Invitation for Expressions of Interest
Melbourne Metropolitan Bus Franchise
Volume 1 – Expression of Interest Brief
Message from Ian Dobbs,
Chair and CEO Public Transport Victoria

This request for expressions of interest marks the beginning of the competitive tender for the operation of approximately 30 per cent of Melbourne's public bus network.

The tender is an important part of the Public Transport Victoria’s plan to improve public transport services across metropolitan Melbourne.

Melbourne is one of the most liveable cities in the world, with a reputation for the arts, culture and great sporting events. Melbourne’s strong population growth is largely a result of the liveability of the city, but also presents challenges for the public transport network.

There is a growing demand in Melbourne for safe, integrated, efficient and reliable public transport and, wherever Melburnians live, they expect to have access to the best possible public transport. Local bus services are a vital link in the public transport network because a large number of Melburnians live in locations removed from train and tram lines, but close to bus services.

Public Transport Victoria requires an experienced operator to work with the State to deliver best practice and to bring innovation to the provision of bus services. This can only result in continuous improvements over the life of the service contract.

The challenges surrounding Melbourne’s public transport network present opportunities for operators to contribute their experience and expertise, and to realise the benefits of their innovation and investment.

Public Transport Victoria is committed to ensuring that the process undertaken for securing the future operator of the new metropolitan bus franchise is fair, transparent and competitive, results in value-for-money outcomes and delivers the highest quality services for passengers.

Ian Dobbs
Chair and CEO
Important notice

Whilst the State has taken care in the preparation of the information contained in this Invitation for Expression of Interest (EOI) 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 Invitation for EOI is not intended to be exhaustive. Recipients and Respondents are required to make their own independent review, investigations and analysis of the Project. In addition, Respondents are expected to inform themselves of all relevant aspects of the Melbourne public transport network, including all publicly available information relevant to the Project. Respondents will be required to confirm in writing that they have done so, and that they have not relied upon the information in this Invitation for EOI in submitting its EOI Response. The information in this Invitation for EOI 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:

- not proceed with the Invitation for EOI or the Project
- alter or supplement any aspect of the Invitation for EOI including, without limitation, the Project Objectives, evaluation process, the EOI Evaluation Criteria or timetable
- take any other action which it is permitted to take under this Invitation for EOI.

Under no circumstances will the State or the State’s Associates reimburse any charges, costs, expenses or fees that may be incurred by any Recipient in relation to reviewing and/or investigating this Invitation for EOI, regardless of whether the Recipient elects to submit an EOI Response.

Recipients and Respondents should review the Terms and Conditions set out in this Invitation for EOI.
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The following terms have been used within all three Volumes of this Invitation for EOI, the singular includes the plural and conversely and if a word or phrase is defined its other grammatical forms have a corresponding meaning.

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<tr>
<th>TERM</th>
<th>MEANING</th>
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</thead>
<tbody>
<tr>
<td>ACCC</td>
<td>The Australian Competition and Consumer Commission.</td>
</tr>
<tr>
<td>Annual Works Plan</td>
<td>The plan to be developed by the Respondents which will set out how the Asset Management Plan will be achieved by detailing the planned maintenance regime including timing of major planned works, acquisition and retirement of vehicles.</td>
</tr>
<tr>
<td>Asset Management Plan</td>
<td>The plan to be developed by the Respondents which will detail the fleet and depot requirements and how these assets will be managed over the Contract Term.</td>
</tr>
<tr>
<td>Beneficial Owner</td>
<td>In respect of a Respondent or Respondent Member who is acting in its capacity as the trustee of a trust arrangement, any party who is a beneficiary of that trust.</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer of Public Transport Victoria.</td>
</tr>
<tr>
<td>Claim</td>
<td>Includes any claim, proceeding, cause of action, action, demand or suit (including of an interlocutory or administrative nature or by way of contribution or indemnity) of any nature whatsoever (whether at law or otherwise).</td>
</tr>
<tr>
<td>Closing Date</td>
<td>The date and time specified in Section 5.3.1 (Volume 1).</td>
</tr>
<tr>
<td>Confidential Information</td>
<td>Any confidential information provided by the State or Public Transport Victoria in connection with the Project, and all discussions between the State and the State’s Associates and the Recipient and the Recipient’s Associates relating to the Project.</td>
</tr>
<tr>
<td>Contract Commencement</td>
<td>The date commencing after the end of the Transition Phase when the Franchisee commences operational services in relation to the Franchise.</td>
</tr>
<tr>
<td>Contract Finalisation Phase</td>
<td>The phase during which Public Transport Victoria and the Preferred Respondent will endeavour to finalise the Transaction Documents to be entered into by the Franchisee.</td>
</tr>
<tr>
<td>Contract Term</td>
<td>The term defined in Section 3.4 (Volume 1).</td>
</tr>
<tr>
<td>Contractual Close</td>
<td>The date when the Transaction Documents are entered into by the Franchisee.</td>
</tr>
<tr>
<td>Current Operators</td>
<td>The current operators of the Eastern Area, Western Area and SmartBus Orbitals servicing the routes as described in Section 5.1 to 5.4 (Volume 2).</td>
</tr>
<tr>
<td>Eastern Area</td>
<td>The bus operations servicing the routes as described in Sections 5.1 and 5.2 (Volume 2), running mainly through the eastern suburbs with key departure and arrival destinations in Kew, Doncaster, Box Hill, Ringwood and the City.</td>
</tr>
<tr>
<td>EOI</td>
<td>Expression of Interest.</td>
</tr>
<tr>
<td>EOI Phase</td>
<td>The phase of the Tender Process used to shortlist parties to proceed to the RFT Phase as further described in Section 5 (Volume 1).</td>
</tr>
<tr>
<td>EOI Response</td>
<td>A Respondent’s response to this Invitation for EOI.</td>
</tr>
<tr>
<td>Evaluation Criteria</td>
<td>The criteria as described in Section 5.1.2 (Volume 1) used to shortlist Respondents.</td>
</tr>
<tr>
<td>TERM</td>
<td>MEANING</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Franchise</td>
<td>The contract for the operation of the Eastern Area, Western Area and SmartBus Orbitals, also known as the Melbourne Metropolitan Bus Franchise.</td>
</tr>
<tr>
<td>Franchisee</td>
<td>Any entity operating the Franchise post the termination or expiry of the current Eastern Area, Western Area and SmartBus Orbitals bus operations.</td>
</tr>
<tr>
<td>FTE</td>
<td>Full-time equivalent.</td>
</tr>
<tr>
<td>Government Agency</td>
<td>Any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity including a statutory corporation or a self-regulatory authority established under statute.</td>
</tr>
<tr>
<td>Government Information</td>
<td>The information contained in this Invitation for EOI or any information which may be provided in association with it, including estimates, predictions or assumptions upon which they may be based.</td>
</tr>
<tr>
<td>Important Notice</td>
<td>The Important Notice is set out in Volume 1.</td>
</tr>
<tr>
<td>Invitation for EOI</td>
<td>The documents inviting EOI Responses comprising all Volumes and all appendices, schedules, attachments and addenda thereto, as amended from time to time.</td>
</tr>
<tr>
<td>Key Principles</td>
<td>The principles set out in Sections 3.2 to 3.15 (Volume 1).</td>
</tr>
<tr>
<td>Parent Company Guarantee</td>
<td>A guarantee from the Respondent’s or Respondent Member’s ultimate parent entity.</td>
</tr>
<tr>
<td>Preferred Respondent</td>
<td>The Respondent that is selected by the State following the RFT Phase.</td>
</tr>
<tr>
<td>Probitity Auditor</td>
<td>The party identified in Section 2.2 (Volume 1).</td>
</tr>
<tr>
<td>Project</td>
<td>The Metropolitan Bus Services Project as described in Section 1 (Volume 1), being the competitive tendering of the Franchise.</td>
</tr>
<tr>
<td>Project Contact</td>
<td>The email address nominated in Section 5.6.1 (Volume 1).</td>
</tr>
<tr>
<td>Project Director</td>
<td>The person nominated in Section 5.6.1 (Volume 1) or their successor.</td>
</tr>
<tr>
<td>Project Objectives</td>
<td>The objectives as listed in Section 1.2 (Volume 1).</td>
</tr>
<tr>
<td>Public Transport Victoria</td>
<td>Public Transport Development Authority, a body corporate established under the Transport Integration Act 2010 (Vic).</td>
</tr>
<tr>
<td>Recipient</td>
<td>Any person who receives a copy of the Invitation for EOI.</td>
</tr>
<tr>
<td>Recipient’s Associates</td>
<td>A Recipient, its consortium members (if applicable), its Related Parties and their respective officers, employees and agents, advisors and consultants.</td>
</tr>
<tr>
<td>Related Party</td>
<td>Any ‘related entity’, ‘related body corporate’, ‘associate’ and ‘associated entity’ as those terms are defined in the Corporations Act 2001 (Cth).</td>
</tr>
<tr>
<td>Respondent</td>
<td>A party who submits an EOI Response and, for the avoidance of doubt, may be a single legal entity or a group of Respondent Members that collectively submit an EOI Response as a consortium.</td>
</tr>
<tr>
<td>Respondent’s Associates</td>
<td>A Respondent, its consortium members (if applicable), its Related Parties and their respective officers, employees and agents, advisors and consultants.</td>
</tr>
<tr>
<td>Respondent Member</td>
<td>Each separate legal entity comprising part of the consortium represented by the Respondent and includes its officers, employees and agents.</td>
</tr>
<tr>
<td>TERM</td>
<td>MEANING</td>
</tr>
<tr>
<td>-------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Returnable Schedules</td>
<td>The schedules setting out the information requirements contained in Volume 3 of this Invitation for EOI.</td>
</tr>
<tr>
<td>RFT</td>
<td>Request for Tender.</td>
</tr>
<tr>
<td>RFT Phase</td>
<td>The phase of the Tender Process used to select a Preferred Respondent.</td>
</tr>
<tr>
<td>RFT Response</td>
<td>A Respondent’s response to the RFT.</td>
</tr>
<tr>
<td>Shortlisted Respondent</td>
<td>The Respondent selected to participate in the RFT Phase.</td>
</tr>
<tr>
<td>SmartBus</td>
<td>A regular passenger service designated as such by the Public Transport Victoria as part of the SmartBus initiative.</td>
</tr>
<tr>
<td>SmartBus Orbitals</td>
<td>The bus operations servicing the routes as described in Sections 5.1 and 5.4 (Volume 2), running from Frankston to Melbourne Airport (Yellow – route 901), Chelsea to Airport West (Green – route 902) and Altona to Mordialloc (Red – route 903).</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 (including Public Transport Victoria) or an officer, employee, agent of, or contractor, adviser or consultant to any of them.</td>
</tr>
<tr>
<td>Successor Operator</td>
<td>Any entity operating the Franchise as a successor to the Franchisee post the termination or expiry of the Franchise.</td>
</tr>
<tr>
<td>Tender Process</td>
<td>The process as outlined in Section 4 (Volume 1).</td>
</tr>
<tr>
<td>Terms and Conditions</td>
<td>The terms and conditions as outlined in Section 6 (Volume 1).</td>
</tr>
<tr>
<td>Transaction Documents</td>
<td>The contractual documents for the Franchise to be entered into by the Franchisee.</td>
</tr>
<tr>
<td>Transition Phase</td>
<td>The phase of the Tender Process described in Section 4.1.4 (Volume 1).</td>
</tr>
<tr>
<td>Volume 1</td>
<td>The document titled Volume 1 – EOI Brief of this Invitation for EOI.</td>
</tr>
<tr>
<td>Volume 2</td>
<td>The document titled Volume 2 – Melbourne and its Bus and Public Transport Networks of this Invitation for EOI.</td>
</tr>
<tr>
<td>Volume 3</td>
<td>The document titled Volume 3 – Returnable Schedules of this Invitation for EOI.</td>
</tr>
<tr>
<td>Volumes</td>
<td>Volume 1, Volume 2 and/or Volume 3.</td>
</tr>
<tr>
<td>Western Area</td>
<td>The bus operations servicing the routes as described in Sections 5.1 and 5.3 (Volume 2), running mainly through the western and south-eastern suburban area with key departure and arrival destinations in Altona North, Footscray, Sunshine, Sandringham and the City.</td>
</tr>
<tr>
<td>Working Day</td>
<td>Any day other than a Saturday, Sunday or a day wholly or partly observed as a statutory public holiday throughout Victoria.</td>
</tr>
</tbody>
</table>
Section A – Project Scope

1. The Opportunity

1.1. Overview

Public Transport Victoria, on behalf of the State, invites suitably qualified Respondents to submit an EOI Response for the Franchise. The Franchise will account for an estimated 30 per cent of the Melbourne metropolitan bus market.

The Franchise is being established by the Metropolitan Bus Services Project (Project), on behalf of Public Transport Victoria. The Project provides an opportunity for Respondents to put forward innovative solutions consistent with the Project Objectives. Critical elements that are a priority for delivering the Project include continuous improvement in the areas of safety, patronage growth, modal coordination, network planning, efficiency and resource allocation.

The Project seeks to optimise the value for money outcome through an innovative framework of commercial propositions. This framework introduces a new approach to performance management through incentive-based contracts, a collaborative and transparent delivery structure and improved risk sharing between Public Transport Victoria and the Franchisee. This includes a whole-of-life vision for managing fleet and depot requirements. This proposed commercial framework is targeted towards incentivising the highest standards in the delivery of quality bus services. The Contract Term of seven years plus an opportunity to extend for three years allows both Public Transport Victoria and the Franchisee to realise the benefits of their innovation and investment.

An experienced and qualified public transport operator will be provided with the opportunity to work collaboratively with Public Transport Victoria to strengthen the performance of Melbourne’s bus network. The Franchisee will be expected to deliver best practice bus services and to think innovatively, both operationally and commercially, about any potential challenges and opportunities for the bus network.
The Franchise is comprised of three areas as per the table below:

<table>
<thead>
<tr>
<th>THE FRANCHISE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EASTERN AREA</strong></td>
</tr>
<tr>
<td><strong>Routes</strong></td>
</tr>
<tr>
<td><strong>Areas of service</strong></td>
</tr>
<tr>
<td><strong>Number of Routes</strong></td>
</tr>
<tr>
<td><strong>Number of FTE Staff (estimate)</strong></td>
</tr>
<tr>
<td><strong>Fleet (1 Jan 2012)</strong></td>
</tr>
<tr>
<td><strong>Annual Bus Kilometres (Feb 2012)</strong></td>
</tr>
<tr>
<td><strong>Depots</strong></td>
</tr>
<tr>
<td><em><em>Fleet Values</em> (31 Dec 2012)</em>*</td>
</tr>
<tr>
<td><strong>Indicative Depot Values</strong></td>
</tr>
</tbody>
</table>

* Note that these values are indicative only and are given to provide Respondents with a high-level understanding of the magnitude of fleet and depot acquisition costs where available. Actual acquisition costs may vary from the costs provided depending on a range of factors.

** Actual value will depend on depot numbers, depot location, functionality, land values and construction costs.

During the Contract Term the Franchisee will be able to integrate the operations of the Eastern Area, Western Area and the SmartBus Orbitals as it deems appropriate, to optimise service delivery and value for money.
1.2. Project Objectives

The following are the Project Objectives:

- to encourage sustainable competition in the provision of metropolitan bus services
- to establish new contracts for metropolitan bus services that:
  - provide safe, integrated, accessible and reliable public transport services
  - support the efficient operation of passenger transport services
  - promote innovation in the provision of services to meet the needs of customers and Public Transport Victoria
  - provide value for money.

The Project objectives have been developed in accordance with the Transport Integration Act 2010, having regard to the transport system objectives and decision making principles under that Act.

1.3. Overview of the Tender Process

The Tender Process will involve the following phases:

- **EOI Phase** – Commencing with the release of this Invitation for EOI, Public Transport Victoria will assess each Respondent’s EOI Response against the EOI Evaluation Criteria having regard to the Project Objectives and shortlist Respondents for the Franchise

- **RFT Phase** – Shortlisted Respondents will develop and submit fully costed, detailed and binding tenders. Public Transport Victoria will evaluate and clarify where required these tenders and it is envisaged a Preferred Respondent will be selected

- **Contract Finalisation Phase** – Public Transport Victoria and the Preferred Respondent will endeavour to finalise the Transaction Documents

- **Transition Phase** – The phase between Contractual Close and Contract Commencement during which the Preferred Respondent is required to efficiently manage all transition activities to operate the Franchise, including the transfer of assets and employees.

The indicative Tender Process timetable includes the following key dates:

<table>
<thead>
<tr>
<th>TENDER PROCESS</th>
<th>TARGET DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EOI Phase</strong></td>
<td></td>
</tr>
<tr>
<td>Release of Invitation for EOI</td>
<td>6 June 2012</td>
</tr>
<tr>
<td>Invitation for EOI briefing session (if required)*</td>
<td>within 2 weeks of release</td>
</tr>
<tr>
<td>Closing date for submission of EOI Response</td>
<td>(10.00am) 19 July 2012</td>
</tr>
<tr>
<td>Respondent presentations (if required)*</td>
<td>July/August 2012</td>
</tr>
<tr>
<td>Announcement of Shortlisted Respondents</td>
<td>August/September 2012</td>
</tr>
<tr>
<td><strong>RFT Phase</strong></td>
<td></td>
</tr>
<tr>
<td>Release of RFT to Shortlisted Respondents</td>
<td>Q3 2012</td>
</tr>
<tr>
<td>Closing date for submission of RFT Responses</td>
<td>Q4 2012</td>
</tr>
<tr>
<td>Respondent presentations and clarification (if required)</td>
<td>Q1 2013</td>
</tr>
<tr>
<td><strong>Contract Finalisation Phase</strong></td>
<td></td>
</tr>
<tr>
<td>Contract finalisation process</td>
<td>Q2 2013</td>
</tr>
<tr>
<td>Announcement of Preferred Respondent</td>
<td>Q2 2013</td>
</tr>
<tr>
<td>Execution of Transaction Documents</td>
<td>Q2 2013</td>
</tr>
<tr>
<td><strong>Transition period</strong></td>
<td></td>
</tr>
<tr>
<td>Contract Commencement</td>
<td>Q3 2013</td>
</tr>
</tbody>
</table>

* Respondents will be notified by Public Transport Victoria of the date, time and location (if required).
1.4. Purpose of this Invitation for EOI

The purpose of this Invitation for EOI is to:

• assist Respondents to understand the Melbourne public transport industry, the Franchise and the proposed commercial structure

• invite EOI Responses from Respondents who have the capacity, capability and commitment to successfully operate the Franchise so that Public Transport Victoria can select a shortlist of Respondents who will be invited to submit a detailed response for the Franchise as part of the RFT Phase

• specify the requirements and format for the EOI Response

• set out the EOI Evaluation Criteria to be applied in selecting Shortlisted Respondents

• outline the proposed process and timetable for the Project.

1.5. Responding to EOI

Respondents must submit a response addressing the information requirements set out in Volume 3.

1.6. Invitation for EOI Roadmap

The following diagram presents a summary roadmap across all three Volumes of the Invitation for EOI.

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<th>VOLUME 2</th>
<th>VOLUME 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary</td>
<td>Introduction to Melbourne and Victoria</td>
<td>Returnable Schedules</td>
</tr>
<tr>
<td>The Opportunity</td>
<td>Government, Legislation and regulators</td>
<td></td>
</tr>
<tr>
<td>Governance and Proby</td>
<td>Melbourne’s Transport System</td>
<td></td>
</tr>
<tr>
<td>Proposed Contractual Arrangements – Key Principles</td>
<td>Patronage Trends</td>
<td></td>
</tr>
<tr>
<td>The Tender Process</td>
<td>Franchise Business Information</td>
<td></td>
</tr>
<tr>
<td>EOI Phase</td>
<td>Franchise Assets</td>
<td></td>
</tr>
<tr>
<td>Terms and Conditions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Further information on the Project background is included in Volume 2. The format and requirements for EOI Responses is set out in Volume 3.
2. Governance and probity

2.1. Governance

The following diagram is a high-level illustration of the Project governance under which the Project will be delivered.

- Minster for Public Transport
- Public Transport Victoria
  - Board
  - Steering Committee (chaired by the CEO)
  - Project Director
  - Project Team
- Probity Auditor
Ultimate responsibility for delivery of the Project, on behalf of the State, lies with Public Transport Victoria, an entity established under the Transport Integration Act 2010 (Vic).

Within Public Transport Victoria, the Project Director reports to a Steering Committee chaired by the CEO. The Steering Committee is comprised of representatives from Public Transport Victoria, the Department of Treasury and Finance and the Department of Premier and Cabinet.

A Probity Auditor has been appointed and reports directly to the CEO.

2.2. Probity

Ensuring compliance with the Victorian Government probity principles in the procurement and delivery of the Project is of fundamental importance to the State.

O’Connor Marsden & Associates will act as the Probity Auditor for the Project. The objective of the Probity Auditor is to provide assurance to the CEO that the Project has maintained compliance with the Victorian Government Probity Principles in all material respects.

The Probity Auditor is not part of the evaluation panel and will not evaluate any EOI Responses. However, the Probity Auditor may attend meetings of the evaluation panel as an independent observer and will have access to other aspects of the Tender Process.

Recipients or Respondents who have any concerns about the conduct or probity of the Tender Process should bring their concerns in writing to the attention of the Probity Auditor immediately as they become aware of any concern. The Recipient or Respondent is required to set out in writing the matter, how it has affected the Recipient or Respondent and the proposed remedy for the matter. Together with the Probity Auditor, the Project team will endeavour to address any probity issue(s) to the satisfaction of all parties concerned.

Probity Auditor contact details

Ms Andrea Hassett
O’Connor Marsden & Associates
Telephone: +61 (0)414 739 475
Email: ahassett@ocm.net.au
3. Proposed contractual arrangements – Key Principles

This section sets out the proposed contractual arrangements of the Franchise contract. These arrangements have been developed to achieve the design objectives that meet the Project Objectives as follows:

- introduction of incentive-based contracts
- improved transparency of franchisee performance and financial viability
- improved step-in rights and end of term arrangements
- encouraging innovation and continuous improvement throughout the contract term
- improve the risk sharing between the State and the franchisee
- increased value for money through introducing restructured contracts which grow patronage through improved service delivery and customer experience.

The final form of the commercial arrangements may reflect innovation and operational expertise that the successful Respondent may bring that are considered to achieve the Project Objectives.

The full details in relation to risk allocation and commercial principles will be provided to Shortlisted Respondents in the RFT Phase, however, some proposed Key Principles are described in more detail in the rest of this section.

3.1. Indicative allocation of responsibilities

The table below provides a high-level overview of the allocation of responsibilities in the Franchise.

<table>
<thead>
<tr>
<th>TYPE OF RISK</th>
<th>RELEVANT SECTION REFERENCES (VOLUME 1, UNLESS OTHERWISE STATED)</th>
<th>PRIMARY RESPONSIBILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance with safety accreditation requirements</td>
<td>3.2. Accreditation, 5.1.2. Safety and Operating Accreditation</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Strategic network planning</td>
<td>3.5. Operational services</td>
<td>Public Transport Victoria</td>
</tr>
<tr>
<td>Operational performance</td>
<td>3.10. Performance regime</td>
<td>Franchisee</td>
</tr>
</tbody>
</table>
3.2. Accreditation

The Franchisee will be required to have successfully achieved accreditation in accordance with the *Bus Safety Act 2009* (Vic) before Contract Commencement.

The process of accreditation may take some time to complete and the Franchisee will be required to be accredited from Contract Commencement as a condition precedent.

3.3. Legal structure and parties

The following diagram presents, at a high-level, the expected key contractual relationships.

<table>
<thead>
<tr>
<th>TYPE OF RISK</th>
<th>RELEVANT SECTION REFERENCES (VOLUME 1, UNLESS OTHERWISE STATED)</th>
<th>PRIMARY RESPONSIBILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer experience</td>
<td>3.10. Performance regime</td>
<td>Franchisee</td>
</tr>
<tr>
<td></td>
<td>3.11. Reporting</td>
<td></td>
</tr>
<tr>
<td>Fleet procurement</td>
<td>3.8. Asset management</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Fleet maintenance</td>
<td>3.8. Asset management</td>
<td>Franchisee</td>
</tr>
<tr>
<td>Capital requirements</td>
<td>5.1.2 Financial Capacity</td>
<td>Franchisee</td>
</tr>
<tr>
<td></td>
<td>Volume 3 Response Schedule 4: Financial Capacity</td>
<td></td>
</tr>
<tr>
<td>Revenue risk (farebox)</td>
<td>3.10. Performance regime</td>
<td>Shared</td>
</tr>
<tr>
<td>Revenue risk (fare policy)</td>
<td>3.13. Fares</td>
<td>Public Transport Victoria</td>
</tr>
<tr>
<td></td>
<td>3.14. Ticketing</td>
<td></td>
</tr>
<tr>
<td>Residual value risk (fleet and</td>
<td>3.8. Asset management</td>
<td>Shared</td>
</tr>
<tr>
<td>depots)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depot development risk (time,</td>
<td>3.8. Asset management</td>
<td>Franchisee</td>
</tr>
<tr>
<td>cost and delay risk)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

![Diagram showing contractual relationships]

*Public Transport Victoria* is the owner of the service and the Franchisee is the operator. The Franchisee Special Purpose Vehicle Co is the vehicle business entity. Subcontractors and Financiers are involved in the operation and financing of the service. Current Operators are the current operators of the service.
The Franchisee is required to establish a stand-alone corporate entity to undertake the contracted services in the form of a special purpose vehicle. The special purpose vehicle will hold the dedicated assets and staff. It is expected that this structure will facilitate greater transparency through provision of relevant operational and financial information, and a smoother transfer of staff and assets at the end of Contract Term. The special purpose vehicle will be established specifically for the delivery of the Franchise services and will be restricted from undertaking any other business operations unless otherwise agreed with Public Transport Victoria.

The Preferred Respondent will sign transfer agreements with the Current Operators.

For the Franchise, the parties to the contract will be the special purpose vehicle and Public Transport Victoria. The Franchise contract will be the contractual document governing the obligations and rights of each party under the Franchise.

### 3.4. Contract term

The proposed Contract Term for the Franchise will be seven years with an opportunity to extend for up to an additional three years.

The Contract Term is designed to allow both Public Transport Victoria and the Franchisee the opportunity to realise the benefits of their innovation, investments and efforts.

### 3.5. Operational services

The Franchisee will be required to take an active approach to service management and is expected to work in collaboration with Public Transport Victoria. This includes complying with standards regarding service delivery, safety and accreditation, bus service planning, asset management, asset maintenance and procurement, service change management and reporting performance and meeting other information requirements.

The Franchisee will be responsible for operating the bus services in accordance with the service requirements including implementing services along the corresponding Franchise routes, in accordance with defined timetables, and adhering to Public Transport Victoria requirements regarding the collection of fares and customer service. The initial service scope will be defined based upon existing services, however, Public Transport Victoria is keen to explore improved service plans. At the RFT Phase, Respondents will therefore be asked to:

- price the base service scope
- provide a priced bid for an alternative service offering which provides an innovative solution to known constraints / boundaries.

To assist Respondents, the Project may provide details of potential route changes, which are based on a number of recent bus service reviews, to assist them in developing innovative timetable and route structure options. Any proposed route network changes should be prepared having regard to potential application of the exclusivity provisions in the *Bus Services Act 1995 (Vic)* (see Section 2.2.3 (Volume 2)).

### 3.6. Service adjustments

As per 3.5 above, the Franchisee will be required to take an active approach to service management with a focus on continuous improvement. Service adjustments may be either PTV or Franchisee initiated. Where the Franchisee requests a major service adjustment, this will need to be accompanied by a business case that demonstrates how the changes provide an improved customer outcome and value to the State. The price of service adjustments is expected to be based on marginal rates to be bid at the RFT Phase.

### 3.7. Human resources

Through transfer agreements the Current Operators will identify employees for transfer to the Franchise.

The current transfer agreements oblige the:

- Current Operators to identify staff that are suitably qualified and skilled to conduct the Franchise services and make them available to be offered employment by the Franchisee at the end of the current contract term. These employees will comprise drivers, maintenance personnel, support staff and management
- Franchisee to make offers of employment to those staff which are on terms that are no less favourable than their current terms of employment, provide for continuity of staff liabilities and entitlements and meet the relevant criteria of offers of acceptable alternative employment set out in the applicable enterprise or workplace agreement
- Franchisee to assume liabilities for those staff that choose to transfer.

A transition plan detailing the Respondent’s human resources and industrial relations management plans will be required at the RFT Phase, at which time more details will be made available on the arrangements for staff transfer.
3.8. Asset management

The Franchisee will be responsible for fleet and depot management, maintenance and compliance with the Bus Safety Act 2009 (Vic) and regulations.

Accordingly, Respondents will be required to develop a fleet strategy and a depot strategy, which may also include development of depot capability.

To ensure sustained competition in the bus sector, the major assets including fleet and depots are expected to be retained or acquired by Public Transport Victoria and transferred between the Current Operators to the Franchisee and then onto the Successor Operator, as follows:

**Fleet**

- Buses will be transferred from the Current Operators to the Franchisee at the beginning of the Franchise term for predetermined value, market value or through novation of leases depending on existing agreements with Current Operators.

- At the end of the Franchise term, all buses are expected to be transferred from the Franchisee to the Successor Operator.

**Current depots**

- Doncaster and North Fitzroy depots are owned by Public Transport Victoria and will be leased to the Franchisee for a nominal rent. The depots are to be handed back to Public Transport Victoria at the end of the Contract Term in a condition consistent with which they were originally leased.

- Footscray and Sandringham depots will need to be acquired from the Current Operator at the start of the Contract Term, at market value, and will be required to be sold to Public Transport Victoria or the Successor Operator at the end of the Contract Term. The depot transfer price at the end of the Contract Term is expected to be determined by a 30 year capital repayment schedule.

**Depot strategy / development of depot capability**

- Based on Respondents’ depot strategy further depots may be needed to operate these services given that the SmartBus Orbitals are currently operated out of approximately eight privately owned depots, which are not transferable. Accordingly the Franchisee may need to make interim arrangements until a permanent depot solution can be implemented. In any event interim arrangements should not exceed four years.

At the RFT Phase Respondents will be required to provide fully costed details of their depot solution covering the entire Contract Term, including interim arrangements. Financing of the depots will be up to the Franchisee including all necessary land acquisition. At the end of the Contract Term these depots will be required to be sold or transferred to Public Transport Victoria or the Successor Operator. In the case of depot ownership the depot transfer price at the end of the Contract Term is expected to be determined by a 30 year capital repayment schedule. In the case of long term rights of access / use being transferred these arrangements must be able to be novated for a successor term.

At this stage it is envisaged that the Franchisee could develop a few full service depots supported by a number of smaller satellite depots. All proposals will be considered including using existing privately owned depots, provided those depots are able to be transferred to Public Transport Victoria or a Successor Operator at the end of the Contract Term.

To facilitate the construction of new depots the State may make available vacant land for consideration, however, it is possible private land will need to be acquired as well. The Franchisee will be responsible for approval processes. Public Transport Victoria will provide information to enable the Franchisee to sufficiently future proof its depot locations and sizes.

At the RFT Phase, Shortlisted Respondents are likely to be asked to price the cost of bus ownership, including purchase cost and maintenance cost for the existing fleet and for replacement vehicles. This should be supported by an Asset Management Plan which is expected to cover the full term and outline how the cost as bid will be achieved by highlighting items such as the maintenance program and expected vehicle lives.

Notwithstanding the principles described above, Public Transport Victoria is also prepared to consider any alternative models that Respondents may suggest which can achieve the Project Objectives.

3.9. Pricing and payment model

Contract service payments will be based on the annual cost plus margin profile bid in real dollars (to be indexed by CPI) for each year of operation of the Contract Term and will be made monthly in arrears.

The payment mechanism will include incentives tied to the performance regimes outlined in Section 3.10. The payment mechanism may also include a profit sharing mechanism.

Public Transport Victoria is interested in hearing from Respondents on managing price and volume risk relating to fuel costs.

At the RFT Phase, Respondents will be required to submit detailed pricing templates which will be used for evaluation and act as the reference point for reporting over the Contract Term.

Notwithstanding the principles described above, Public Transport Victoria is also prepared to consider any alternative models that Respondents may suggest which can achieve the Project Objectives.
3.10. Performance regime

The Franchise contract will include performance-based mechanisms to incentivise the Franchisee to improve the quality and use of the services. The key components of the performance regime are expected to include:

- **patronage growth** – a financial incentive to encourage the Franchisee to grow patronage of the system effectively and manage fare evasion
- **operational performance** – to maximise reliability and service punctuality
- **customer service** – to assess Franchisee performance against qualitative measures (including vehicle presentation and driver behaviour)
- **flexible measures** – to reflect emerging policy and/or operational priorities, the Franchisee’s performance will also be assessed using flexible performance measures. These may include asset condition, vehicle availability and initiatives to address modal connectivity. These measures are expected to be set annually between Public Transport Victoria and the Franchisee.

Data provided through the ticketing system, the bus tracking system and other equipment to be agreed will be the core data sources.

This performance regime is designed to provide the Franchisee with a bonus or penalty based on its performance against targets and events that are within the Franchisee’s control. The financial impacts will be calibrated to a reasonable portion of the total payments through mechanisms which limit the size of penalties/bonuses in a given year.

In addition, the Franchisee will be required to develop and maintain a customer charter, which sets out the Franchisee’s commitment to specific service standards to be provided to its passengers.

Notwithstanding the principles described above, Public Transport Victoria is also prepared to consider any alternative models that Respondents may suggest which can achieve the Project Objectives.

3.11. Reporting

A comprehensive reporting regime will underpin the new contract to assist Public Transport Victoria with monitoring the Franchisee’s performance with regard to financial, operational and asset condition indicators. Compliance with the new reporting requirements will be managed through the performance regime and the use of template forms to ensure completeness and consistency of reporting.

Key aspects of the reporting regime will involve:

- **handover information** – annual provision of a range of information to Public Transport Victoria to be held in the event of termination/step in. The information requested could include details of staffing liabilities, asset registers, organisational structure, passwords and key registers
- **financial reporting** – quarterly or six monthly reporting on actual costs against the profile bid and annual audited financial statements
- **operational reporting** – on a monthly basis covering significant operational events, challenges and actions/mitigations for the month, as well as future priorities
- **Asset Management Plans and Annual Works Plans** – the Franchisee creating and submitting an Asset Management Plan and an Annual Works Plan, and reporting against key performance indicators for fleet and depots including fleet life, reliability and availability
- **business plan** – a three year plan updated on an annual basis on the challenges and opportunities the Franchisee expects to face.


The following security will be required:

- **performance bond** – the Franchisee will be required to provide a bond of 10 per cent of the first year contract value of the Franchise. The bond will be required to be topped up if called, and service payments will be withheld until the bond is topped up/replaced, to avoid Public Transport Victoria’s security being diminished. Replacement bonds are expected to escalate in value in relation to any material change in service payments over time
- **Parent Company Guarantee** – the Franchisee will be required to provide a Parent Company Guarantee
- **direct agreements** – Public Transport Victoria will require direct agreements with fleet and depot financiers and key subcontractors to ensure continuity of service in the event of a step-in or termination
• **cross default** – Public Transport Victoria will retain rights of cross default entitling it to terminate any bus contract where the right has been exercised to terminate a related bus service contract (i.e., one held by the same Franchisee or one of its related parties).

The form and conditions associated with the security arrangements described above will be provided to Shortlisted Respondents at the RFT Phase.

### 3.13. Fares

The Franchisee will be required to collect fare revenue through the sale (or reloading) of smart card products from buses and to honour valid pre-sold tickets, in accordance with the Victorian Fares and Ticketing Manual available at:


All fare revenue collected by the Franchisee belongs to, and remains the property of, the State. The Franchisee will be responsible for all fare revenue from the time it is collected until it is remitted to Public Transport Victoria. The Franchisee is consequently responsible for any shortfall between their recorded ticket sales and fare revenue remitted to Public Transport Victoria.

The Franchisee will also be required to assist the State and Public Transport Victoria in managing fare evasion.

Further detail on ticketing systems is included in Section 3.2 (Volume 2).

### 3.14. Ticketing

From the commencement of the Franchise *myki*, the State’s smart card system, it is expected to be the only ticketing system in place for all metropolitan public transport services.

Bus drivers will be required to sell *myki* cards, top up existing *myki* cards and to endeavour to ensure that all passengers touch on *myki* cards on boarding the bus.

Further detail on ticketing systems is included in Section 3.2 (Volume 2).

### 3.15. Advertising, livery and other commercial opportunities

The State welcomes Respondents’ advertising and livery ideas, as well as other commercial opportunities (including charter services).

The Franchisee’s advertising and livery programs (on and within vehicles) will be subject to approval by Public Transport Victoria.
Section B – The Tender Process

4. The Tender Process

The State and Public Transport Victoria are committed to ensuring the Tender Process proceeds in a manner which is efficient, fair and transparent. The Tender Process will be conducted in accordance with Victorian Government Purchasing Board policies.

4.1. Stages of the Tender Process

The Tender Process will involve the following phases:

4.1.1. EOI phase

The issue of this Invitation for EOI represents the first stage of the Tender Process for the Project.

EOI Responses will be assessed against the EOI Evaluation Criteria for the purpose of shortlisting Respondents for the Franchise. The Shortlisted Respondents that have been assessed as having best met the EOI criteria will be invited to participate in the RFT Phase.

Public Transport Victoria also appreciates that significant bid costs may be required in this tender process, and will have regard to this aspect when determining the appropriate number of Shortlisted Respondents.

Further details on the EOI Phase are provided in Section 5 below.

4.1.2. RFT phase

At RFT Phase the State will invite Shortlisted Respondents to provide fully costed and binding tenders based on the requirements outlined in the RFT documentation that are capable of acceptance by Public Transport Victoria. Public Transport Victoria expects that the tender received during the RFT Phase represents each Respondent’s best and final offer.

In this RFT Phase variant bids may be considered, noting these should be binding, capable of assessment and demonstrate achievement of the project objectives. Further details will be provided at the RFT Phase.

The RFT Phase is expected to include a structured approach to interactions and clarifications, where required, between individual Respondents and Public Transport Victoria, including a number of workshops and provision of access to relevant information. Public Transport Victoria envisages announcing a Preferred Bidder at the end of the RFT Phase.

As a condition precedent to entering into the RFT Phase, Shortlisted Respondents will be required to enter into a probity and process deed prior to receiving the RFT and any supporting information. This deed will regulate the terms and conditions under which information provided during the RFT Phase is disclosed by Public Transport Victoria to Shortlisted Respondents and will outline the probity requirements and process which will apply in respect of the RFT Phase through to the completion of the Tender Process.

The State also reserves the right to request a bid bond from successful parties at short listing.

Public Transport Victoria will provide further detailed information during the RFT Phase to assist Respondents with their due diligence.

4.1.3. Contract finalisation phase

Following the completion of the RFT Phase, Public Transport Victoria will endeavour to finalise the Transaction Documents for the Franchise with the Preferred Respondent, however, Public Transport Victoria reserves all of its rights in relation to the execution of the Transaction Documents.

4.1.4. Transition

An appropriate number of months will be allowed between Contractual Close and Contract Commencement for the Preferred Respondent to efficiently manage all transition activities required to operate the Franchise, including the transfer of assets and employees. The Preferred Respondent will also be required to successfully achieve accreditation during this phase. A transition plan will form part of the requirements at the RFT Phase.
4.2. Indicative EOI timetable

An indicative timetable for the EOI Process is provided in the following table.

<table>
<thead>
<tr>
<th>TENDER PROCESS</th>
<th>TARGET DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Release of Invitation for EOI</td>
<td>6 June 2012</td>
</tr>
<tr>
<td>Invitation for EOI briefing session (if required)*</td>
<td>within 2 weeks of release</td>
</tr>
<tr>
<td>Closing date for submission of EOI Response</td>
<td>(10.00am) 19 July 2012</td>
</tr>
<tr>
<td>Respondent presentations (if required)*</td>
<td>July 2012</td>
</tr>
<tr>
<td>Announcement of Shortlisted Respondents</td>
<td>August/September 2012</td>
</tr>
</tbody>
</table>

* Respondents will be notified by Public Transport Victoria of the date, time and location (if required).

4.3. Further information

Public Transport Victoria may issue clarifications and additional information in addenda which will form part of this Invitation for EOI.
5. EOI Phase

5.1. Purpose
The purpose of the EOI Phase is to shortlist the Respondents who will be invited to participate in the RFT Phase. Further details about the Tender Process are provided in Section 4 above.

5.1.2. Evaluation criteria
The Respondent is expected to demonstrate, to the satisfaction of Public Transport Victoria, its capacity to comply with the Evaluation Criteria set out below. These Evaluation Criteria have been developed to ensure that the Project Objectives are delivered.

Public Transport Victoria welcomes, and highly regards, demonstrable innovation in responding to each evaluation criterion.

<table>
<thead>
<tr>
<th>EVALUATION CRITERION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety and Operating Accreditation</td>
<td>Demonstrated capability and a track record of effective management of safety risk in public transport services including evidence that the Respondent is entitled to operate public transport services under a permissible national or international accreditation regime.</td>
</tr>
<tr>
<td>Operational Capability, Experience and Capacity</td>
<td>The extent to which the Respondent demonstrates its capability, experience, record of innovation and culture of continuous improvement in managing public transport operations, including effective human resource management, change management and industrial relations management. The Respondent’s capacity to participate in the Tender Process for, and to operate, the Franchise and understanding of the key issues in relation to the Franchise.</td>
</tr>
<tr>
<td>Financial Capacity</td>
<td>Demonstrated evidence that the Respondent has the financial capacity to operate the Franchise including the ability to meet capital requirements as described in Section 4.2 (Volume 3).</td>
</tr>
<tr>
<td>Working with Public Transport Victoria and other Public Transport Operators</td>
<td>The extent to which the Respondent demonstrates the attitudes, ethics and mindset that will underpin the successful long-term collaborative relationship envisaged by Public Transport Victoria.</td>
</tr>
<tr>
<td>Proposed Contractual Arrangements – Key Principles</td>
<td>The extent to which the Respondent accepts the proposed Key Principles, or proposes reasonable alternatives which achieve the Project Objectives.</td>
</tr>
</tbody>
</table>

5.1.1. Assessment of EOI responses
Public Transport Victoria will evaluate each Respondent’s EOI Response based upon the EOI Evaluation Criteria set out in Section 5.1.2 below.

Public Transport Victoria, at its discretion, may decline to undertake a full evaluation of an EOI Response where that Respondent has failed to satisfy the requirements of any Evaluation Criterion.
<table>
<thead>
<tr>
<th>EVALUATION CRITERION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fleet Strategy</td>
<td>The extent to which the Respondent demonstrates the capacity and capability to provide and deliver an asset management strategy for the bus fleet including procurement, maintenance, refurbishment and retirement of buses.</td>
</tr>
<tr>
<td>Depot Strategy</td>
<td>The extent to which the Respondent demonstrates the capacity and capability to provide and deliver a depot strategy, including (if applicable) the design, construction and financing of new depot(s) and/or assessing the suitability of a depot acquisition.</td>
</tr>
<tr>
<td>Significant Innovation</td>
<td>The extent to which the EOI Response demonstrates significant innovation and continuous improvement, focusing on past, present and future initiatives.</td>
</tr>
<tr>
<td>Quality, Consistency and Completeness</td>
<td>The extent to which the EOI Response addresses all requirements of the Invitation for EOI, is internally consistent, complete, credible and of high quality.</td>
</tr>
</tbody>
</table>

5.2. Invitation for EOI briefing session

Recipients will be notified in the event an Invitation for EOI briefing session is held.

5.3. EOI response submission

Respondents are to complete all Returnable Schedules contained in Volume 3 as part of their EOI Response.

Public Transport Victoria, having assessed some of the Evaluation Criteria, at its discretion, may decline to consider an EOI Response that is incomplete or does not comply with the requirements of this Invitation for EOI.

5.3.1. Closing date and time

EOI Responses are to be submitted by 10:00am (Australian Eastern Standard Time) on 19 July 2012 (Closing Date). It is the complete responsibility of Respondents to ensure that their EOI Response is received before the time and date set out above.

Refer to Section 6.2 below for further details.

5.3.2. Submission requirements

The EOI Response must comply with the requirements specified below:

- the EOI Response must contain the information required by this Invitation for EOI and set out in Volume 3. The format of the EOI Response should be in accordance with and follow the order in which the information is requested in Volume 3
- the EOI Response must provide sufficient detail to address the EOI Evaluation Criteria. Respondents should not rely on being invited to make further submissions after the Closing Date
- all EOI Responses must be in English language only. All measurements should be metric and reference to monetary values in current Australian dollars
- unnecessarily elaborate EOI Responses or other presentations beyond what is sufficient to present a complete EOI Responses in accordance with this Invitation for EOI are not desired or required. Elaborate artwork and expensive visual and other presentation aids are not necessary.

Further details on the submission requirements are provided in the Terms and Conditions and set out in Volume 3.
5.3.3. Lodgement details

Respondents are required to provide one unbound copy marked “Original” and five consecutively numbered bound copies (i.e. “Copy 1”, “Copy 2”, etc.) of their EOI Response. Each copy should contain the full details of the original. In addition, one electronic copy on a CD, DVD or other portable data storage device is required. Files in PDF format are required to be provided in their original form (e.g. MS Word, MS Excel etc.).

Signatures on the document marked “Original” are expected to be executed by hand.

In the event of any discrepancies in the hard copy or electronic documents, the hard copy document marked “Original” will prevail. If any EOI Response is not marked “Original” Public Transport Victoria will determine, in its discretion, which copy is to be deemed as the “Original”.

The EOI Response must be submitted in a sealed package with the cover clearly and prominently marked as follows:

Strictly Private and Confidential
Metropolitan Bus Services Project
Public Transport Victoria Tender Box
Basement Level B2
121 Exhibition Street
Melbourne Vic 3000

A map and instructions for locating the tender box are provided as Appendix A to assist persons lodging an EOI Response.

5.4. Respondent presentations

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

5.5. Referee interviews

Public Transport Victoria reserves the right to undertake referee interviews in order to validate details of an EOI Response. Respondents will be required to provide relevant referee contact details when completing the information required in Volume 3. Respondents are required to contact the Project Contact should Respondents wish to nominate a referee as part of their EOI Response who is in an ongoing employment relationship with Public Transport Victoria.

5.6. Communication

5.6.1. Project Contact and Project Director

All contact in respect of the Project is to be directed in writing to the email address mbsproject@ptv.vic.gov.au. Please include contact details including email, telephone and mobile numbers for the Project to respond.

The Project Director in respect of this Invitation for EOI is:

Tony Hayward
Project Director
Metropolitan Bus Services Project
E-mail: mbsproject@ptv.vic.gov.au

5.6.2. Submission of enquiries and clarification questions

Recipients may submit enquiries and clarification questions in respect of this Invitation for EOI to Public Transport Victoria. Any enquiries or requests for clarifications must be directed in writing to the Project Contact in respect of the Invitation for EOI by email: mbsproject@ptv.vic.gov.au. The Project team will check this email on a regular basis.

All such enquiries and clarification questions must be submitted no later than five Working Days prior to the Closing Date, and include the following details:

• name of organisation
• name of primary contact person
• contact email address
• contact telephone number(s).

Recipients should note that Public Transport Victoria may reply to enquiries and clarification questions from a Recipient by notice to the Recipient and all other Recipients (together with the question). A Recipient may request that any question not be disclosed to other Recipients, but Public Transport Victoria may determine in its absolute discretion whether it will disclose the question (and associated response).

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

Other than through the nominated Project Contact, Recipients and Respondents are prohibited from contacting any Government Agency, Member of Parliament or their staff to discuss any aspect of the Project except as permitted by the Invitation for EOI or otherwise with the prior written consent of the Project Director.
Section C – Terms and Conditions

6. Terms and Conditions of the Invitation for EOI

6.1. Disclaimer

This Invitation for EOI 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 Invitation for EOI, in relation to its assessment of the Project and the submission of its EOI Response.

This Invitation for EOI has been delivered to the Recipient on the express understanding that, and in consideration for, the Recipient, using it only under the conditions set out in this Invitation for EOI. No guarantee, representation or warranty (either express or implied) is given by or on behalf of the State or the State’s Associates 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 or the State’s Associates in relation to this Invitation for EOI or the Project is, to the maximum extent permitted by law expressly disclaimed and excluded.

By lodging an EOI Response a Respondent is deemed to have expressly agreed to the Terms and Conditions of the Invitation for EOI including but not limited to disclaiming any reliance on the information contained in this Invitation for EOI.

6.2. Lodgement of EOI Responses

The State reserves the right, at its absolute discretion, to accept or reject any EOI Response:

• lodged after the Closing Date
• that does not comply with the requirements specified in Sections 5.3.2 and 5.3.3 above.

Respondents must ensure that the EOI Response complies with any page limits specified in Volume 3. Page limits include all diagrams, charts, pictures or similar. The State reserves the right to disregard any parts of the EOI Response that exceed the specified page limit.

6.3. Changes to the Invitation for EOI

The State reserves the right, in its absolute discretion, to cancel, supplement or amend the information, terms, procedures and protocols contained in this Invitation for EOI without giving any reasons. A Recipient or Respondent will have no Claim against the State or the State’s Associates with respect to the exercise of, or failure to exercise, this right.
6.4. Costs to be borne by the Recipient and Respondent

All costs or expenses incurred by any Recipient in reviewing, investigating or analysing this Invitation for EOI, or any Respondent in preparing or lodging an EOI Response or otherwise in connection with the Project (including as a result of anything done by the State under Section 6.3 above) will be borne by the Recipient or Respondent and a Recipient or Respondent will have no Claim against the State or the State’s Associates in relation to such costs or expenses. 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.

6.5. Confidentiality and personal information

The Recipient must keep confidential any Confidential Information provided by the State or Public Transport Victoria.

The Recipient must not reproduce the State’s or any State’s Associates' documents (or any part of them) except where necessary for preparation and submission of its EOI Response.

6.6. Ownership of EOI Responses

Upon submission, all EOI Responses will become the property of the State and will not be returned to the Respondents.

Information submitted by the Respondent will not be considered proprietary.

Subject to the State’s rights under this Section 6.6, and any need to provide information to the State’s Associates in connection with the Tender Process, the State and Public Transport Victoria 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 and Public Transport Victoria to copy, adapt, modify, disclose or do anything necessary in the State’s or Public Transport Victoria’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 and the RFT documentation
- 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
- anything else related to the above purposes, including audit requirements, compliance with Victorian Government and Ministerial reporting requirements and responding to any challenge to the Tender Process or audit.

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

6.7. Freedom of Information Act 1982 (Vic)

The Freedom of Information Act 1982 (Vic) applies to the information provided by the Respondent in its EOI Response. The Respondent should note that the Freedom of Information Act 1982 (Vic) grants members of the public rights of access to information in the possession of the State, Public Transport Victoria 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 Freedom of Information Act 1982 (Vic). 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 commercially sensitive or confidential. Marking information as ‘commercial and confidential’ will not necessarily prevent disclosure of the information in accordance with the Freedom of Information Act 1982 (Vic). Any decision to release information will be determined by the requirements of the Freedom of Information Act 1982 (Vic). The Respondent will not be entitled to make any Claim in relation to any actions taken in relation to, or under, the Freedom of Information Act 1982 (Vic).

6.8. 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 and may be referred to the ACCC.
6.9. Respondent Members and Related Parties

As part of its EOI Response, the Respondent is required to identify:

- its Respondent Members (if any) and any changes to Respondent Members
- its Respondent’s and the Respondent Members’ advisers
- any Respondent Member that is a Related Party of another Respondent.

Where a Respondent has Respondent Members it must:

- confirm that the special purpose vehicle described under Section 3.3 (Volume 1) will contract as one separate legal entity for the Respondent and the Respondent Members
- provide a single point of contact for the Respondent and the Respondent Members.

Failure to do so may result in a Shortlisted Respondent being disqualified as a Shortlisted Respondent. Note that the formation of consortia is subject to the Competition and Consumer Act 2010 (Cth).

6.10. Foreign Investment Review Board Approval

Each Respondent should review the requirements of the Foreign Acquisitions 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 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.

6.11. Exclusions of Australian 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 the 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.

6.12. Return of Government Information

The State reserves the right, at its absolute discretion, to require that all information, other than publicly available information, provided to Recipients by the State or the State’s Associates as part of the Invitation for EOI be returned to the State or the State’s Associates, or at the option of the State, be destroyed at any stage.

6.13. Legislation

References to, and explanations of, legislation and regulatory issues which appear in this Invitation for EOI 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 Invitation for EOI.


Any projections as to future events or other forward looking statements contained in this Invitation for EOI represent estimates only. These projections are based on various assumptions (which may be incomplete or erroneous) and are subject to significant uncertainties and contingencies, many of which are outside the control of the State or Public Transport Victoria. 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.

6.15. No Legal relationship

This Invitation for EOI is not intended to form the basis of any investment decision. No part of this Invitation for EOI constitutes a recommendation, offer, invitation or solicitation in relation to the Project. Neither the State nor Public Transport Victoria have any contractual or other legal obligation to the Recipient or Respondent arising out of the release of this Invitation for EOI or any EOI Response including but not limited to the consideration, evaluation, acceptance or rejection of any EOI Response or the failure to consider, evaluate or accept any EOI Response.

No contract exists or will arise between the State or Public Transport Victoria and any Recipient or Respondent until the Transaction Documents for the Franchise are executed between Public Transport Victoria and the Franchisee at the end of the Contract Finalisation Phase.
6.16. Conflict of interest and compliance with law

Any party with a real or perceived conflict of interest must declare that interest to Public Transport Victoria as soon as the conflict (whether real or perceived) 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.

A declaration is required to be made by the Respondent and submitted with the EOI Response, as to any actual, potential or perceived 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 Public Transport Victoria of any actual, potential or perceived conflicts that may arise after the date of submission of the EOI Response.

The Respondent must, and must ensure that the Respondent’s Associates, comply with all laws in relation to participation in the Tender Process.

6.17. Non compliance

The Recipient and Respondent agrees that it is bound by the Terms and Conditions set out in this Invitation for EOI. Accordingly, if a Recipient or Respondent breaches a material requirement or condition of the Invitation for EOI or otherwise engages in conduct that Public Transport Victoria considers adverse to the Project Objectives then Public Transport Victoria may, at its absolute discretion, exclude the Respondent from any further involvement in the Project by giving written notice to that Respondent.

The State’s rights under this Section 6.17 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 or Public Transport Victoria arising out of its exercise, or failure to exercise, its rights under this Section 6.17.

6.18. Communication

The Respondent must communicate only with the Project Contact identified in Section 5.6.1 above, on all issues relating to the Invitation for EOI or the EOI Phase.

The Respondent must not, and must ensure that the Respondent’s Associates do not, make contact with any Government Agency, Members of Parliament or their staff to discuss any aspect of the Government Information or the Tender Process except as permitted by the Invitation for EOI or otherwise with the prior written consent of the Project Director.

Recipients must not use any media or other communication channels in a way which might reflect adversely on the State, Public Transport Victoria or the Project. Until the conclusion of the RFT Phase and the selection of the Franchisee, Recipients must not comment to any media or third party about matters connected with the Tender Process. If Recipients consider that they must make a public statement or comment then, so far as practicable, Recipients must notify Public Transport Victoria of the content of such statements or comments prior to the release of such statements or comments by sending the content by email to the Project Contact at the email address specified in Section 5.6.2 above and comply with Public Transport Victoria’s requirements.

At the sole discretion of the State, unauthorised communication by a Recipient may lead to the disqualification of the Recipient from any further participation in the EOI Phase, any subsequent phases of the Tender Process or any other related process.

6.19. Probity

The Respondent must not, and must ensure that the Respondent’s Associates do not offer any incentive to, or otherwise attempt to influence, any of the persons who are either directly or indirectly involved in the Tender Process, or in awarding any subsequent contract, through any means other than in accordance with the Invitation for EOI. If Public Transport Victoria determines that the Respondent or any of the Respondent’s Associates have violated this condition, the Respondent may be disqualified from further consideration.

By submitting an EOI Response, the Respondent consents to Public Transport Victoria performing such probity and financial investigations and procedures as Public Transport Victoria may determine is 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 Public Transport Victoria, to seek such consents from individuals as are required by law to be obtained prior to such probity checks and criminal investigations.

Shortlisted Respondents may 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 or Public Transport Victoria to Shortlisted Respondents and will outline the probity requirements and process which will apply in respect of the RFT Phase.
6.20. Release

a. The Respondent unconditionally, irrevocably and absolutely releases and forever discharges the State and the State’s Associates from any liability that they have, or may (but for this release) have had, and all Claims arising out of, or in relation to or in connection with any matter pertaining to or in connection with:

i. this Invitation for EOI;

ii. the State’s decision to issue (and any subsequent issue of) a RFT relating to the provision of the Franchise (or any similar process); or

iii. 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 the Invitation for EOI.

b. The Respondent covenants in favour of the State and the State’s Associates that it will not, and will procure that none of the Respondent’s Associates will:

i. pursue, bring or procure that a third party brings or pursues, provide financial support for or otherwise support any Claim in respect of any matter which is the subject of a release under this Section 6.20;

ii. assert in relation to any matter the subject of a release under this Section 6.20 any Claim against any other person who, in turn, may reasonably be expected to assert, as a result of the Respondent’s Claim, a Claim for contribution, indemnity or any Claim in warranty against the State.

c. The Respondent represents and warrants that neither it nor any of the Respondent’s Associates has sold, assigned, granted or transferred to any other person any Claim contemplated by the terms of this Section 6.20.

d. The Respondent hereby indemnifies the State and the State’s Associate from and against any loss, damage, cost or expense (including legal costs on a full indemnity basis) incurred or suffered by it as a result of any Claim arising from or in any way connected with:

i. the provision of, or the purported reliance upon, or use of the Government Information (including the Invitation for EOI) by the Respondent or any other person to whom the Government Information (including the Invitation for EOI) is disclosed by the Respondent as permitted in accordance with the Invitation for EOI;

ii. a breach by the Respondent of Sections 6.20(b) or 6.20(c); or

iii. a Claim made by another person against the State or State’s Associates in the circumstances described in Section 6.20(b).

e. A release or covenant in favour of a person who is not a party to this Invitation for EOI is a right held on trust for the benefit of the person by any party with whom the person has a relationship by virtue of which the person has the benefit of the release or covenant.

f. This Section 6.20 may be pleaded and tendered by any party as an absolute bar and defence to any proceeding brought in breach of the Terms and Conditions.

6.21. State’s other rights

Without limitation to any other rights the State may have including rights under this Invitation for EOI, Public Transport Victoria may at any stage of the Project:

- require additional information from the Respondent
- terminate further participation in the Project by the Respondent
- amend any part of this Invitation for EOI (including issuing clarifications, additional information and supplements in respect of any aspect of this Invitation for EOI)
- change the structure or timing of the Project or the Tender 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 Tender 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
- rely on information relating to the Respondent as part of the evaluation process
- not select any Respondent to be shortlisted
- where a Shortlisted Respondent’s RFT Response is materially adversely different to its EOI Response, Public Transport Victoria may take that into account as part of the RFT Phase evaluation process and/or not proceed with the Shortlisted Respondent
• not proceed with a Shortlisted Respondent where there has been a change to the Respondent Members following the EOI Response

• undertake the Project with a person other than a Respondent

• change the scope of the Project

• not proceed with the Tender 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

• refuse to progress a Respondent through the Tender Process if there is a serious concern about a likely contravention of the law

• take any other action which it is permitted to take under this Invitation for EOI.

and a Recipient or Respondent will have no Claim against the State or Public Transport Victoria in connection with such matters.
Persons lodging tender documentation are advised to follow the directions below. If you require any assistance please contact the Mail Centre on (03) 8684 0184.

**Directions**

1. Enter via ramp on Little Collins Street (stay to the left)
2. Follow the signs to the Mail Centre
3. Approach the desk (if there is a queue tell mail centre staff you are dropping off a tender)
4. Receive a receipt for your EOI Response and exit the same way you entered.