as a result of this EOI Process or in connection with the proposed contract;
   ii. details of any strategy for identifying, managing and preventing conflicts of interest; and
   iii. an executed warranty, acknowledgement and waiver in the form contained in Attachment 1 to this Schedule.
Dear Mr Alexander

Melbourne's Metropolitan Rail Franchising Project

We refer to the EOI Brief for the Project dated 9 May 2008 and attach an EOI Response in response to the EOI Brief.

We acknowledge that we have read and understood the EOI Brief, and in particular the Important Notice and the terms and conditions.

In consideration of being permitted to submit an EOI Response and in accordance with the terms of our EOI Response, we:

- agree to be bound by the terms and conditions of the EOI Brief and warrant that the person signing this letter has the authority to bind the Respondent;

- warrant that the information contained in the EOI Response is accurate, reliable and complete as at the date on which it is submitted and may be relied upon by the State when evaluating the EOI Response and determining whether or not to invite the Respondent to submit an ITT Response;

- warrant that we have not relied upon the Government Information in relation to our assessment of the Project or the preparation or submission of our EOI Response;

- warrant that we will notify the State of any material change to any of the information contained in the EOI Response and of any material change in circumstance which may affect the truth, completeness or accuracy of any information provided in, or in connection with, the EOI Response;

- warrant that we have not engaged in any collusive tendering, anti-competitive conduct or any other similar conduct with any other Respondent or any other person in relation to the preparation or lodgement of an EOI Response;

- acknowledge that the State will rely on the above warranties and undertakings when evaluating the EOI Response;

- acknowledge that the State or the State's Associates may suffer loss or damage if the Respondent breaches any of the above warranties and undertakings; and

- irrevocably release and indemnify the State and the State's Associates from and against any loss, liability or claim arising out of, or in connection with the provision of, or the purported reliance upon, or use of the Government Information by the Respondent or any other person to whom the Government Information is disclosed by the Respondent as permitted in accordance with this EOI Brief or the Confidentiality Deed.

Words and expressions defined in the EOI Brief have the same meaning in this letter.

Yours sincerely,

[Insert execution details]