

Concession Agreement

in respect of the RTA Special Number Plates business

Roads and Traffic Authority of NSW
ABN 64 480 155 255

Plate Marketing Pty Ltd
ABN 17 142 084 302

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Concession Agreement dated

Parties **Roads and Traffic Authority of NSW ABN 64 480 155 255** of 101 Miller Street, North Sydney NSW (**RTA**)

Plate Marketing Pty Ltd ABN 17 142 084 302 of 93 Wolston Road, Sumner, Queensland 4074 (**Concessionaire**)

The RTA and the Concessionaire agree that they will be bound by and will perform their respective obligations in accordance with this Concession Agreement, comprising:

- A. the Background;
- B. the Operative Provisions (clauses 1 to 46);
- C. Schedules 1 to 10; and
- D. Annexures A, B, C, D and E.

Signed as an agreement.

The **Seal of Roads and Traffic Authority of New South Wales** was hereunto affixed by

_____, being an authorised signatory:



Signature

Executed by Plate Marketing Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Background

- A. In the 2008-09 Mini-Budget presented to the NSW Parliament on 11 November 2008, the NSW State Government announced that it was considering granting a concession to the private sector to operate the SNP Business.
- B. The NSW State Government has invited proposals from the private sector for the operation of the SNP Business and, based on the proposals submitted in response to that invitation, selected the proposal of the Concessionaire.
- C. The RTA and the Concessionaire have agreed on the terms as set out in this agreement to regulate their relationship in respect of the operation of the SNP Business, including the performance of the Concessionaire Services by the Concessionaire and the provision of the RTA Services by the RTA.

Operative provisions

1. Definitions and interpretation

The definitions and rules of interpretation of this agreement are set out in Schedule 1 (Dictionary).

2. Conditions precedent

2.1 Conditions

Subject to clause 2.6, this agreement does not become binding on the parties and has no force or effect unless each of the conditions listed in the first column of the following table has been either satisfied or waived in accordance with clause 2.4:

Condition	Right to waive
(a) the Minister of Roads and Treasurer of New South Wales have provided all relevant Authorisations to approve the execution of this agreement by the RTA;	None
(b) the Concessionaire has delivered to the RTA an executed copy of the Security Documents required to be provided by the Concessionaire in accordance with clause 11.1;	RTA
(c) the Concessionaire has delivered to the RTA such evidence reasonably satisfactory to the RTA that the Concessionaire has effected the Insurances with the Approved Insurers in accordance with clause 26; and	RTA
(d) the SNP Enablement Project has been Completed.	RTA

2.2 Reasonable endeavours to satisfy Conditions

Each party must:

- (a) use all reasonable endeavours to ensure that each Condition is satisfied as soon as practicable after the Execution Date and in any event before the CP End Date; and

- (b) keep the other party informed of any fact, matter or circumstance of which it becomes aware that may result in a Condition not being satisfied in accordance with its terms.

2.3 Notice in relation to satisfaction of Conditions

Each party must within 15 Business Days after becoming aware of the satisfaction of any Condition give notice to the other party of the satisfaction of that Condition and provide reasonable evidence that the Condition has been satisfied.

2.4 Waiver of Conditions

The RTA is entitled to waive or to agree to waive each of the Conditions set out in clauses 2.1(b), (c) and (d) in its absolute discretion by notice to the Concessionaire.

2.5 Failure of Conditions

A party is entitled to terminate this agreement by notice to the other party at any time:

- (a) if any Condition has become incapable of satisfaction and that Condition has not been waived in accordance with clause 2.4 within 5 Business Days after the occurrence of the fact, matter or circumstance which caused that Condition to become incapable of satisfaction; or
- (b) if any Condition has not been satisfied or waived in accordance with clause 2.4 before the CP End Date.

2.6 Commencement of some clauses

Notwithstanding clause 2.1, the following clauses of this agreement commence on the date this document is signed by the RTA and the Concessionaire:

Clauses 1, 2, 38.2, 38.3, 42.1 and 46

3. Scope of Services

3.1 Exclusivity

The rights granted by the RTA to the Concessionaire to perform the Concessionaire Services and to operate the SNP Business in accordance with this agreement are exclusive for the duration of the Term.

3.2 Scope limited to SNP Products

The RTA and the Concessionaire acknowledge and agree that, except as set out in this agreement or as otherwise agreed by the parties:

- (a) the Concessionaire will perform the Concessionaire Services only in connection with the SNP Products; and
- (b) nothing in this agreement will be considered or interpreted as granting the Concessionaire any rights to perform the Concessionaire Services in connection with Plates that are not SNP Products.

3.3 SNP Business website functionality

The RTA and the Concessionaire acknowledge and agree that, except as set out in this agreement or as otherwise agreed by the parties, the Concessionaire must ensure that there is a SNP Business website accessible by SNP Customers and potential SNP Customers that has the following functionality and features:

- (a) an interactive enquiry and transaction SNP facility in respect of SNP Products which allows potential SNP Customers to search for general information about SNP Products, design a SNP Product and undertake a SNP Transaction;
- (b) a description and graphic for all SNP Products that are available through the website;
- (c) capability for a customer to order:
 - (i) replacement General Issue Plates or replacement Numeral Only Plates; and
 - (ii) new or replacement Bike Rack Plates or Heavy Vehicle Plates; and
- (d) contains a link to the RTA's general website.

3.4 Changes to General Issue Plates

- (a) During the Term, the RTA must not change the colour of the background, the colour of the Characters, the design (and, in the case of General Issue Plates for vehicles only, the Content Format) of General Issue Plates from the General Issue Plates Features, and must not make any material change to the appearance or design of the General Issue Plates from the General Issue Plates Features (in each case a **Material Plate Change**), except where a Material Plate Change is required by a Regulatory Change Event. For the avoidance of doubt, nothing in this clause 3.4(a) will preclude the RTA from changing the technical specifications of and materials used to manufacture the General Issue Plates, whether or not the change is required by Regulatory Change Event.
- (b) The RTA will consult with the Concessionaire in respect of any proposed Material Plate Change.
- (c) Subject to clauses 3.4(d) and 3.5, the RTA must pay the amount of the Liabilities that the Concessionaire may suffer or incur in connection with the Material Plate Change (**Material Plate Change Payment**), as agreed by the parties or as otherwise determined in accordance with clause 3.5, except where the relevant Regulatory Change Event has occurred in connection with a national reform program or as a result of an enactment of any Commonwealth legislation or regulation, or any change to existing Commonwealth legislation or regulation.
- (d) The RTA is not liable to make a Material Plate Change Payment to the Concessionaire for an aggregate amount in excess of the amount calculated in accordance with the following formula:

$$\left(\frac{A}{365 \times B} \times \text{Upfront Licence Fee} \right)$$

where:

- A** is the number of days in the period commencing on the date a Material Plate Change occurs and ending on the 15th anniversary of the Start Date; and
- B** is 15 years, being the initial term of this agreement, assuming there is no early termination in accordance with this agreement or at Law, or extension of the term in accordance with clause 9.2.

3.5 Determination of the Material Plate Change Payment

- (a) To claim a Material Plate Change Payment, the Concessionaire must within 120 Business Days following the occurrence of the relevant Material Plate Change, give notice to the RTA in writing setting out the full particulars of the impact of the Material Plate Change on the SNP Business and the SNP Revenue and an estimate of the amount of the Material Plate Change Payment (if any) (a **Material Plate Change Notice**).
- (b) Within 20 Business Days after receipt of a Material Plate Change Notice under clause 3.5(a), the RTA and the Concessionaire must negotiate and use reasonable endeavours to agree on the impact of the Material Plate Change on the SNP Business and the SNP Revenue and the amount of the Material Plate Change Payment (if any).
- (c) If the parties reach agreement on the matters referred to in clause 3.5(b), the RTA must pay the Concessionaire the amount of the Material Plate Change Payment within 60 Business Days of agreement by the parties.
- (d) If agreement in relation to clause 3.5(b) has not been reached within 40 Business Days after a Material Plate Change Notice is given under clause 3.6(a), either party may give notice to the secretary of the Operational Review Committee in writing setting out the full particulars of the impact of the relevant Material Plate Change on the SNP Business and the SNP Revenue and the amount of the Material Plate Change Payment (if any) for the Operational Review Committee to determine the amount of the Material Plate Change Payment (if any) in accordance with clause 12.5(b)(i).

3.6 Expert determination of Material Plate Change Payment

- (a) (**Request for expert determination**) If a Deadlock Notice is given under clause 14.10(b) in respect of a meeting of the Concession Management Committee regarding the impact of a Material Plate Change on the SNP Business and the SNP Revenue and the amount of the Material Plate Change Payment payable by the RTA to the Concessionaire (if any) under clause 3.4, either party may give notice to the other party requesting expert determination of such under clause 3.6(b).
- (b) (**Appointment of Expert**) Within 10 Business Days after a notice is given under clause 3.6(a), the parties must each use their reasonable endeavours to appoint an Expert to determine the amount of the Material Plate Change Payment, being:
- (i) one of the Major Accounting Firms, as agreed by the parties; or
 - (ii) in the absence of agreement by the parties, a major accounting firm chosen by the President for the time being of the Institute of Chartered Accountants of Australia.

- (c) **(Parties to assist Expert)** The parties must use all reasonable endeavours to make available to the Expert the full particulars of the impact of the relevant Material Plate Change on the SNP Business and the SNP Revenue and the amount of the Material Plate Change Payment (if any) which the Expert may require to determine the Material Plate Change Payment, including ensuring that the Expert has a right of access at all reasonable times to the accounting records and other records of the SNP Business and the Expert is entitled to require from the Concessionaire and the Concessionaire's Personnel such information and explanation as the Expert requires to determine the matter.
- (d) **(Period of determination)** The parties must each use their best endeavours to ensure that the Expert makes a determination as soon as practicable and in any event within 20 Business Days after receiving instructions.
- (e) **(Process)** The parties acknowledge and agree that, in determining the Material Plate Change Payment, the Expert:
 - (i) will act as an expert and not as an arbitrator;
 - (ii) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as they determine appropriate;
 - (iii) must provide each party with a draft of their determination and must give each party an opportunity to comment on the draft determination before it is finalised; and
 - (iv) may engage such assistance as they reasonably believe is appropriate or necessary to make a determination.

The parties must procure that no discussions or written correspondence with the Expert take place unless both parties are present or represented in those discussions or are copied into the correspondence at the same time.
- (f) **(Final and binding)** The Expert's determination will be final and binding on the parties.
- (g) **(Costs)** Subject to clause 34.16, the reasonable costs and expenses of the Expert must be borne equally by the parties.

3.7 Content limitations

The Concessionaire cannot offer for sale a SNP Product that comprises:

- (a) the following:
 - (i) more than 6 letters;
 - (ii) more than 6 numbers; or
 - (iii) more than 6 letters or numbers combined

unless:

- A. the RTA is satisfied that it is an appropriate SNP Product;

- B. the RTA is capable of fully administering that SNP Product, including the RTA's IT Systems having the capability to fully administer that SNP Product; and
 - C. the offering of that SNP Product is provided for, and is in accordance with, the SNP Business Plan that applies when that SNP Product is offered; or
- (b) Content that is an existing distinguishing registration number for a vehicle.

3.8 Recall of content

Content that is not permitted to be issued or in respect of which a SNP Product must be recalled in accordance with:

- (a) the matters set out in the content management section of the RTA SNP Policies;
- (b) the content management services set out in the RTA Services Schedule and the Concessionaire Services Schedule; or
- (c) any RTA policies or procedures in relation to Inappropriate Content.

3.9 Additional Products

The Concessionaire and the RTA may agree from time to time on additional products that may be sold together with SNP Products (**Additional Products**) including:

- (a) any product or service used to attach Plates to vehicles; and
- (b) any product or service that affixes to Plates,

and the sale of any Additional Products will form part of the SNP Business.

4. Concessionaire Services

4.1 General

- (a) Subject to clause 4.2, during the Term, the Concessionaire must operate the SNP Business, including performing the Concessionaire Services,
 - (i) in accordance with:
 - A. this agreement;
 - B. the Concessionaire Services Schedule;
 - C. the RTA SNP Policies;
 - D. the Concessionaire IT Procedures;
 - E. any relevant RTA policies and procedures;
 - F. all Authorisations, all Laws and all applicable requirements of any Authority; and
 - (ii) in a manner that ensures the RTA is able to comply with all Authorisations, all Laws and all applicable requirements of any

Authority, including all Authorisations, laws and applicable requirements of any Authority that apply to Plates and all relevant RTA policies and procedures.

- (b) Without limiting the Concessionaire's other obligations under this agreement, the Concessionaire must operate the SNP Business, including performing the Concessionaire Services:
 - (i) in a commercial and competent manner; and
 - (ii) in accordance with the practices and standards that would be used by a prudent and competent person operating a business similar to the SNP Business, including performing services similar to the Concessionaire Services.
- (c) The parties acknowledge and agree that the sale of a SNP Product at all times constitutes a transaction between the RTA and a SNP Customer.
- (d) The RTA must ensure that each document that governs a transaction between the RTA and a SNP Customer, as approved by the RTA, will be in a form that if properly completed and executed will constitute a legally binding and enforceable contract between the RTA and each SNP Customer and the Concessionaire must ensure that the relevant documents are used in relation to a SNP Transaction and are properly completed and executed.

4.2 Short term and long term Concessionaire Services

- (a) Unless the Concessionaire Services Schedule characterises particular Concessionaire Services as short or long term services, the Concessionaire must perform those services throughout the Term.
- (b) Where the Concessionaire Services Schedule characterises a particular Concessionaire Service as short term, the Concessionaire must:
 - (i) perform that service from the Start Date until the time changeover takes place on the first Service Changeover Date after the Start Date in respect of that service (the **First Service Changeover Date**); and
 - (ii) perform any part of that service that is not the subject of the First Service Changeover Notice until the Service Changeover Date in respect of that part.
- (c) Where the Concessionaire Services Schedule characterises a particular Concessionaire Service as long term, the Concessionaire must perform that service or a part of that service from the Service Changeover Date in respect of that service or part of that service until the end of the Term.

4.3 Concessionaire IT Procedures

- (a) Prior to the Start Date, the Concessionaire must prepare and submit to the RTA in the form required by the RTA for approval its procedures for access to the RTA's IT Systems, which must include:
 - (i) a requirement for all Concessionaire's Personnel who have access to the RTA's IT Systems to execute an appropriate undertaking with respect to confidentiality and compliance with the terms of use of the RTA's IT

Systems (including an acknowledgement of the consequences of misuse of the RTA's IT Systems) prior to first having access to the RTA's IT Systems and at least annually afterwards;

- (ii) a description of the extent to which the Concessionaire's Personnel are authorised to use the RTA's IT Systems;
- (iii) a description of what information the Concessionaire's Personnel are authorised to use in the RTA's IT Systems and the extent to which it can be used;
- (iv) a detailed outline of how the Concessionaire will protect, audit and monitor the use of the RTA's IT Systems to prevent them being misused or disclosed in breach of this agreement;
- (v) procedures for determining which specific Concessionaire's Personnel are authorised to use the RTA's IT Systems;
- (vi) a requirement that any Concessionaire's Personnel authorised to use the RTA's IT Systems are notified that their use of the RTA's IT Systems may be monitored by the RTA at any time;
- (vii) a requirement that the Concessionaire document and maintain records of the relevant Concessionaire's Personnel that have current access, or have had access in the past to the RTA's IT Systems, including the name and the position of such relevant Concessionaire's Personnel and the location and duration of the access to or use of the RTA's IT Systems;
- (viii) a requirement that the Concessionaire inform the relevant Concessionaire's Personnel authorised to use the RTA's IT Systems of their potential personal liability under any Law in relation to privacy;
- (ix) a requirement that the Concessionaire maintain security for the equipment, systems and networks used to electronically access, store or process data contained in the RTA's IT Systems;
- (x) a prohibition against any Concessionaire's Personnel authorised to use the RTA's IT Systems sharing user identifications or user passwords for access to the RTA's IT Systems;
- (xi) a prohibition against the Concessionaire from creating any common user accounts or user identifications for access to the RTA's IT Systems;
- (xii) a requirement that any Concessionaire's Personnel authorised to use the RTA's IT Systems log out of the relevant RTA's IT Systems when vacating a terminal or workstation where the RTA's IT Systems are located;
- (xiii) a requirement that the terminals or workstations where the RTA's IT Systems are located are kept secure;
- (xiv) a requirement that the Concessionaire establish procedures dealing with privacy under clause 25;

- (xv) a requirement that the hardware procured by the Concessionaire which is used to access the RTA's IT Systems must meet the required specifications which are prescribed by the RTA;
 - (xvi) a requirement that the Concessionaire meet the minimum standards specified by the RTA for internet connectivity and associated telephony infrastructure and equipment used to access the RTA's IT Systems;
 - (xvii) a requirement that all Concessionaire's personnel authorised to access the RTA's IT Systems are properly trained in the use and access of the RTA's IT Systems; and
 - (xviii) any other procedures in relation to access to the RTA's IT Systems as are necessary to ensure the integrity and confidentiality of the RTA's IT Systems is maintained.
- (b) The RTA undertakes to conduct its assessment of the Concessionaire's procedures for access to the RTA's IT Systems in a timely manner and not unreasonably withhold approval.
 - (c) If the RTA approves the operating procedures submitted under clause 4.3(a) or 4.3(d), the RTA must give notice of this to the Concessionaire.
 - (d) During the Term, if the Concessionaire wants to amend the Concessionaire IT Procedures for any reason, prior to amending the Concessionaire IT Procedures, the Concessionaire must prepare and submit to the RTA for approval the draft amended operating procedure for access to the RTA's IT Systems.

4.4 Preparation of Documents

- (a) If the Concessionaire is required to provide any type of document under the Concessionaire Services Schedule or the RTA Services Schedule (**Document**), the Concessionaire must submit to the RTA the draft Document in a hard copy and manipulable electronic format a reasonable time before the Document is required to be finalised.
- (b) If required by the RTA, the Concessionaire must make available such further information as the RTA may reasonably request relating to the development of the Document, in such form as the RTA may reasonably request.
- (c) Within a reasonable time after receiving the draft Document or, if applicable, any information under clause 4.4(b), the RTA may review the draft Document and give the Concessionaire comments, recommendations and representations regarding the draft Document.
- (d) If the RTA gives the Concessionaire comments, recommendations and representations regarding the draft Document, the Concessionaire must amend the draft Document to reflect the RTA 's comments, recommendations or representations and the draft Document must be re-submitted in accordance with this clause 4.4.
- (e) The final version of any Document must be approved by RTA.
- (f) A Documents may be updated from time to time by the Concessionaire during the Term with the prior agreement of RTA.

5. RTA Services and the Capital Works Projects

5.1 General

- (a) Subject to clause 5.2, during the Term, the RTA must provide the RTA Services in accordance with:
 - (i) this agreement;
 - (ii) the RTA Services Schedule; and
 - (iii) all Authorisations, all Laws and all applicable requirements of any Authority.
- (b) Without limiting the RTA's other obligations under this agreement, the RTA must provide the RTA Services:
 - (i) in a competent manner; and
 - (ii) in accordance with the practices and standards that would be used by a prudent and competent person providing services similar to the RTA Services.
- (c) In consideration of the provision of the RTA Services by the RTA, the Concessionaire must pay the RTA the RTA Services Charges monthly in arrears in accordance with clause 10 of this Agreement.

5.2 Short term and long term RTA Services

- (a) Unless the RTA Services Schedule characterises particular RTA Services as short or long term, the RTA must perform those services throughout the Term.
- (b) Where the RTA Services Schedule characterises a particular RTA Service as short term, the RTA must:
 - (i) perform that RTA Service from the Start Date until the time changeover takes place on the first Service Changeover Date after the Start Date in respect of that service (the **First Changeover Date**); and
 - (ii) perform any part of that service that is not the subject of the First Changeover Notice until the Service Changeover Date in respect of that part.
- (c) Where the RTA Services Schedule characterises a particular RTA Service as long term, the RTA must perform that RTA Service or a part of that service from the time changeover takes place on the Service Changeover Date in respect of that service or a part of that service until the end of the Term.

5.3 Service Changeover Date and transition

- (a) A party may give notice to the other party if it reasonably requires the other party to undertake any obligations in relation to transition from services characterised in the Concessionaire Services Schedule or the RTA Services Schedule as short term to services characterised in the Concessionaire Services Schedule or the RTA Services Schedule as long term.

- (b) The parties must co-operate with each other and use reasonable endeavours to promptly agree upon and document any obligations the subject of a notice given under clause 5.3(a).
- (c) The parties must comply with any obligations agreed and documented in accordance with clause 5.3(b).
- (d) The Concessionaire must be able to fully and properly perform a service characterised in the Concessionaire Services Schedule as long term by the Target Service Changeover Date in respect of that service other than to the extent it is unable to do because all or any part of a Capital Works Project has not been Completed.
- (e) Prior to commencing to perform a Concessionaire Service characterised in the Concessionaire Services Schedule as long term, the Concessionaire must demonstrate to the RTA's reasonable satisfaction that it is able fully and properly to do so in accordance with this agreement.
- (f) Subject to clause 5.3(g), the RTA may give notice to the Concessionaire when it is reasonably satisfied that the Concessionaire is able to fully and properly perform a Concessionaire Service or part of a Concessionaire Service characterised in the Concessionaire Services Schedule as long term and this notice must specify:
 - (i) that Concessionaire Service or that part of a Concessionaire Service;
 - (ii) any services or part of services in the RTA Services Schedule or the Concessionaire Services Schedule that must no longer be provided or performed after the Concessionaire commences performing that Concessionaire Service or that part of a Concessionaire Service;
 - (iii) any other services or part of services in the RTA Services Schedule or services or part of services in the Concessionaire Services Schedule that must be provided or performed after the Concessionaire commences performing that Concessionaire Service; and
 - (iv) the Service Changeover Date in respect of the services or part of the services referred to in the notice, as determined in accordance with clause 5.3(h).
- (g) The RTA cannot issue a notice under clause 5.3(f) in respect of a Concessionaire Service or part of a Concessionaire Service to the extent that it is unable to be performed because all or any part of a Capital Works Project has not been Completed.
- (h) The Service Changeover Date of a notice under clause 5.3(f) must be 5 Business Days after the giving of the notice under clause 5.3(f) or such other date as is agreed by the parties.

5.4 RTA's IT Systems

- (a) The RTA will use reasonable endeavours to ensure that the Concessionaire has reasonable access to the RTA's IT Systems . However, the RTA makes no representations or warranties that, and has no obligation to ensure that:
 - (i) the RTA's IT Systems will be available at any time; and

- (ii) the Concessionaire's access to the RTA's IT Systems will not be interrupted or disrupted by any maintenance or other activities that the RTA carries out from time to time.
- (b) The Concessionaire acknowledges and agrees that the RTA's obligation to provide the RTA Services are subject to any unavailability of the RTA's IT Systems from time to time. The RTA will provide the Concessionaire with 5 Business Days' notice of all scheduled maintenance that will result in the Concessionaire being unable to access the RTA's IT Systems or will result in them being unavailable.
- (c) For the avoidance of doubt for the purposes of this clause 5.4, "**RTA's IT Systems**" includes the myPlates Website while ever that website is hosted by the RTA.
- (d) If the RTA's IT Systems are unavailable for use by the Concessionaire or SNP Customers or potential SNP Customers (whether directly or indirectly) the obligations of the Concessionaire under this agreement which are affected by the unavailability will be suspended, but only to the extent that the unavailability materially prevents the Concessionaire from meeting its obligations in a timely manner under this agreement.
- (e) If:
 - (i) either:
 - A. the amount of Downtime in any Financial Year exceeds 44 hours ("**the Yearly Threshold**"); or
 - B. there are 30 consecutive hours of Downtime in any Month ("**the Monthly Threshold**"),
 and
 - (ii) the Monthly Revenue (as defined in Schedule 6) in a Month:
 - A. during which the Monthly Threshold was exceeded; or
 - B. in a Financial Year during or after which the Yearly Threshold was exceeded,
 is less than the budgeted SNP revenue for that month (as specified in the SNP Business Plan),

then the Monthly Revenue figure to be used to calculate the Preliminary Concessionaire Payment under Schedule 6 for that Month will be adjusted as follows:

$$\text{Adjusted Revenue Amount} = \text{Monthly Revenue} + (\text{Budgeted Revenue Amount} \times \frac{\text{Monthly Downtime}}{720})$$

where:

Adjusted Revenue Amount is the amount to be used in calculating the Preliminary Concessionaire Payment for that Month;

Monthly Revenue has the meaning given to that term in Schedule 6 of this agreement.

Budgeted Revenue Amount means the amount of SNP Revenue (as defined in Schedule 6) that was budgeted to be achieved for the relevant Month in the current SNP Business Plan.

Monthly Downtime means:

- (a) where the Monthly Threshold was exceeded in the Month, but the Yearly Threshold has not been exceeded in that Month or any prior Month in that Financial Year, the total Downtime for that Month, less the total Downtime for each of the consecutive days which caused the Monthly Threshold to be breached;
- (b) where the Yearly Threshold was exceeded in the Month, but the Monthly Threshold was not exceeded in the Month, the total Downtime for that Month less the unexpired portion of the Yearly Threshold that applied at the beginning of that Month;
- (c) where both the Yearly Threshold and the Monthly Threshold was exceeded in the Month, the greater of:
 - (i) the total Downtime for that Month less the unexpired portion of the Yearly Threshold that applied at the beginning of that Month;
 - (ii) the total Downtime for that Month, less the total Downtime which caused the Monthly Threshold to be breached; and
- (c) where the Yearly Threshold was exceeded in a month prior to the relevant Month (regardless of whether the Monthly Threshold is also exceeded in the Month), the total Downtime for that Month.

Downtime:

- (a) means the total elapsed time that one or more RTA IT Systems are not available for use by the Concessionaire or potential SNP Customers (whether directly or indirectly) where that unavailability materially adversely impacts upon the ability of an SNP Customer or potential SNP Customer or the Concessionaire to undertake SNP Transactions, excluding where such unavailability is due to:
 - (i) a Force Majeure Event;

- (ii) any act or omission of the Concessionaire;
- (iii) any scheduled maintenance notified to the Concessionaire by RTA as contemplated in clause 5.4(b); and
- (iv) any stop or suspension under clause 27; and
- (b) shall:
 - (i) for the purposes of determining whether Downtime has exceeded the Yearly Threshold or Monthly Threshold, be measured in quarter hourly intervals, rounded down to the nearest quarter hour; and
 - (ii) for the purposes of determining the Monthly Downtime, be measured in hourly intervals, rounded up to the nearest hour,

commencing on notification from the Concessionaire to the RTA that the relevant system(s) is unavailable and ending when the relevant system(s) is again available for use by the Concessionaire or SNP Customers or potential SNP Customers.
- (f) The adjustment to the Monthly Revenue amount in clause 5.4(e) is the sole and exclusive remedy of the Concessionaire in relation to or arising out of or in connection with any unavailability of the RTA IT Systems.

5.5 RTA Registries

Notwithstanding any other provision of this agreement, the RTA is able to deal with the Registries in any way it sees fit, including:

- (a) changing the staffing or hours of operation of Registries;
- (b) changing the processes, procedures or functions of Registries;
- (c) requiring RTA approval of Concessionaire marketing collateral which is proposed for placement in Registries;
- (d) limiting the ability of a particular Registry to accept Concessionaire marketing collateral, if it sees fit based on capacity and competing priorities;
- (e) changing the location of Registries; and
- (f) closing Registries, including closing all Registries, either temporarily or permanently.

5.6 RTA Capital Works Projects

RTA must ensure that:

- (a) Completion of the Direct Delivery Project - Phase 1 has been achieved on or before the Direct Delivery Project - Phase 1 Date for Completion;
- (b) Completion of the Direct Delivery Project - Phase 2 has been achieved on or before the Direct Delivery Project - Phase 2 Date for Completion;
- (c) Completion of the Content and Product Management Project - Phase 1 has been achieved on or before the Content and Product Management Project - Phase 1 Date for Completion; and
- (d) Completion of the Content and Product Management Project - Phase 2 has been achieved on or before the Content and Product Management Project - Phase 2 Date for Completion.

5.7 Liquidated damages

- (a) **(RTA liable for delays)** The RTA acknowledges and agrees that it may be liable for liquidated damages for delay to Completion of the Direct Delivery Project - Phase 1, the Direct Delivery Project - Phase 2, the Content and Product Management Project - Phase 1 or the Content and Product Management Project - Phase 2 in accordance with this clause 5.7.
- (b) **(Direct Delivery Project - Phase 1)** If the Direct Delivery Project Phase 1 is not Completed by the Direct Delivery Project - Phase 1 Date for Completion, the RTA must pay to the Concessionaire by way of liquidated damages \$1,500 per day (or part thereof) in the period:
 - (i) commencing on the Direct Delivery Project - Phase 1 Date for Completion; and
 - (ii) ending on the earlier of:
 - A. the date the Direct Delivery Project - Phase 1 is Completed; and
 - B. the Termination Date,

provided that the maximum aggregate liability of the RTA under this clause 5.7(b) is \$150,000. The RTA will pay to the Concessionaire any amount due under this clause 5.7(b) within 20 Business Days of the final day of the period referred to above.

- (c) **(Direct Delivery Project - Phase 2)** If the Direct Delivery Project Phase 2 is not Completed by the date that is 60 Business Days after the Direct Delivery Project - Phase 2 Date for Completion, the RTA must pay to the Concessionaire by way of liquidated damages \$500 per day (or part thereof) in the period:
 - (i) commencing on the date that is 60 Business Days after the Direct Delivery Project - Phase 2 Date for Completion; and

- (ii) ending on the earlier of:
 - A. the date the Direct Delivery Project - Phase 2 is Completed;
and
 - B. the Termination Date,

provided that the maximum aggregate liability of the RTA under this clause 5.7(c) is \$50,000. The RTA will pay to the Concessionaire any amount due under this clause 5.7(c) within 20 Business Days of the final day of the period referred to above.

- (d) **(Content and Product Management Project - Phase 1)** If the Content and Product Management Project - Phase 1 is not Completed by the date that is 60 Business Days after the Content and Product Management Project - Phase 1 Date for Completion, the RTA must pay to the Concessionaire by way of liquidated damages \$750 per day (or part thereof) in the period:

- (i) commencing on the date that is 60 Business Days after the Content and Product Management Project - Phase 1 Date for Completion; and

- (ii) ending on the earlier of:

- A. the date the Content and Product Management Project - Phase 1 is Completed; and
- B. the Termination Date,

provided that the maximum aggregate liability of the RTA under this clause 5.7(d) is \$75,000. The RTA will pay to the Concessionaire any amount due under this clause 5.7(d) within 20 Business Days of the final day of the period referred to above.

- (e) **(Content and Product Management Project - Phase 2)** If the Content and Product Management Project - Phase 2 is not Completed by the date that is 60 Business Days after the Content and Product Management Project - Phase 2 Date for Completion, the RTA must pay to the Concessionaire by way of liquidated damages \$250 per day (or part thereof) in the period:

- (i) commencing on the date that is 60 Business Days after the Content and Product Management Project - Phase 2 Date for Completion; and

- (ii) ending on the earlier of:

- A. the date the Content and Product Management Project - Phase 2 is Completed; and
- B. the Termination Date,

provided that the maximum aggregate liability of the RTA under this clause 5.7(e) is \$25,000. The RTA will pay to the Concessionaire any amount due under this clause 5.7(e) within 20 Business Days of the final day of the period referred to above.

- (f) **(Genuine pre-estimate of loss)** For the purposes of this agreement, the parties:

- (i) agree and acknowledge that the liquidated damages provided for in this clause 5.7 constitute a genuine pre-estimate of the anticipated or actual losses, liabilities, costs, expenses, payments, outgoings or damage which will be incurred by the Concessionaire as a result of:
 - A. the Content and Product Management Project - Phase 1 not being Completed on or before the Content and Product Management Project - Phase 1 Date for Completion;
 - B. the Content and Product Management Project - Phase 2 not being Completed on or before the Content and Product Management Project - Phase 2 Date for Completion;
 - C. the Direct Delivery Project - Phase 1 not being Completed on or before the Direct Delivery Project - Phase 1 Date for Completion; and
 - D. the Direct Delivery Project - Phase 2 not being Completed on or before the Direct Delivery Project - Phase 2 Date for Completion; and
 - (ii) desire to avoid the difficulties of proof of damages in connection with such failure and agree that the liquidated damages payable by the RTA in accordance with this clause 5.7 are reasonable and are not intended as a penalty.
- (g) **(Sole remedy)** The liability of the RTA to pay the Concessionaire liquidated damages under this clause 5.7 will be the sole and exclusive remedy of the Concessionaire to damages or to any other Claim for the payment of money in relation to or arising out of or in connection with delay by the RTA in Completing:
- (i) the Direct Delivery Project - Phase 1 by the Direct Delivery Project - Phase 1 Date for Completion;
 - (ii) the Direct Delivery Project - Phase 2 by the Direct Delivery Project - Phase 2 Date for Completion;
 - (iii) the Content and Product Management Project - Phase 1 by the Content and Product Management Project - Phase 1 Date for Completion; and
 - (iv) the Content and Product Management Project - Phase 2 by the Content and Product Management Project - Phase 2 Date for Completion.

5.8 Extension of time by the Concessionaire

- (a) **(General right)** If the RTA is or will be delayed by an Act of Prevention which will delay it in achieving Completion of:
 - (i) the Direct Delivery Project - Phase 1 by the Direct Delivery Project - Phase 1 Date for Completion;
 - (ii) the Direct Delivery Project - Phase 2 by the Direct Delivery Project - Phase 2 Date for Completion;
 - (iii) the Content and Product Management Project - Phase 1 by the Content and Product Management Project - Phase 1 Date for Completion; or

- (iv) the Content and Product Management Project - Phase 2 by the Content and Product Management Project - Phase 2 Date for Completion,

the RTA may claim an extension of time.

- (b) **(Claiming an extension)** To claim an extension of time the RTA must:

- (i) within 20 Business Days of the date on which the RTA became aware of the first occurrence of the cause of any delay submit a written claim to the Concessionaire for an extension to the Direct Delivery Project - Phase 1 Date for Completion, Direct Delivery Project - Phase 2 Date for Completion, the Content and Product Management Project - Phase 1 Date for Completion or the Content and Product Management Project - Phase 2 Date for Completion (as applicable) which:

- A. gives detailed particulars of the delay and the events or circumstances giving rise to the delay; and
- B. states the number of days required for the extension of time claimed together with the basis of calculating that period; and

- (ii) if the effects of the delay continue beyond the 20 Business Days referred to in clause 5.8(b)(i) or a later date as agreed between the parties and the RTA wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Concessionaire:

- A. every 20 Business Days after the first written claim until 20 Business Days after the end of the effects of the delay; and
- B. containing the information required by clause 5.8(b)(i).

- (c) **(Extension)** The Concessionaire must extend the Direct Delivery Project - Phase 1 Date for Completion, Direct Delivery Project - Phase 2 Date for Completion, the Content and Product Management Project - Phase 1 Date for Completion or the Content and Product Management Project - Phase 2 Date for Completion (as applicable) by the period(s) notified by the RTA under clause 5.8(b).

5.9 Completion

- (a) **(Notification)** The RTA must give notice to the Concessionaire in writing when it reasonably considers that Completion of any of the Capital Works Projects has occurred.
- (b) **(Concessionaire's response)** Upon receipt of a notice under clause 5.9(a), the Concessionaire must notify the RTA within 5 Business Days of receiving a notice under clause 5.9(a) whether:
 - (i) it agrees that Completion of the relevant Capital Works Project has occurred; or
 - (ii) it does not agree that Completion of the relevant Capital Works Project has occurred, in which case it must provide a complete list of the work it believes is still required to achieve Completion.
- (c) **(RTA to perform additional work)** Subject to clause 5.9(e), upon receipt of a notice given under clause 5.9(b)(ii), the RTA must:

- (i) immediately notify the Concessionaire of the additional number of Business Days required to perform and complete the work specified in the notice given under clause 5.9(b)(ii);
 - (ii) perform the work specified in the notice given under clause 5.9(b)(ii); and
 - (iii) notify the Concessionaire when it has completed the work specified in the notice given under clause 5.9(b)(ii).
- (d) **(Concessionaire's response to additional work)** This clause 5.9(d) will apply in respect of the RTA's notice under clause 5.9(c) in the same way as if it were the original notice under clause 5.9(a) except that, the Concessionaire will, in making its determination on whether Completion has occurred, be restricted to considering whether the work specified in the list which it previously provided to the RTA under clause 5.9(b)(ii) has been completed.
- (e) **(Disputes)** If the RTA disagrees with a notice given by the Concessionaire under clause 5.9(b)(ii), it may at any time after receipt of that notice refer the matter as a Dispute under clause 34.2 and will not be required to perform any additional work until the Dispute is resolved pursuant to this agreement.
- (f) **(RTA assistance)** The RTA must provide the Concessionaire with such reasonable assistance and access as is requested by the Concessionaire following receipt of notice under clause 5.9(a).

5.10 Services schedules

- (a) The Concessionaire must comply with all obligations expressed to apply to it in the Concessionaire Services Schedule and the RTA Services Schedule and agrees that RTA has all the rights expressed to be given to it in the Concessionaire Services Schedule and the RTA Services Schedule.
- (b) If the Concessionaire Services Schedule or the RTA Services Schedule provides that the parties must agree any matter, the parties must co-operate with each other and use reasonable endeavours to promptly agree any such matters.

6. Variation of Concessionaire Services and RTA Services

6.1 RTA changes to the RTA Services

- (a) Subject to clause 6.1(b), the RTA may at any time change the way in which it provides the RTA Services provided that the nature of the services being provided does not materially change.
- (b) The RTA must use reasonable endeavours to notify the Concessionaire of a proposed change to the RTA Services prior to the date of the relevant change.

6.2 Variations to services

- (a) Either party may at any time propose a variation to the Concessionaire Services or the RTA Services (other than an IT Variation) by giving a notice to the other party setting out the nature of the proposed change (**Variation Notice**).

- (b) The Concessionaire may at any time propose an IT Variation by submitting an IT Change Request Form.
- (c) Within 20 Business Days after a Variation Notice or IT Change Request Form is given, the parties must negotiate in good faith and use reasonable endeavours to agree and document any proposed variation the subject of the Variation Notice or IT Change Request.
- (d) If a proposed variation is not agreed within the period in clause 6.2(b), either party may give notice to the secretary of the Concession Management Committee outlining the details of the proposed variation to the Concessionaire Services or the RTA Services (as the case may be) for the Concession Management Committee to make a decision in respect of, in accordance with clause 12.
- (e) A proposed variation agreed in accordance with clause 6.2(b) or approved by the Concession Management Committee under clause 12.5(b) is only effective and binding on the parties if it is documented in writing and validly executed by the parties.
- (f) Unless otherwise agreed between the parties, the Concessionaire must pay the RTA 20% of the costs reasonably incurred by the RTA in carrying out any IT Variation agreed in accordance with this clause 6.2, such amounts to be paid monthly in arrears unless otherwise agreed between the parties.

7. Mobilisation

7.1 Mobilisation activities

Each party must comply with its obligations under the Mobilisation Plan and any other obligations in relation to additional mobilisation activities that are agreed under clause 7.2.

7.2 Additional mobilisation activities

Where a party, acting reasonably, notifies the other party that it requires the other party to undertake additional mobilisation activities, the parties must co-operate with each other and use reasonable endeavours to agree upon and document obligations in relation to those activities.

7.3 Parties to keep each other informed

Each party must keep the other party informed of:

- (a) the progress in completing each mobilisation activity by the relevant milestone date (if any) outlined in the Mobilisation Plan and any other obligations documented in accordance with clause 7.2; and
- (b) keep the other party informed of any fact, matter or circumstance of which it becomes aware that may result in any particular mobilisation activity outlined in the Mobilisation Plan and any other obligations documented in accordance with clause 7.2 not being completed by the relevant milestone date (if any).

7.4 Notice of mobilisation activity completion

A party must provide notice to the other party immediately upon the completion of the relevant mobilisation activity as outlined under the Mobilisation Plan or the relevant documentation under clause 7.2.

7.5 Mobilisation co-operation

If a party provides notice to the other party that it is unable to complete a particular mobilisation activity by the relevant milestone date (if any) under the Mobilisation Plan or the relevant documentation under clause 7.2, the parties must co-operate with each other and use reasonable endeavours to agree the action that should be taken to address the consequences of not completing the relevant mobilisation activity, including whether the relevant mobilisation activity should become a short term or long term Concessionaire Service or RTA Service (as the case may be).

7.6 Process for commencement

- (a) If:
- (i) the relevant mobilisation activities outlined in the Mobilisation Plan and any other obligations documented in accordance with clause 7.2 have been completed or otherwise addressed in accordance with clause 7.5;
 - (ii) the RTA has approved the Concessionaire IT Procedures in accordance with clause 4.3; and
 - (iii) the Concessionaire is of the opinion that it is able to fully and properly commence operating the SNP Business, including performing the Concessionaire Services,

the Concessionaire must give notice to the RTA, requesting its approval to commence the operation of the SNP Business.

- (b) Within 10 Business Days of receiving notice from the Concessionaire under clause 7.6(a), the RTA must give notice to the Concessionaire of its approval (**Approval Notice**) or disapproval (**Disapproval Notice**) of the Concessionaire's request. Any Disapproval Notice must include details of the relevant mobilisation activities outlined in the Mobilisation Plan and any other obligations documented in accordance with clause 7.2 that, in the RTA's reasonable opinion, have not been completed or otherwise addressed in accordance with clause 7.5.
- (c) If the Concessionaire receives a Disapproval Notice, the Concessionaire must use its reasonable endeavours to complete the relevant mobilisation activities and other obligations the subject of the Disapproval Notice and on completion of those activities the Concessionaire must comply again with clause 7.6(a).

7.7 Start Date

- (a) On the first Business Day of the Month following the later of the date the Concessionaire receives the Approval Notice from the RTA or the date the Concessionaire pays the Up Front Licence Fee to the RTA:
- (i) the Concessionaire must commence operating the SNP Business, including performing the Concessionaire Services; and

- (ii) the RTA must commence providing the RTA Services,

provided however that if there is less than 5 Business Days between the date on which the Approval Notice is received from the RTA and first Business Day of the following Month and the date the Concessionaire has paid the Up Front Licence Fee to the RTA, the obligations of the Concessionaire and the RTA under this clause will commence on the first Business Day of the Month after the following Month.

- (b) Notwithstanding any other provision of this agreement, the Concessionaire cannot commence operating the SNP Business until it has paid the Up Front Licence Fee to the RTA.

7.8 Commencement End Date

The RTA will be entitled to terminate this agreement by notice to the Concessionaire at any time if the Concessionaire has not commenced operating the SNP Business, including performing the Concessionaire Services, by the Commencement End Date.

8. Other services to be performed by the Concessionaire

8.1 Numeral Only Plates services

- (a) **(RTA request)** The RTA may, on up to 2 occasions in each Financial Year during the Term, give notice to the Concessionaire requesting the Concessionaire to market, arrange and manage the auction of Numeral Only Plates.
- (b) **(Details to be provided by the RTA)** The RTA must outline the following matters in the notice under clause 8.1(a):
 - (i) the Style, Content and Content Format of the Numeral Only Plates;
 - (ii) any specifications in relation to the design, format and dimensions of the Numeral Only Plates;
 - (iii) the number of units of the Numeral Only Plates required;
 - (iv) the number of Business Days the Concessionaire is required to perform the relevant services with respect to the relevant Numeral Only Plates; and
 - (v) the timing for conducting the auction in relation to the relevant Numeral Only Plates.
- (c) **(Concessionaire response)** The Concessionaire must, within 30 Business Days from receipt of notice under clause 8.1(a), prepare and submit to the RTA a proposal outlining:
 - (i) the relevant marketing and advertising services that the Concessionaire will perform to maximise the value obtained for the RTA from the auction of the Numeral Only Plates;
 - (ii) a plan outlining the details of how the Concessionaire will arrange and manage the auction of the relevant Numeral Only Plates;

- (iii) details in relation to the auctioneer proposed to conduct the auction of the relevant Numeral Only Plates, including the requisite qualifications and experience of the auctioneer to conduct auctions within the State of NSW; and
 - (iv) the estimated third party incremental costs for undertaking the proposed steps and processes for the design, development, marketing and auctioning of the Numeral Only Plates under clauses 8.1(c)(i) to 8.1(c)(iii).
- (d) **(RTA approval)** If the RTA approves the proposal provided by the Concessionaire under clause 8.1(c), including the estimated third party incremental costs referred to in clause 8.2(c)(iv), the RTA must give notice of this to the Concessionaire.
- (e) **(RTA disapproval)** If the RTA does not approve the proposal provided by the Concessionaire under clause 8.1(c), including the estimated third party incremental costs referred to in clause 8.2(c)(iv), and the parties are unable to promptly agree a revised proposal, the RTA may give notice to the Concessionaire, setting out its required amendments to the Concessionaire's proposal, which must be incorporated by the Concessionaire and will comprise the final form of the proposal. Notice issued under this clause 8.1(e) will constitute notice of the RTA's approval for the purposes of this clause 8.1.
- (f) **(Concessionaire to proceed)** The Concessionaire must, promptly following receipt of notice of the RTA's approval under clauses 8.1(d) or 8.1(e), design and develop the marketing and advertising services for Numeral Only Plates in accordance with the approved proposal.
- (g) **(Co-operation)** The Concessionaire must co-operate and consult with the RTA in respect of the design and development of the marketing and advertising services for the relevant Numeral Only Plates under clause 8.1(f).
- (h) **(Other obligations in respect of Numeral Only Plates)** The parties acknowledge and agree that, notwithstanding this clause 8.1, they will each perform their respective obligations under this agreement in relation to any Numeral Only Plates subject to a notice of RTA's approval under clauses 8.1(d) or 8.1(e) as if they were SNP Products, including performing their respective obligations in relation to the relevant approvals and camera testing for Numeral Only Plates as if they were New SNP Products.
- (i) **(Additional Concessionaire services)** If the RTA approves the marketing proposal for the relevant Numeral Only Plates and the relevant Numeral Only Plates pass any camera testing which may be required by the RTA in accordance with the RTA Services Schedule, the Concessionaire must perform the marketing and advertising services in respect of the Numeral Only Plates, and arrange and manage the auction of the relevant Numeral Only Plates in accordance with the approved proposal notified by the RTA under clause 8.1(d).
- (j) **(Numeral Only Plates Auction Management Fee and costs)** Subject to clause 10.7, during the Term, in consideration for the Concessionaire performing the relevant services under this clause 8.1, the RTA must pay to the Concessionaire:
 - (i) the Numeral Only Plates Auction Management Fee; and
 - (ii) the reasonable incremental third party costs incurred by the Concessionaire in performing the relevant services under this clause 8.1,

within 20 Business Days of receiving a tax invoice from the Concessionaire.

8.2 Charity Plates

- (a) **(RTA request)** The RTA may during the Term give notice to the Concessionaire requesting the Concessionaire to design, market and sell up to a total of 5 SNP Products (comprising 5 sets of Plates) in connection with a charitable purpose.
- (b) **(Details to be provided by the RTA)** The RTA must outline the following matters in the notice under clause 8.2(a):
 - (i) details of the relevant charitable purpose;
 - (ii) a description of any proposed design concepts for the Charity Plate (if any);
 - (iii) the number of units of the Charity Plate required;
 - (iv) the number of Business Days the Concessionaire is required to perform marketing and sales services as requested by the RTA and agreed by the Concessionaire, acting reasonably, with respect to the relevant Charity Plate;
 - (v) the marketing and sales services required in relation to the Charity Plate (if any);
 - (vi) the timing for the launch of the relevant Charity Plate; and
 - (vii) the Style of the relevant Charity Plate.
- (c) **(Concessionaire response)** The Concessionaire must, within 10 Business Days from receipt of notice under clause 8.2(a), prepare and submit to the RTA a proposal outlining:
 - (i) the steps and processes that the Concessionaire proposes to take for the design, development, manufacture, marketing and sales of the Charity Plate, including details of the proposed pricing of the Charity Plate; and
 - (ii) the estimated third party costs for undertaking the proposed steps and processes for the design, development, marketing and sales of the Charity Plate under clause 8.2(c)(i).
- (d) **(RTA approval)** If the RTA approves the proposal provided by the Concessionaire under clause 8.2(c), including the estimated third party incremental costs referred to in clause 8.2(c)(ii), or such other revised proposal as agreed by the parties, the RTA must give notice of this to the Concessionaire.
- (e) **(RTA disapproval)** If the RTA does not approve the proposal proposed by the Concessionaire under clause 8.2(c), including the estimated third party incremental costs referred to in clause 8.2(c)(ii) the RTA may give notice to the Concessionaire, setting out its required amendments to the Concessionaire's proposal, and which must be incorporated by the Concessionaire and will comprise the final form of the proposal. Notice issued under this clause 8.2(e) will constitute notice of RTA's approval for the purposes of this clause 8.2.

- (f) **(Concessionaire to proceed)** The Concessionaire must, promptly following receipt of notice of the RTA's approval under clauses 8.2(d) or 8.2(e), design and develop the Charity Plate in accordance with the approved proposal.
- (g) **(Co-operation)** The Concessionaire must co-operate and consult with the RTA in respect of:
 - (i) the design and development of the relevant Charity Plate under clause 8.2(f); and
 - (ii) putting in place any necessary arrangements with the relevant charitable organisation, including the licensing of any Intellectual Property in accordance with this agreement.
- (h) **(Other obligations in respect of New SNP Products)** The parties acknowledge and agree that, notwithstanding this clause 8, they will each perform their respective obligations under this agreement in relation to any Charity Plates subject to a notice of RTA's approval under clauses 8.2(d) or 8.2(e) as if they were SNP Products, including performing their respective obligations in relation to the relevant approvals and camera testing for the Charity Plates as if they were New SNP Products.
- (i) **(Additional Concessionaire services)** If the RTA approves the design and development of the Charity Plate and the Charity Plate passes camera testing performed by the RTA in accordance with the RTA Services Schedule, the Concessionaire must perform the marketing, sales and other services with respect to the Charity Plate in accordance with the approved proposal notified by the RTA under clause 8.2(d).
- (j) **(RTA to pay costs)** Subject to clause 10.7, the RTA must pay to the Concessionaire the reasonable incremental third party costs incurred by the Concessionaire in performing the relevant services under this clause 8.2, within 20 Business Days of receiving a tax invoice from the Concessionaire.
- (k) Upon the receipt of notice under clause 8.2(a), the Concessionaire cannot offer as a SNP Product a Plate with the Style and design concepts of the Charity Plate the subject of the relevant notice.

9. Term and extensions

9.1 Term

The term commences on the Start Date and continues until the expiry of the period ending on the 15th anniversary of the Start Date, unless:

- (a) extended in accordance with clause 9.2; or
- (b) terminated earlier in accordance with this agreement or at Law,

(the **Term**).

9.2 Extension

- (a) No later than twelve months prior to the period ending on the 15th anniversary of the Start Date, the RTA may, at its sole discretion, extend the Term for a further period of 3 years (**First Extension**), by providing notice to the Concessionaire.

- (b) If the Term is extended by the RTA under clause 9.2(a), then no later than twelve months prior to the expiry of the First Extension, the RTA may, at its sole discretion, extend the Term for a further period of 2 years, by providing notice to the Concessionaire.

10. Payments

10.1 Up Front Licence Fee

The Concessionaire must pay to the RTA the Up Front Licence Fee within 2 Business Days of receiving the Approval Notice from the RTA under clause 7.6(b), such payment to be made into the account nominated by the RTA under clause 10.10.

10.2 RTA revenue report

Within 5 Business Days of the end of each Month, the RTA must give to the Concessionaire a revenue report which sets out the RTA's calculation of the Concessionaire Payment for the relevant month and all relevant information to allow the Concessionaire to verify the calculation of the amount of the Concessionaire Payment for the relevant Month.

10.3 Concessionaire Payment Invoice

Within 4 Business Days after receipt of the report under clause 10.2, the Concessionaire must give to the RTA an invoice for the Concessionaire Payment for the relevant Month.

10.4 RTA Services Charges Invoice

Within 10 Business Days of the end of each Month the RTA must give the Concessionaire an invoice for the RTA Services Charges for the relevant Month.

10.5 Payment of RTA Services Charges

The Concessionaire must pay to the RTA the RTA Services Charges for each Month within 10 Business Days of receipt of an invoice from the RTA under clause 10.4, unless the Concessionaire has prior to that time disputed payment of the invoice in accordance with clause 10.7, in which case the Concessionaire must pay all undisputed amounts of the RTA Services Charges for the relevant Month.

10.6 Concessionaire Payment

Subject to clause 31.3, during the Term, in consideration for the Concessionaire operating the SNP Business, including providing the Concessionaire Services, the RTA must pay to the Concessionaire the Concessionaire Payment for each Month, to be paid monthly in arrears within 11 Business Days of receipt of an invoice from the Concessionaire under clause 10.3, unless the RTA has prior to the time for that payment disputed the invoice under clause 10.7, in which case RTA must pay the Concessionaire all undisputed amounts of the Concessionaire Payment for the relevant month.

10.7 Dispute of invoices

- (a) If at any time a party acting reasonably disputes any aspect of an invoice issued by the other party (including an invoice issued under clauses 8.1(j) or 8.2(j)) (**the Disputing Party**), it may give notice to the other party (**the Non-Disputing Party**) of:

- (i) any amount in the relevant invoice which it disputes and, to the extent that it is able to calculate them, details of the adjustments it requires; and
 - (ii) such further information as it requires to determine the amounts of the adjustments it requires.
- (b) Within 20 Business Days after receipt of the notification under clause 10.7(a), the Non-Disputing Party must:
- (i) provide to the Disputing Party a revised invoice, amended to reflect:
 - A. any of the adjustments notified by the Disputing Party with which it agrees; and
 - B. where the Disputing Party was unable to specify the adjustment required for an amount, any adjustment which the Non-Disputing Party believes the Disputing Party is entitled to in relation to a disputed amount;
 - (ii) provide the Disputing Party with any information requested in accordance with clause 10.7(a)(ii); and
 - (iii) provide the Disputing Party with written reasons of why it believes any of the disputed amounts are correct.
- (c) If the Disputing Party does not dispute any aspect of the revised invoice provided under clause 10.7(b)(i),
- (i) in the case of a revised Concessionaire Payment Invoice, the RTA must within 5 Business Days after receiving the revised invoice from the Concessionaire, pay to the Concessionaire such amount owing under the revised invoice that has not otherwise been paid;
 - (ii) in the case of a revised invoice in respect of the matters under clauses 8.1(j) or 8.2(j), the RTA must within 5 Business Days after receiving the revised invoice from the Concessionaire, pay to the Concessionaire such amount owing under the revised invoice that has not otherwise been paid in accordance with clauses 8.1(j) or 8.2(j) (as the case may be); and
 - (iii) in the case of a revised RTA Services Charges Invoice, the Concessionaire must within 5 Business Days of receiving the revised invoice from the RTA, pay to the RTA the amount owing to the RTA under the revised invoice that has not otherwise been paid.
- (d) If within 30 Business Days after receipt by the Non-Disputing Party of the notice under clause 10.7(a), the parties have not agreed the relevant amounts in dispute, either party can give a Dispute Notice to the other in respect of the determination of the matter.

10.8 Amounts payable by the Concessionaire

Unless otherwise specified in this agreement, all amounts that become payable by the Concessionaire to the RTA under this agreement will be debts immediately due and payable by the Concessionaire to the RTA.

10.9 No additional payments

Except as expressly provided in this agreement or as otherwise agreed by the parties, the RTA is not required in any event to:

- (a) pay, invest or contribute capital funds or other moneys in connection with the SNP Business;
- (b) pay or reimburse any moneys to the Concessionaire; or
- (c) advance or extend any loan, credit or other financial accommodation to the Concessionaire.

10.10 Time and currency

All payments by the RTA or the Concessionaire to the other party under this agreement are to be made in Australian dollars in immediately available funds not later than 11.00 am in the place of payment on the due date to the bank account that the relevant party from time to time nominates.

11. Security arrangements and undertakings

11.1 Security

On or prior to the Operative Date, the Concessionaire must procure that the following security is provided to the RTA:

- (a) the Deed of Charge from the Concessionaire; and
- (b) the Deed of Priority from the Concessionaire and its financier.

11.2 Information required on the Operative Date

On the Operative Date, the Concessionaire must promptly deliver to the RTA a certificate signed by any 2 of the directors of the Concessionaire, stating that as at the date of the certificate:

- (a) the Concessionaire is able to pay all of its debts as and when they become due and payable;
- (b) after undertaking reasonable enquiries, the Concessionaire is not aware of any circumstances that would be reasonably likely to result in the Concessionaire not being able to pay all of its debts as and when they become due and payable for the remainder of the current Financial Year;
- (c) after undertaking reasonable enquiries, the Concessionaire is not aware of any event or circumstances that would be reasonably likely to have a Material Adverse Effect; and
- (d) confirming that all Insurances that are required to be maintained by the Concessionaire under this agreement are in force, and appending certificates of currency confirming this.

11.3 Information required during the Term

- (a) **(Solvency and compliance certificate)** Within 60 Business Days after the end of each Financial Year during the Term or any other time as requested by the RTA, the Concessionaire must promptly deliver to the RTA a certificate, signed by any 2 directors of the Concessionaire, stating that:
- (i) the Concessionaire has complied with clause 11.3(c) in that relevant Financial Year;
 - (ii) as at 30 June of that relevant Financial Year, the Concessionaire is able to pay all of its debts, as and when they become due and payable;
 - (iii) after undertaking reasonable enquiries, the Concessionaire is not aware of any circumstances that would be reasonably likely to result in the Concessionaire not being able to pay all of its debts, as and when they become due and payable, for the next Financial Year; and
 - (iv) all Insurances required to be maintained by the Concessionaire under this agreement are in force, and appending certificates of currency confirming this.
- (b) **(Financial information)** The Concessionaire will promptly provide any further information regarding the financial condition and business operations of itself and its Subsidiaries as the RTA may request from time to time.
- (c) **(Notification of certain events)** The Concessionaire will immediately notify the RTA if it becomes aware of the occurrence of:
- (i) **(Event of Default)** any Default, Major Default, Potential Default or Potential Major Default;
 - (ii) **(Event of Insolvency)** any Event of Insolvency that occurs in relation to any Concessionaire Group Member;
 - (iii) **(Litigation)** any litigation, arbitration, criminal or administrative proceedings which are current, pending or to its knowledge threatened relating to any Concessionaire Group Member or any Concessionaire Group Member's assets and which involve a claim against any Concessionaire Group Member in excess of \$1,000,000 or which, if determined adversely to any Concessionaire Group Member, could have a Material Adverse Effect;
 - (iv) **(Dispute in relation to a Material Contract)** any dispute between the Concessionaire and any counterparty to a Material Contract the outcome of which if either resolved or unresolved could have a Material Adverse Effect;
 - (v) **(Probity)** any Probity Event or any event or circumstance likely to lead to a Probity Event;
 - (vi) **(Change of control)** a Change of Control Event; or
 - (vii) **(Others)** any event or circumstance that would be reasonably likely to have a Material Adverse Effect.

11.4 Location of SNP Business and performance of the Concessionaire Services

Except as otherwise agreed by the RTA, the Concessionaire must at all times during the Term in respect of the SNP Business:

- (a) have a registered office located in the state of New South Wales;
- (b) have its principal place of business, at which it operates the SNP Business, including performing the Concessionaire Services, located in the state of New South Wales; and
- (c) ensure that:
 - (i) all other operations of the SNP Business including:
 - A. the contact centre for the SNP Business; and
 - B. the premises from which the Concessionaire Personnel perform the particular sales and marketing services as outlined in the Concessionaire Services Schedule; and
 - (ii) any business or activities other than the SNP Business which the Concessionaire conducts or is involved in (which must be approved by the RTA under clause 11.5(b)(i)),

are conducted within a state or territory of Australia.

11.5 SNP Business to be sole business of Concessionaire

- (a) Subject to clause 24, the Concessionaire must not permit:
 - (i) any part of the SNP Business to be operated, including performing the Concessionaire Services, by; or
 - (ii) any assets used in operating the SNP Business, including performing the Concessionaire Services, to be owned by, used by or licensed to,

any company in the Concessionaire Group (other than the Concessionaire) without the prior written approval of the RTA.
- (b) The Concessionaire must not, without prior written approval of the RTA:
 - (i) be directly or indirectly involved in or conduct any business or activity, or incur any liabilities in respect of any business or activity, other than the SNP Business;
 - (ii) engage any employee in any activity or business other than in connection with operating the SNP Business, including performing the Concessionaire Services; and
 - (iii) have any subsidiary as that term is defined in the Corporations Act.

12. Concession Management Committee

12.1 Establishment of the Concession Management Committee

On or as soon as practicable after the date on which all of the Conditions have been satisfied, the RTA and the Concessionaire must establish the Concession Management Committee.

12.2 Role of Concession Management Committee

The parties acknowledge and agree that the role of the Concession Management Committee is to:

- (a) review the performance of the SNP Business on a quarterly basis;
- (b) approve the matters set out in clause 12.5; and
- (c) consider and resolve (if possible) any Escalated Submissions.

12.3 Representative appointment

Each of the RTA and the Concessionaire may at any time by notice to the other party:

- (a) **(Appointment)** appoint as members of the Concession Management Committee two representatives (each a **CMC Representative**) or such other number of CMC Representatives as agreed by the parties; and
- (b) **(Substitution)** remove or replace its CMC Representative(s).

12.4 Alternate representatives

Each of the RTA and the Concessionaire may at any time by notice to the other party appoint alternate CMC Representatives.

12.5 Decisions of the Concession Management Committee

- (a) Decisions of the Concession Management Committee require the Unanimous Consent of the Concession Management Committee.
- (b) Subject to clause 12.5(c), the parties agree that the Concession Management Committee may make decisions only with respect to the following:
 - (i) **(Determination of Material Plate Change Payment)** the amount of the Material Plate Change Payment (if any) to be paid by the RTA to the Concessionaire in accordance with clause 3.4(c);
 - (ii) **(Amendment to RTA Services or Concessionaire Services)** the approval of an amendment or variation to the RTA Services Schedule or the Concessionaire Services Schedule under clause 6.2;
 - (iii) **(SNP Business Plan)** any approval or amendment of any SNP Business Plan;
 - (iv) **(Amendments to this agreement)** approval of any proposed amendment to this agreement;
 - (v) **(Escalated Submissions)** the resolution of any Escalated Submissions;

- (vi) the approval of the matters referred to in clause 19.12; and
 - (vii) resolution of any inconsistencies, ambiguities or discrepancies under clause 46.4(c).
- (c) The Concession Management Committee may determine which of the Concession Management Committee or the Operational Review Committee may make the decisions referred to in clauses 12.5(b) and 13.5(b).

13. Operational Review Committee

13.1 Establishment of the Operational Review Committee

On or as soon as practicable after the Start Date, the RTA and the Concessionaire must establish the Operational Review Committee.

13.2 Role of Operational Review Committee

The parties acknowledge and agree that the role of the Operational Review Committee is to:

- (a) review the operational matters of the SNP Business on a monthly basis;
- (b) review the RTA Services Charges;
- (c) make decisions with respect to the matters under clause 13.5; and
- (d) consider the steps that should be undertaken by the parties to resolve any matters:
 - (i) in respect of which Unanimous Consent of the Operational Review Committee cannot be achieved under clause 13.5; and
 - (ii) such other matters that are raised by the Concessionaire or the RTA from time to time in relation to the SNP Business,

and, as necessary, escalate the matters for consideration by the Concession Management Committee in accordance with clause 13.6.

13.3 Representative appointment

Each of the RTA and the Concessionaire may at any time by written notice to the other party:

- (a) **(Appointment)** appoint members of the Operational Review Committee; and
- (b) **(Substitution)** remove or replace its ORC Representative(s).

13.4 Alternate representatives

Each of the RTA and the Concessionaire may at any time by notice to the other party appoint alternate ORC Representatives.

13.5 Decisions of the Operational Review Committee

- (a) Decisions of the Operational Review Committee require Unanimous Consent of the Operational Review Committee.

- (b) Subject to clause 12.5(c), the parties agree that the Operational Review Committee may make decisions only with respect to the following:
- (i) **(Determination of Direct Costs)** the amount of the Direct Costs to be paid by the RTA to the Concessionaire in accordance with clause 20.2;
 - (ii) **(Approvals)** the approval of certain matters under clause 19.9 that are not permitted by the RTA SNP Policies;
 - (iii) **(Appointment of Concessionaire as Agent of RTA)** the terms on which the Concessionaire is appointed the RTA's agent under clause 18 of this agreement; and
 - (iv) **(Dispute Resolution)** the resolution of any Dispute that is referred to the Operational Review Committee under clause 34.4.

13.6 Escalated Submissions

If a Deadlock Notice is given under clause 14.10(b) in respect of a meeting of the Operational Review Committee, the Secretary of the Operational Review Committee must within 5 Business Days of receipt of that Deadlock Notice provide the relevant details of the relevant matter for the Concession Management Committee to consider and resolve (if possible) in accordance with clause 12.5(b)(v).

14. Committee Meetings

14.1 Chair

The parties agree that, except as otherwise decided by the Committee Representatives in the event of any absence of or vacancy in the chair:

- (a) the chair of a Committee must be elected annually by the Committee Representatives and will rotate annually (on or about each anniversary of the Start Date) between one of the Committee Representatives nominated by the RTA and the Concessionaire under clauses 12.3 or 13.3 (as the case may be); and
- (b) the initial chair of a Committee will be one of the Committee Representatives nominated by the RTA.

14.2 Committee meetings

- (a) **(Meetings)** Meetings must be held, in relation to the:
 - (i) Concession Management Committee, at least once in each Quarter, and where the Concession Management Committee has received notice of an Escalated Submission under clause 13.6, as soon as possible thereafter; and
 - (ii) Operational Review Committee, at least once in each Month,or with such frequency as a Committee determines.
- (b) **(Additional meetings)** Additional meetings of a Committee may be convened by any Committee Representative following a written request made to the chair of a Committee.

- (c) **(Venue)** Meetings of a Committee must be held in Sydney, Australia (or such other place as the relevant Committee Representatives agree) at any venue agreed at any time by the Committee Representatives.
- (d) **(Methods)** Any meeting of a Committee may be conducted by written resolution, telephone conference, video conference or any similar means of audio or audio-visual communication.
- (e) **(Notices)** Each Committee Representative must receive prior notice of any meeting of a Committee, together with an agenda which should include the resolutions proposed to be voted on at that meeting, at least 10 Business Days before that meeting, except where otherwise agreed by all Committee Representatives.
- (f) **(Agendas)** The agenda for any meeting of a Committee must be decided by the chair or, in the case of a meeting convened at the request of a Committee Representative, by that Committee Representative.
- (g) **(Resolutions)** A Committee must not pass any resolution at any meeting where notice of that resolution has not been given in the prior agenda for that meeting.
- (h) **(Observer)** A Committee Representative may by giving written notice to the chair of a Committee nominate a person to attend any meetings of that Committee as an observer.

14.3 Meeting quorum

- (a) **(Minimum attendance)** A quorum for any meeting of a Committee is created by the attendance, in person or by alternate, of a minimum of one Committee Representative appointed by each of the RTA and the Concessionaire.
- (b) **(Meeting adjournment)** A meeting of a Committee must be adjourned, if a quorum is not present within 30 minutes of the time specified for the meeting, to a date and time seven days following the time of, and at the same place as, the original meeting to be notified to all Committee Representatives.

14.4 Voting

Each Committee Representative is entitled to cast one vote at any meeting of a Committee. If two Committee Representatives are appointed by the RTA or the Concessionaire and only one of those Committee Representatives attends a Committee meeting, the relevant Committee Representative present may in addition to their own votes exercise the voting right of the other Committee Representative appointed by the RTA or the Concessionaire (as the case may be) not in attendance.

14.5 Authority of Committee Representatives

Each Committee Representative has full power and authority to represent the party appointing that person in all matters within the powers of the relevant Committee, and all acts done by that person as a Committee Representative will be deemed to be the act of the party which appointed that person.

14.6 Circulating resolutions

A resolution of a Committee signed by one Committee Representative of each of the RTA and the Concessionaire will be valid and effectual as if the resolution had been passed at a meeting

of a Committee duly convened and held. Any such resolution may consist of one or several documents in identical terms.

14.7 Secretary of Committee

A Committee must appoint a person as secretary of that Committee. The secretary will be responsible for circulating notices of meeting of the relevant Committee and will have such other additional responsibilities as the relevant Committee may decide from time to time. A person appointed as secretary of a Committee is not required to be a member of that Committee.

14.8 Minutes

- (a) A written record of decisions made at each meeting of a Committee and of decisions made pursuant to clause 14.6 must be kept by the secretary who must distribute copies of the record to each Committee Representative, as soon as practicable following a meeting of a Committee or of a decision made pursuant to clause 14.6.
- (b) If a Committee Representative has not commented on the written record within 30 days of receipt, it is deemed to have accepted such written record as an accurate recording of the decisions noted in the record.
- (c) A written record accepted by the Committee Representatives in accordance with this clause and signed by the chair of the relevant Committee is prima facie evidence of the decisions and proceedings of the meetings of a Committee to which it relates.

14.9 Resolutions contractually binding

- (a) All approvals and decisions duly given or made by a Committee under either clause 12.5 or clause 13.5, as the case may be, will, subject to clause 6.2(e), be binding on each of the parties with effect from the time specified in such approval or decision (as the case may be) or, if no time is specified, when the minutes recording such approval or decision are accepted (or deemed as accepted) under clause 14.8.
- (b) A failure to comply with any notice requirement in this clause 14 does not invalidate an approval or decision given or made by a Committee.

14.10 Deadlock

- (a) A Deadlock between the RTA and the Concessionaire is taken to have occurred at a meeting of a Committee if:
 - (i) a resolution (**First Resolution**) in respect of any matter listed under clause 12.5 or 13.5, as the case may be, is proposed by the chair of a Committee in accordance with clause 14.2(e) and that resolution does not receive Unanimous Consent of that Committee at the meeting of that Committee conducted to vote on the First Resolution; and
 - (ii) within 3 months from the date of the First Resolution (or such shorter period that is agreed by the parties), a second resolution (**Second Resolution**) in materially the same terms as the First Resolution is proposed by the chair of that Committee in accordance with clause 14.2(e) and that resolution does not receive the Unanimous Consent of

that Committee at the meeting of that Committee conducted to vote on the Second Resolution.

- (b) If a Deadlock occurs, the chair of a Committee must, not later than 10 Business Days after the date on which the Deadlock occurs, give a notice (**Deadlock Notice**) to each of the RTA and the Concessionaire which:
 - (i) is dated;
 - (ii) states that it is a Deadlock Notice under this clause 14.10(b); and
 - (iii) specifies the date of which the Deadlock occurred and the subject of the Deadlock.
- (c) (**Concession Management Committee**) A Deadlock Notice given under clause 14.10(b) in respect of a meeting of the Concession Management Committee is deemed to be a Dispute Notice for the purposes of clause 34 other than:
 - (i) where a Dispute Notice has already been given in respect of the Dispute that is the subject of that Deadlock Notice;
 - (ii) where the Deadlock Notice is in respect of a Material Plate Change Dispute; or
 - (iii) where the Deadlock Notice is in respect of a Direct Cost Dispute.

15. SNP Business planning

15.1 Initial SNP Business Plan

The parties agree and acknowledge that the business plan set out in Annexure B is the SNP Business Plan with respect to the First Financial Year.

15.2 General obligation to consult

The Concessionaire must, prior to the commencement of each Financial Year after the First Financial Year:

- (a) consult with the Operational Review Committee and Concession Management Committee as required in relation to the preparation of the SNP Business Plan for the forthcoming Financial Year; and
- (b) prior to the formal submission in accordance with clause 15.3, present a draft SNP Business Plan for the forthcoming Financial Year to the Concession Management Committee at least 80 Business Days before the commencement of that Financial Year.

15.3 SNP Business Plan

The Concessionaire must, at least 60 Business Days before the commencement of each Financial Year after the First Financial Year, prepare and submit to the Concession Management Committee for approval a further draft SNP Business Plan for that Financial Year, which must set out the following details in relation to the SNP Business:

- (a) **(Long-term strategy plan)** a long-term strategy plan for that Financial Year and the following 3 consecutive Financial Years and a short-term strategy plan for that Financial Year, which must include:
- (i) the Concessionaire's relevant strategic objectives to achieve over the respective period of the strategy plan;
 - (ii) market analysis;
 - (iii) sales growth and opportunities;
 - (iv) any services that the Concessionaire may require the RTA to provide;
 - (v) a risk identification and management plan; and
 - (vi) appropriate key performance indicators.
- (b) **(Sales and marketing plan)** a sales and marketing plan for that Financial Year, which must include:
- (i) a segmentation, positioning and strategy, including:
 - A. market and customer analysis;
 - B. branding strategy; and
 - C. appropriate key performance indicators;
 - (ii) a marketing and advertising plan, including:
 - A. customer acquisition plans, including marketing and advertising activities, including campaigns and promotions;
 - B. customer retention plans, including any customer incentives and loyalty plans;
 - C. any services that the Concessionaire may require the RTA to provide in respect of any marketing, advertising or promotions; and
 - D. appropriate key performance indicators;
 - (iii) a product development plan, which must include:
 - A. New SNP Product release schedule;
 - B. New SNP Product pricing, including one-off fees and annual fees (or other fees as the case may be);
 - C. customer target segments for New SNP Products;
 - D. the details set out in clauses 15.3(b)(iii)A to 15.3(b)(iii)C (inclusive) in respect of any proposed Additional Products; and
 - E. any services that the Concessionaire may require the RTA to provide in respect of product development;

- (iv) a SNP Products price and promotions plan setting out:
 - A. planned promotions for the year (both price and non-price promotions);
 - B. planned prices, including proposed price changes, for the year for existing SNP Products and planned New SNP Products;
 - C. planned prices, including proposed price changes, for the year for any existing Additional Products and any planned Additional Products; and
 - D. any services that the Concessionaire may require the RTA to provide in respect of price and promotions;
 - (v) details of any planned SNP Product retirements, including the rationale for the proposed retirement;
 - (vi) details of any new Sales Channel and Fulfilment Channel initiatives;
 - (vii) details of planned licensing and partnering arrangements;
 - (viii) a customer service strategy, including customer service initiatives and planned customer satisfaction measurement;
- (c) **(Financial plan)** a financial plan for that Financial Year, which must include:
- (i) in the case of the First Financial Year, forecast monthly SNP Revenue and monthly unit sales performance for the First Year and the following Financial Year, plus forecast annual SNP Revenue and annual unit sales performance for the following two consecutive Financial Years, by:
 - A. SNP Product, Plate Category and Plate Style;
 - B. Sales Channel and Fulfilment Channel; and
 - C. customer segment;
 - (ii) for all Financial years after the First Financial Year, forecast monthly SNP Revenue and monthly unit sales performance for that Financial Year, plus forecast annual SNP Revenue and annual unit sales performance for the following 3 consecutive Financial Years by:
 - A. SNP Product, Plate Category and Plate Style;
 - B. Sales Channel and Fulfilment Channel; and
 - C. customer segment;
 - (iii) Forecast Annual SNP Revenue for that Financial Year and the following 3 consecutive Financial Years;
 - (iv) planned marketing expenditure for that Financial Year and the following 3 consecutive Financial Years;
 - (v) planned capital expenditure for that Financial Year and the following 3 consecutive Financial Years, including:

- A. business case and financial analysis, including net present value analysis, for each relevant capital expenditure item; and
 - B. details of planned expenditure on systems and information technology;
- (vi) disaster recovery arrangements, specifically including:
- A. Sales Channel and Fulfilment Channel;
 - B. contact centre; and
 - C. information technology;
- (d) **(Exit and Hand-back Plan)** an Exit and Hand-back Plan, which must include the details set out in clause 32.2; and
- (e) **(Concessionaire's Privacy Plan)** the Concessionaire's Privacy Plan, which must include the details set out in clause 25.3.

15.4 Business planning implementation

- (a) **(Consideration)** The Concession Management Committee must meet to consider and approve:
- (i) the draft SNP Business Plan submitted under clause 15.3 at least 40 Business Days before its proposed commencement date; and
 - (ii) if relevant, each revised SNP Business Plan submitted under clause 15.4(c) as soon as practicable following receipt of the revised SNP Business Plan.
- (b) **(Notice to Concessionaire)** The secretary of the Concession Management Committee must give notice to the Concessionaire of its approval or disapproval of the draft SNP Business Plan submitted to it promptly after its meeting at which that decision was made. Any notice of disapproval will include details to enable the Concessionaire to identify the areas needing amendment.
- (c) **(Resubmission)** If the Concessionaire is notified of the Concession Management Committee's disapproval of the draft SNP Business Plan under clause 15.4(b), the Concessionaire must make any amendments it considers appropriate and must promptly resubmit a further draft SNP Business Plan to the Concession Management Committee.
- (d) **(Variation)** If the Concession Management Committee fails to approve a SNP Business Plan before the commencement of any Financial Year, the SNP Business Plan from the previous Financial Year continues to apply and will be deemed to be varied immediately as follows:
- (i) the relevant financial performance and costs forecasts in the SNP Business Plan from the previous Financial Year will be increased by 5%; and
 - (ii) the Concessionaire will put in place such other arrangements in connection with the operation of the SNP Business to meet the increased forecasts under clause 15.4(d),

and such variation will apply for the period from the commencement of the relevant Financial Year until the earlier of the date that:

- (iii) the Concession Management Committee approves the SNP Business Plan for that Financial Year; and
 - (iv) the SNP Business Plan for that Financial Year is determined by an Expert in accordance with clauses 15.4(f) to 15.4(k).
- (e) **(Request for expert determination)** If a SNP Business Plan is varied under clause 15.4(d), either party may give notice to the other party requesting expert determination of the relevant SNP Business Plan in accordance with clauses 15.4(f) to 15.4(k).
- (f) **(Appointment of Expert)** Within 10 Business Days after a notice is given under clause 15.4(e), the parties must each use their reasonable endeavours to appoint an Expert to determine the SNP Business Plan for the relevant Financial Year, being:
- (i) one of the Major Accounting Firms, as agreed by the parties; or
 - (ii) in the absence of agreement by the parties, a major accounting firm chosen by the President for the time being of the Institute of Chartered Accountants of Australia.
- (g) **(Parties to assist Expert)** The parties must use all reasonable endeavours to make available to the Expert all facts and circumstances which the Expert may require to determine the SNP Business Plan for the relevant Financial Year, including ensuring that the Expert has a right of access at all reasonable times to the accounting records and other records of the SNP Business and the Expert is entitled to require from the Concessionaire and the Concessionaire's Personnel such information and explanation as the Expert requires to determine the relevant SNP Business Plan.
- (h) **(Period of determination)** The parties must each use their best endeavours to ensure that the Expert makes a determination as soon as practicable and in any event within 20 Business Days after receiving instructions.
- (i) **(Process)** The parties acknowledge and agree that, in determining the relevant SNP Business Plan, the Expert:
- (i) will act as an expert and not as an arbitrator;
 - (ii) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as they determine appropriate;
 - (iii) must provide each party with a draft of their determination and must give each party an opportunity to comment on the draft determination before it is finalised; and
 - (iv) may engage such assistance as they reasonably believe is appropriate or necessary to make a determination.

The parties must procure that no discussions or written correspondence with the Expert take place unless both parties are present or represented in those discussions or are copied into the correspondence at the same time.

- (j) **(Final and binding)** The Expert's determination will be final and binding on the parties.
- (k) **(Costs)** The reasonable costs and expenses of the Expert must be borne equally by the parties.

15.5 Concessionaire to comply with SNP Business Plan

Subject to clause 19, the Concessionaire must during any Financial Year operate the SNP Business, including performing the Concessionaire Services, in compliance with the SNP Business Plan for that Financial Year.

16. SNP Business reporting

16.1 General obligation

The Concessionaire must provide the Concession Management Committee and the Operational Review Committee with any information or other reports that the Concession Management Committee or the Operational Review Committee may reasonably require, to enable the Concession Management Committee or the Operational Review Committee (as relevant) to supervise the operation of the SNP Business and to monitor the Concessionaire's performance of the Concessionaire Services.

16.2 Monthly reporting

The Concessionaire must, within 15 Business Days following the end of each Month in a Financial Year, prepare and submit to the Operational Review Committee a monthly management report for the SNP Business in relation to that Month, which must set out the following information:

- (a) details of any promotions conducted during the period (including sales volume and revenue for each SNP Product the subject of a promotion) and any upcoming promotions;
- (b) actual financial performance for the period compared to budget (variance in both dollar and percentage terms), year to date actual and year to date budgeted (variance in both dollar and percentage terms), and full year forecast compared with budget for revenue and expenses;
- (c) revenue, volume and transaction analysis by Sales Channel, Fulfilment Channel and SNP Product category;
- (d) number and details of all customer complaints, and details of resolution of complaints;
- (e) number of new car dealers signed up to the SNP Business Dealer Incentive Program (or alternative programs if applicable) and volume analysis for the channel;
- (f) details of any loyalty programs and uptake;
- (g) details of performance against key performance indicators agreed from time to time by the Concession Management Committee or the Operational Review Committee;
- (h) the Concessionaire's contact centre call volume; and

- (i) any other information that the Operational Review Committee decides must be included in a monthly amount report required under this clause 16.2.

16.3 Quarterly reporting

The Concessionaire must, within 15 Business Days following the end of each Quarter in a Financial Year, prepare and submit to the Concession Management Committee a quarterly management report for the SNP Business comprising a consolidated version of the three management reports submitted to the Concession Management Committee under clause 16.2 in relation to that Quarter.

16.4 Annual reporting

The Concessionaire must, within 30 Business Days following the end of each Financial Year, prepare and submit to the Concession Management Committee an annual management report for the SNP Business comprising a consolidated version of the four quarterly management reports submitted to the Concession Management Committee under clause 16.3 in relation to that Financial Year.

16.5 Reporting standards

The Concessionaire must ensure that the reports required under clauses 16.2, 16.3 and 16.4 and all other information and other reports provided by the Concessionaire to the Concession Management Committee or the Operational Review Committee will:

- (a) in the case of financial information:
 - (i) be prepared in accordance with generally accepted Australian accounting principles and practices consistently applied; and
 - (ii) fairly represent the financial performance and the results of the operations of the SNP Business as at the date and for the period ending on the date to which the relevant reports were prepared, and
- (b) in the case of all information, be prepared to the standards that would be expected of a prudent and competent person undertaking similar obligations as the Concessionaire is undertaking under this agreement.

17. Material contracts

17.1 General obligation

The Concessionaire must not enter into or vary any Material Contract unless:

- (a) the Concessionaire has given prior notice to the RTA setting out the full particulars of the proposed contract together with a copy of the draft Material Contract or variation document; and
- (b) the RTA has not rejected the proposed Material Contract or variation to the Material Contract within 10 Business Days of receiving notice, such rejection not to be unreasonable.

17.2 Requirements to be met

The Concessionaire must ensure that:

- (a) in relation to any contract entered into by the Concessionaire in relation to this agreement, the contractor is a reputable entity which:
 - (i) has sufficient experience, expertise and ability to perform its obligations to the standards required by this agreement;
 - (ii) has in place arrangements for ensuring the availability of the appropriate skills and resources to perform its obligations to the standards required by this agreement; and
 - (iii) is of sufficiently high financial and commercial standing to perform its obligations to the standards required by this agreement;
- (b) in relation to any Material Contract, the Concessionaire has carried out such probity and criminal history investigations to report on the character, honesty and integrity of the Subcontractor and persons associated with the Subcontractor as are reasonable in the circumstances to ensure that the Subcontractor is fit and proper for its involvement in operating the SNP Business, including performing the Concessionaire Services and has provided all details of those investigations to the RTA upon request; and
- (c) in relation to any Material Contract, the RTA is provided with a copy of the executed Material Contract as soon as possible after execution of the contract and is promptly provided with any amendments to such contracts during the Term.

17.3 Mandatory provisions

The Concessionaire must ensure that each Material Contract contains provisions:

- (a) requiring the licensing or assignment of any Intellectual Property to the Concessionaire and the RTA to the extent required for the Concessionaire and the RTA to comply with their obligations under this agreement; and
- (b) providing that the Concessionaire may assign or novate the Material Contract to the RTA or its nominee without any consent from the Subcontractor and requiring the Subcontractor to do all things necessary to effect such assignment or novation in compliance with the Concessionaire's obligation under clause 25.5(a).

17.4 Impact of Probity Investigation in respect of a Subcontractor

Where, as a result of carrying out a Probity Investigation or otherwise, the RTA has reasonable grounds for believing that a contractor to the Concessionaire in relation to this agreement should not be involved in the operation of the SNP Business, including performing the Concessionaire Services, the RTA may give notice to the Concessionaire requiring it to ensure that the contractor is no longer involved in the SNP Business and the Concessionaire must comply with any such notice as soon as possible and, in any event, within 5 Business Days of receiving such notice.

17.5 Concessionaire to remain liable

- (a) Despite the provisions of this clause and notwithstanding any Material Contract, the Concessionaire remains bound by its obligations under this agreement to operate the

SNP Business, including performing the Concessionaire Services, in accordance with this agreement, and will be vicariously liable for all acts, omissions and defaults of its Subcontractors relating to, or in any way connected with, this agreement.

- (b) The Concessionaire agrees and acknowledges that the RTA has no obligation under this agreement or otherwise (at any time) to meet any Liability whatsoever arising as result of a contractor ceasing involvement in the SNP Business in accordance with clause 17.4 (whether by way of an obligation to any contractor directly, or by way of compensation to the Concessionaire).

18. SNP Products manufacturing contract

- (a) The RTA may appoint the Concessionaire to act as the RTA's agent under any Plate manufacture contract or any warehouse and distribution services agreement (whether they form one or more contracts) with such powers and authority as the ORC decides from time to time under clause 13.5. The terms of such agency must be agreed in writing between the RTA and the Concessionaire, however the Concessionaire shall not be entitled to any compensation for performing that agency role nor will it be liable to any person under those contracts unless the terms of appointment as RTA's agent require the Concessionaire to do so.
- (b) The Concessionaire will give notice to the RTA in writing within 3 Business Days of the Concessionaire or its Subsidiaries entering into any agreement or arrangement (written or unwritten) with a manufacturer of Plates other than for the purposes of this agreement.

19. RTA SNP Policies and RTA approvals

19.1 Compliance with RTA SNP Policies

The Concessionaire must comply with the RTA SNP Policies in operating the SNP Business, including performing the Concessionaire Services.

19.2 Changes to RTA SNP Policies

- (a) Subject to clause 19.2(b), the RTA may at any time change the RTA SNP Policies.
- (b) The RTA must use reasonable endeavours to notify the Concessionaire of a proposed change to the RTA SNP Policies prior to the date of the relevant change.

19.3 Permitted marketing and advertising activities

- (a) Subject to clauses 19.6, 19.7 and 19.8, the Concessionaire must conduct all marketing and advertising activities in accordance with:
 - (i) the SNP Business Plan applicable to the period in which the relevant activities are carried out; and
 - (ii) comply with the Marketing Guidelines in section 1 of the RTA SNP Policies.
- (b) If, in the reasonable opinion of the RTA, any marketing or advertising activity conducted, or proposed to be conducted, by the Concessionaire does not comply

with clause 19.3(a), the RTA may give notice to the Concessionaire requesting that the Concessionaire cease performing the relevant activity.

- (c) The Concessionaire must, on receipt of a notice from the RTA under clause 19.3(b), immediately cease conducting the relevant marketing or advertising activity and withdraw the relevant marketing and advertising campaign or advertisements from all relevant channels at the Concessionaire's cost.

19.4 Permitted changes in price of SNP Products

- (a) Subject to clause 19.6, the Concessionaire may, on up to 4 occasions in each Financial Year during the Term, at its discretion increase or decrease the:
 - (i) amount of the order fee for a SNP Product provided that such fee may not be changed more than 4 times per Financial Year and the aggregate change in the amount of the order fee in any Financial Year must not exceed 10% of the order fee for that SNP Product at the end of the previous Financial Year; and
 - (ii) amount of the annual fee for a SNP Product provided that such fee may not be changed more than 4 times per Financial Year and the aggregate change in the amount of the annual fee in any Financial Year must not exceed 5% of the annual fee for that SNP Product at the end of the previous Financial Year.
- (b) If the Concessionaire wants to increase or decrease the amount of an order fee or annual fee for a SNP Product by an amount that exceeds the relevant amounts in clause 19.4(a), the Concessionaire must obtain the prior approval of the RTA and the Operational Review Committee in accordance with clause 19.9.

19.5 Permitted price promotions

- (a) Subject to clause 19.6 and 19.5(c), the Concessionaire may at any time during a Financial Year, at its discretion, conduct price promotions with respect to a SNP Product or any combination of SNP Products provided that the budgeted aggregate amount by which the relevant SNP Product or SNP Products is to be discounted in any particular Quarter (as set out in the budget submitted by the Concessionaire under clause 19.6(a)) is no more than 5% of the total revenue received by the RTA in the corresponding Quarter in the previous Financial Year from the order fees for SNP Products, excluding the order fees for Black On White Plates.
- (b) If the Concessionaire wants to conduct price promotions with respect to a SNP Product or any combination of SNP Products by an amount that exceeds the amount in clause 19.5(a), the Concessionaire must obtain the prior approval of the RTA and the Operational Review Committee in accordance with clause 19.9.
- (c) At any time prior to the commencement of the price promotion, the RTA may give notice that it disputes the budget submitted by the Concessionaire under section 19.6(a), in which case the Concessionaire may not conduct the price promotion until such time as the RTA approves the price promotion or it is otherwise determined that the price promotion complies with the requirements of clause 19.5(a) through the dispute resolution processes in clause 34.
- (d) If in any Quarter the aggregate amount by which relevant SNP Products have been discounted pursuant to price promotions conducted by the Concessionaire equals or

exceeds 5% of the total revenue received by the RTA in the corresponding Quarter in the previous Financial Year from the order fees for SNP Products, excluding the order fees for Black On White Plates, the Concessionaire must immediately cease all price promotions unless otherwise authorised by the RTA.

- (e) The Concessionaire must ensure that the terms and conditions of all price promotions allow it to comply with its obligation under clause 19.5(d).

19.6 Notice of permitted activities

The Concessionaire must:

- (a) at least 20 Business Days before undertaking any matter under clauses 19.3, 19.4 or 19.5 prepare and table at the next meeting of the Operational Review Committee a submission outlining a summary of the details of the relevant matter proposed to be undertaken by the Concessionaire, including, in the case of clause 19.5, a detailed budget illustrating compliance with the requirements of clause 19.5(a); and
- (b) in respect of any marketing and advertising activities referred to in clause 19.3, the Concessionaire must at least 10 Business Days prior to the date of launch of the relevant marketing and advertising activity, also provide to the RTA copies of the key material to be used in that relevant marketing and advertising activity.

19.7 Permitted marketing and advertising submission

The Concessionaire must provide details of each of the following matters in the submission under clause 19.6(a) in respect of the marketing and advertising activities under clause 19.3:

- (a) campaign strategy;
- (b) key advertising concepts;
- (c) key messages;
- (d) target audience;
- (e) media strategy by channel (including, television, radio, print, outdoor or online); and
- (f) timing in relation to the implementation of the relevant advertising or marketing campaign.

19.8 RTA right of veto

The RTA has an unfettered right of veto in respect of any marketing and advertising activities under clause 19.3 as outlined in the relevant submission under clause 19.7, which the RTA may exercise at its sole discretion.

19.9 RTA approvals

The Concessionaire must in accordance with the RTA SNP Policies seek the approval of the RTA (which may be given, given subject to conditions or withheld in the RTA's discretion) and the Operational Review Committee prior to:

- (a) conducting any marketing or advertising activities that:

- (i) do not comply with clause 19.3(a); or
 - (ii) involve the use of RTA's Brand or logo, or includes a reference to the RTA, except in compliance with clause 24.12(c)(ii) in respect of a Trade Mark which does not include the RTA's Brand or logo, or a reference to the RTA.
- (b) increasing or decreasing the price of a particular SNP Product by an amount that exceeds the relevant amounts in clause 19.4(a);
 - (c) introducing any annual fee for a SNP Product which is not charged as at the Execution Date;
 - (d) conducting price promotions with respect to a SNP Product or any combination of SNP Products by an amount that exceeds the amount in clause 19.5(a);
 - (e) launching a New SNP Product (other than the products referred to in clause 19.12);
 - (f) launching a new Brand;
 - (g) launching a new Sales Channel;
 - (h) launching a new Fulfilment Channel;
 - (i) changing the name of a particular SNP Product;
 - (j) retiring a SNP Product;
 - (k) launching a new SNP website;
 - (l) placing marketing materials in Registries or on the RTA's general website; and
 - (m) launching a new Payment Channel,

notwithstanding that details of any of the above activities are set out in the relevant SNP Business Plan applicable to the period in which the relevant activities are proposed to be carried out.

19.10 Compliance with conditions

The Concessionaire cannot undertake any of the activities referred to in clause 19.9 unless they have been approved by the RTA and the Operational Review Committee and the Concessionaire must comply with any conditions that the RTA and the Operational Review Committee may impose on its approval of such activities.

19.11 Inappropriate Content

Notwithstanding any other provision of this agreement, the RTA has an unfettered discretion to determine inappropriate Content, including to add content to or delete Content from the Restricted Words Filter.

19.12 Content Format

The Concessionaire must seek the approval of the RTA (which may be given, subject to conditions or withheld in the RTA's discretion) and the Concession Management Committee prior to launching a New SNP Product which involves:

- (a) Content Format which was not offered as a SNP Product prior to the Start Date; or
- (b) Content Format which was used for particular vehicle types as at the Start Date being used for other vehicle types.

19.13 Content reserved for SNP

- (a) The Concessionaire must act reasonably in determining the Content contained on any list of Content provided to the RTA in accordance with clause 4.1 of the Concessionaire Services Schedule
- (b) If:
 - (i) an approval has been granted by the RTA and the Concession Management Committee for the launch of a New SNP Product in relation to clause 19.12, above; or
 - (ii) in performing its Content Management Services pursuant to the Concessionaire Services Schedule, the Concessionaire has provided a list of Content to the RTA that the Concessionaire would like to be removed from the Content Range, for either Standard Content or General Issue Plates Content,

then the RTA will not use or specify that Content or Content Format for General Issue Plates, including, without limitation, for particular vehicle types such as motorcycles or trailers.

20. Consequences of RTA Changes

20.1 Implementing any change to the Concessionaire's systems

- (a) If the Concessionaire, acting reasonably, forms the opinion that a RTA Change requires the Concessionaire to modify its systems or procedures, it must within 20 Business Days of receiving notice of the RTA Change, give notice to the RTA setting out full particulars of all relevant matters including:
 - (i) details of the systems or procedures affected;
 - (ii) details of the action that the Concessionaire has taken and proposes to take to avoid or minimise the consequences of the RTA Change;
 - (iii) an estimate of the timing that the Concessionaire will require to modify its systems or procedures; and
 - (iv) an estimate of the costs that the Concessionaire would incur to modify its systems or procedures.
- (b) After the Concessionaire gives a notice under clause 20.1(a), the Concessionaire must:
 - (i) continue to provide the RTA with all relevant information relating to the modification of its systems or procedures; and
 - (ii) promptly take all proper and reasonable steps (including expenditure of money, rescheduling of manpower and resources and implementing

appropriate temporary measures) to remedy, avoid or minimise the consequences necessitated by the RTA Change.

- (c) The Concessionaire must co-operate with the RTA in relation to any RTA Change.

20.2 Direct Costs

The RTA must pay the Concessionaire's Direct Costs (if any) of making any changes to its systems or procedures necessitated by a RTA Change. The RTA and the Concessionaire must negotiate and use reasonable endeavours to agree on these Direct Costs, but if agreement has not been reached within 45 Business Days of the RTA making a RTA Change, either party may give notice to the secretary of the Operational Review Committee outlining the details of the changes to the Concessionaire's systems or procedures and the relevant Direct Costs for the Operational Review Committee to determine the amount of the Direct Costs in accordance with clause 13.5(b)(i).

20.3 Expert determination of Direct Costs

- (a) **(Request for expert determination)** If a Deadlock Notice is given under clause 14.10(b) in respect of a meeting of the Concession Management Committee regarding the amount of Direct Costs (if any) payable by the RTA to the Concessionaire under clause 20.2, either party may give notice to the other party requesting expert determination of such under this clause 20.3.
- (b) **(Appointment of Expert)** Within 10 Business Days after a notice is given under clause 20.3(a), the parties must each use their reasonable endeavours to appoint an Expert to determine the amount of the Direct Costs, being:
- (i) one of the Major Accounting Firms, as agreed by the parties; or
 - (ii) in the absence of agreement by the parties, a major accounting firm chosen by the President for the time being of the Institute of Chartered Accountants of Australia.
- (c) **(Parties to assist Expert)** The parties must use all reasonable endeavours to make available to the Expert all facts and circumstances which the Expert may require to determine the amount of the Direct Costs, including ensuring that the Expert has a right of access at all reasonable times to the accounting records and other records of the SNP Business and is entitled to require from the Concessionaire and the Concessionaire's Personnel such information and explanation as the Expert requires to determine the matter.
- (d) **(Period of determination)** The parties must each use their best endeavours to ensure that the Expert makes a determination as soon as practicable and in any event within 20 Business Days after receiving instructions.
- (e) **(Process)** The parties acknowledge and agree that, in determining the Direct Costs, the Expert:
- (i) will act as an expert and not as an arbitrator;
 - (ii) may obtain or refer to any documents, information or material and undertake any inspections or enquiries as they determine appropriate;

- (iii) must provide each party with a draft of their determination and must give each party an opportunity to comment on the draft determination before it is finalised; and
- (iv) may engage such assistance as they reasonably believe is appropriate or necessary to make a determination.

The parties must procure that no discussions or written correspondence with the Expert takes place unless both parties are present or represented in those discussions or are copied into the correspondence at the same time.

- (f) **(Final and binding)** The Expert's determination will be final and binding on the parties except where either party gives notice to the other party that it disputes the determination within 20 Business Days of the determination being given, in which case the determination will be referred to arbitration and clauses 34.8 to 34.11 will apply to the dispute.
- (g) **(Costs)** Subject to clause 34.16, the reasonable costs and expenses of the Expert must be borne equally by the parties.

20.4 Right to implement RTA Changes

The Concessionaire agrees and acknowledges that notwithstanding that the Concessionaire's Direct Costs (if any) of making any changes to its systems or procedures necessitated by a RTA Change may not have been determined:

- (a) the RTA can make the RTA Change, and
- (b) the Concessionaire must still operate the SNP Business, including performing the Concessionaire Services.

21. Concessionaire's Personnel

21.1 Concessionaire's Personnel

The Concessionaire must:

- (a) use adequate numbers of appropriately qualified Concessionaire's Personnel with suitable training, education, experience and expertise to operate the SNP Business, including performing the Concessionaire Services; and
- (b) ensure that all Concessionaire's Personnel comply with all relevant probity policies of the RTA, as nominated by the RTA to the Concessionaire from time to time.

21.2 Key Personnel

The Concessionaire must during the Term:

- (a) promptly provide the RTA with written notice of the termination of employment of any of the people holding the roles specified in Schedule 9; and
- (b) ensure any person who replaces a person in a role specified in Schedule 9 is a person of at least equivalent ability, expertise and experience to the person being replaced who has been approved in writing by the RTA prior to their engagement.

21.3 Probity Investigations

The Concessionaire must prior to employing or contracting any person to perform any part of the Concessionaire Services:

- (a) obtain from that person all necessary consents required by Law to conduct a Probity Investigation from time to time;
- (b) carry out a Probity Investigation with respect to that person; and
- (c) if requested by the RTA, provide details of that Probity Investigation to the RTA.

21.4 Ongoing Probity Investigations

- (a) The RTA may, by giving notice to the Concessionaire, require the Concessionaire to:
 - (i) conduct a Probity Investigation or other probity or security investigations; or
 - (ii) provide all necessary assistance to the RTA to allow the RTA to conduct a Probity Investigation or other probity or security investigations, in respect of any Concessionaire's Personnel.
- (b) Within 2 Business Days of receiving notice from the RTA under clause 21.4(a), if a consent has not been obtained from the relevant Concessionaire's Personnel under clause 21.3(a), the Concessionaire must procure the written consent of that Concessionaire's Personnel to a Probity Investigation and other probity and security investigations.
- (c) The RTA must pay to the Concessionaire, on presentation of an invoice by the Concessionaire, all expenses reasonably incurred by the Concessionaire in carrying out any Probity Investigation under this clause 21.4.

21.5 Notice

If, following a Probity Investigation or otherwise, the RTA has reasonable grounds for believing that a member of the Concessionaire's Personnel is not a fit and proper person to be involved in the SNP Business, including performing any part of the Concessionaire Services, the RTA may give notice to the Concessionaire requiring the Concessionaire to remove the relevant person from any involvement in the SNP Business.

21.6 Removal

Within 2 Business Days of receiving a notice from the RTA under clause 21.5, the Concessionaire must procure the removal of the relevant person from any involvement in the SNP Business and provide the RTA with written confirmation that it has complied with this clause 21.6.

21.7 Concessionaire responsible for Concessionaire's Personnel

- (a) The Concessionaire agrees and acknowledges that the RTA has no obligation under this agreement or otherwise (at any time) to meet any Liability whatsoever arising on termination of employment or service contract of any Concessionaire's Personnel

(whether by way of an obligation to any Concessionaire's Personnel directly, or by way of compensation to the Concessionaire).

- (b) The Concessionaire releases, waives and forever discharges the RTA in relation to any Liabilities whatsoever, and indemnifies the RTA with respect to, any claims by any Concessionaire's Personnel arising out of or in connection with the termination of the relevant employment or service contract, including arising from the expiry or termination of this agreement.

22. Probity Events and investigations

22.1 Notice of Probity Event

- (a) The Concessionaire must, and the RTA may, give notice to the other party as soon as it becomes aware that a Probity Event has occurred or is likely to occur (**Probity Event Notice**).
- (b) The Probity Event Notice must describe the circumstances giving rise to the actual or likely occurrence of the Probity Event.

22.2 Access to Concessionaire's Personnel

Following receipt of a Probity Event Notice under clause 22.1(a), the Concessionaire must promptly comply with any reasonable request from the RTA for access to the Concessionaire's Personnel for the purpose of undertaking any investigations that the RTA may wish to carry out in relation to the actual or likely occurrence of the Probity Event. The Concessionaire will use reasonable endeavours to ensure that the Concessionaire's Personnel co-operate with the RTA or its Nominee and comply with any reasonable requests for information that the RTA may make in the course of such investigations.

22.3 Meeting to discuss action

- (a) Within 2 Business Days after receipt of a Probity Event Notice, the parties must meet and discuss the occurrence of the Probity Event (**Probity Event Meeting**).
- (b) During a Probity Event Meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Concessionaire to reverse the effect of the Probity Event upon or in relation to the provision of the Concessionaire Services under this agreement.

22.4 Unable to agree

If the parties are unable to agree under clause 22.3(b), within 10 Business Days of the Probity Event Meeting, the RTA may give notice to the Concessionaire setting out the action the RTA requires the Concessionaire to take to address the adverse effect of the Probity Event, and the Concessionaire must comply with any such notice as soon as possible and in any event, within 10 Business Days of receiving such notice.

23. Maintenance of records, access to premises and audit

23.1 Business records

The Concessionaire must keep, and must ensure that its Subcontractors keep (if relevant), proper books of accounts and other financial and business records in relation to the SNP Business, including the performance of the Concessionaire Services, as would be expected of a

prudent and competent person undertaking similar obligations as the Concessionaire and its relevant Subcontractors (as the case may be) are undertaking in relation to the operation of the SNP Business, including the performance of the Concessionaire Services.

23.2 Access and inspection

- (a) The Concessionaire must, on receipt of notice from the RTA, allow the RTA or its Nominee to enter the Concessionaire's premises on any Business Day during Business Hours to:
 - (i) inspect, copy or retain any records concerning the SNP Business, including the Concessionaire Services and the performance of the Concessionaire's obligations under this agreement; and
 - (ii) inspect and perform an audit or stock take of all SNP Products held in storage at the Concessionaire's premises.
- (b) The Concessionaire must provide all appropriate resources, including providing access to the Concessionaire's Personnel, and use reasonable endeavours to assist the RTA or its Nominee to conduct the inspections under clause 23.2(a), and fully co-operate with the RTA or its Nominee in good faith.

23.3 Further examination or audit

- (a) If the RTA at any time reasonably suspects that there may be a non-disclosure, error or irregularity in any of the Concessionaire's records inspected by the RTA or its Nominee in accordance with clause 23.2(a), the RTA or its Nominee may further examine or the RTA may appoint an auditor to examine or audit the Concessionaire's records and provide the RTA with a report.
- (b) The Concessionaire must, and must procure its employees to, co-operate with the RTA or its Nominee, or any auditor appointed by the RTA, for any inspection or audit under clause 23.3(a). The Concessionaire must at its sole cost, provide the RTA or its Nominee, or the auditor with any appropriate resources and all reasonable assistance to enable the RTA or its Nominee, or the auditor to carry out the inspection or audit.

23.4 External audits

Without limiting clauses 23.2 and 23.3, the Concessionaire must provide the RTA or its Nominee with access to all external auditors' audits or reviews of the performance of all or any part of the Concessionaire Services or any other aspect of the SNP Business excluding:

- (a) any part of such audits or reviews that contain information of the Concessionaire which is not related to the SNP Business; or
- (b) personal information which the Concessionaire is not permitted by Law to disclose.

23.5 Costs

- (a) The Concessionaire must meet all its own costs in connection with any audits under clauses 23.2 and 23.4.
- (b) The RTA must meet the costs of any further examination or audits under clause 23.3(a), unless the relevant audit discloses that the Concessionaire is in Default of

this agreement, in which case the Concessionaire must meet all of the RTA's reasonable costs and the Concessionaire's costs in connection with that audit.

23.6 Audit findings implementation

- (a) Within 30 Business Days of receipt of the findings by the RTA of an audit conducted under this clause 23, the RTA must provide the Concessionaire with notice outlining the actions or manner in which the findings or recommendations of the persons conducting the audit are to be addressed or implemented (if at all).
- (b) Upon receipt of the notice under clause 23.6(a), the Concessionaire must at its own cost immediately implement the recommendations and comply with the audit findings outlined in the notice under clause 23.6(a) so as to ensure that the operation of the SNP Business, including the performance of the Concessionaire Services, is in accordance with this agreement.

23.7 RTA'S IT Systems access audit

- (a) On or before 31 May in each Financial Year during the Term, the Concessionaire must give notice to the RTA nominating:
 - (i) the three month period in that Financial Year which the Concessionaire wishes to use as a sample for audit; and
 - (ii) the details of the relevant Concessionaire's Personnel that have current access, or have had access in the relevant three month period to the RTA's IT Systems, including the name and the position of such relevant Concessionaire's Personnel and the location and duration of the access to or use of the RTA's IT Systems.
- (b) The RTA will provide access reports to the Concessionaire in respect of the three month period nominated by the Concessionaire under clause 23.7(a)(i).
- (c) The Concessionaire must engage an external auditor to conduct an audit of the Concessionaire's nominated access to the RTA's IT Systems (including compliance with the Concessionaire's IT Procedures under clause 4.3), using any access reports provided by the RTA under clause 23.7(b) and any other records of the Concessionaire's access to the RTA's IT Systems.
- (d) The Concessionaire must, on or before 31 July in each Financial Year, provide to the RTA and the NSW Privacy Commissioner:
 - (i) a report of the audit scope and methodology used by the external auditor to determine compliance with the Concessionaire's IT Procedures under clause 4.3 and this agreement; and
 - (ii) a certificate signed by the external auditor certifying compliance with the Concessionaire's IT Procedures under clause 4.3 of this agreement.
- (e) The Concessionaire must meet all its own costs in connection with any audits conducted under this clause 23.7.
- (f) If the certificate required under clause 23.7(d)(ii) is not provided by the Concessionaire by 31 July in the relevant Financial Year the Concessionaire must provide it to the RTA as soon as possible thereafter and the RTA may request a report from the Concessionaire detailing:

- (i) the reasons why the certificate was not provided by 31 July; and
 - (ii) the steps which the Concessionaire will take to ensure that it complied with clause 23.7(d) in respect of subsequent Financial Years.
- (g) The Concessionaire must provide the report referred to in clause 23.7(f) within 20 Business Days of the RTA's request.

24. Intellectual Property

24.1 Licence of Concessionaire IP

- (a) The Concessionaire grants to the RTA a permanent, perpetual, irrevocable, transferable, royalty free, non-exclusive licence in the State of New South Wales to exercise the Concessionaire IP for the purpose of the SNP Business.
- (b) The licence granted in clause 24.1(a):
 - (i) arises in respect of each component of the Concessionaire IP:
 - A. for any Intellectual Property that exists at the Execution Date, on the Execution Date;
 - B. for any Intellectual Property that is created by the Concessionaire or its Related Parties after the date of this agreement, upon the creation of each component of the Concessionaire IP; and
 - C. for any Intellectual Property licensed by the Concessionaire from a third party after the Execution Date, immediately after the date on which the relevant licence comes into effect;
 - (ii) may be sub-licensed; and
 - (iii) will survive expiry of this agreement or termination of this agreement on any basis.

24.2 Licence of RTA Intellectual Property

- (a) The RTA grants to the Concessionaire a non-exclusive licence during the Term to exercise the RTA IP in the State of New South Wales for the purposes of operating the SNP Business, including performing the Concessionaire Services, in accordance with the requirements of this agreement.
- (b) The licence granted in clause 24.2(a) may only be sublicensed by the Concessionaire with the prior written consent of the RTA (such consent not to be unreasonably withheld) and on such conditions as the RTA may reasonably impose.

24.3 Sub-licence of Existing Plate Branding

The RTA grants to the Concessionaire a sub-licence to exercise the Existing Plate Branding Property on the terms and conditions specified in Schedule 10 or in the case of any Existing Plate Branding Property referred to in paragraph (b) of the definition of "Plate Branding Property" on such terms and conditions specified in writing by the RTA.

24.4 Intellectual Property warranties

The Concessionaire represents and warrants in favour of the RTA that:

- (a) it has all appropriate licences of, or title to, all Intellectual Property that is required by it for the purpose of performing its obligations under this agreement;
- (b) it has the authority to license all Intellectual Property granted to the RTA under this agreement;
- (c) its Related Parties that perform obligations under this agreement on behalf of it have all appropriate licences of, or title to, all Intellectual Property that is required for that purpose;
- (d) no third party rights or interests will affect the enjoyment of the benefit of the licences granted to the RTA under this agreement;
- (e) it is not aware of any claim that the Intellectual Property licensed to the RTA under this agreement or its use or enjoyment in accordance with or as contemplated by this agreement, infringes or will infringe any rights, including any Intellectual Property or Moral Rights, of any third party; and
- (f) none of its activities under this agreement infringe or will infringe any rights, including any Intellectual Property or Moral Rights, of any third party.

24.5 Intellectual Property indemnity

- (a) The Concessionaire must indemnify and keep indemnified the RTA against:
 - (i) all Claims which may be brought or made against the RTA by any person in respect of:
 - A. any alleged or actual infringement of Intellectual Property by the Concessionaire in the course of, or incidental to, the performance of activities or obligations under this agreement, other than to the extent they embody Intellectual Property licensed to the Concessionaire by the RTA;
 - B. the use by the RTA of Intellectual Property licensed to the RTA by the Concessionaire under this agreement, including any Claim relating to an infringement of Moral Rights;
 - (ii) any Liability (including legal fees on an indemnity basis) that may be suffered or incurred by the RTA in connection with any Claim:
 - A. specified in clause 24.5(a)(i); or
 - B. arising from a breach of the warranties set out in clause 24.4 by the Concessionaire.
- (b) The RTA must, as soon as is reasonably practicable after it becomes aware of a Claim:
 - (i) notify the Concessionaire of the alleged infringement;

- (ii) give the Concessionaire at the time of notification the option to conduct the defence of the Claim; and
- (iii) provide the Concessionaire (at the Concessionaire's expense) with reasonable assistance in conducting the defence of such Claim.

24.6 Perfecting licences

Without limiting any other provision of this agreement, each party must do all things necessary (including executing documents) to perfect the licences granted to the other party under this clause 24 and otherwise to give effect to the other party's rights under this clause 24.

24.7 Ownership of Customer Data and Plates

- (a) Notwithstanding any other provision of this agreement, the Concessionaire agrees and acknowledges that the RTA owns the Customer Data including all Intellectual Property in the Customer Data.

These ownership rights vest in the RTA upon creation of the Customer Data or the relevant Intellectual Property comprised in the SNP Products.

- (b) Subject to the Existing Plate Branding Licences, the Concessionaire Branding Licences and the terms of the RTA's agreement with the manufacturer of the SNP Products from time to time unless otherwise agreed, the RTA owns all Intellectual Property in the SNP Products.
- (c) To the extent necessary to give effect to clause 24.7(a) and clause 24.7(b), the Concessionaire assigns to the RTA all of its rights, title and interest in the Customer Data.

24.8 Physical material

The Concessionaire must, at its own cost, deliver, from time to time on request by the RTA during the Term and upon termination or expiry of this agreement, such physical media embodying the Concessionaire IP and the Customer Data as the RTA reasonably requests in such format as is reasonably specified by the RTA to enable it to fully exercise its ownership and rights under this agreement.

24.9 Moral rights

To the extent permitted by law, each party must not, and must take all reasonable steps (including obtaining appropriate consents from authors of work) to ensure that their Related Parties do not sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Execution Date) in respect of the use of the Concessionaire IP or the RTA IP by the RTA or the Concessionaire.

24.10 Copyright and Circuit Layout Act

Notwithstanding any other provision of this agreement, this agreement does not exclude or limit, or have the effect of excluding or limiting, the operation of subsection 47B(3) or sections 47C, 47D, 47E or 47F of the Copyright Act 1968 (Cth) or Part II, Division 3 of the Circuit Layout Act 1989 (Cth).

24.11 List of Intellectual Property

- (a) Prior to the Start Date, the Concessionaire must deliver the List of Intellectual Property to the RTA.
- (b) Within 10 Business Days of the use by the Concessionaire of any Intellectual Property which is not specified on the List of Intellectual Property, the Concessionaire must provide the RTA with the following information:
 - (i) the nature of the Intellectual Property; and
 - (ii) the owner and distributor of the Intellectual Property.

24.12 Brand, Trade Marks and Domain Names

- (a) The Concessionaire agrees and acknowledges that the RTA owns or, where appropriate, holds and will continue throughout the Term to hold the lawful registration of, the Brand.
- (b) The Concessionaire must do all things necessary (including executing documents) and provide the RTA with all such assistance as is reasonably required by the RTA to register the Trade Marks and the Domain Names and all telephone numbers, email addresses and any other addresses used by the general public in relation to the SNP Business to make contact using a telecommunications network in the name of the RTA and to maintain that registration throughout the Term.
- (c) The Concessionaire must ensure that where the Trade Marks appear in any written material (including any electronic material) published by or on behalf of the Concessionaire, unless otherwise authorised by the RTA:
 - (i) the Trade Mark must appear with the ® symbol; and
 - (ii) the Trade Mark must be accompanied by the following footnote:

The [*insert trade mark*] trade mark is used by [*insert Concessionaire's details*] under licence from the RTA.
- (d) The Concessionaire must not use the Trade Marks in a manner which is prejudicial to the RTA or likely to prejudice the distinctiveness of the Trade Marks or the validity of any registration for the Trade Marks.
- (e) The Concessionaire must comply with any standards, directions and specifications notified by the RTA from time to time during the Term as to the appearance, colour, size and positioning of the Trade Marks and the footnote referred to in clause 24.12(c)(ii).
- (f) The Concessionaire will:
 - (i) if requested by the RTA, take all necessary action and execute and deliver to the RTA all necessary documents and instruments to record the Concessionaire as a registered user of the Trade Marks;
 - (ii) except to the extent expressly permitted by this agreement, not use or apply to register the Trade Marks as part of its corporate, business, trading or domain name;

- (iii) not directly or indirectly contest or oppose or assist any other party to contest or oppose the RTA's ownership of the Trade Marks; and
 - (iv) not register or use any trade mark or trade name which is substantially identical or deceptively similar to the Trade Marks.
- (g) Any and all goodwill attaching (now or in the future) to the Trade Marks as a result of use of the Trade Marks by or on behalf of or under licence from the RTA is and shall remain the property of and enure to the RTA and the Concessionaire will not obtain any rights in or to the Trade Marks.

24.13 Concessionaire Branding Licences

- (a) The Concessionaire must not enter or vary any Concessionaire Branding Licence unless:
- (i) the Concessionaire has given prior notice to the RTA setting out full particulars of the proposed licence or variation to the licence together with a copy of the draft Concessionaire Branding Licence or variation document; and
 - (ii) the RTA has not rejected the proposed Concessionaire Branding Licence or variation within 10 Business Days of receiving notice, such rejection not to be unreasonable.
- (b) The Concessionaire must ensure that all Concessionaire Branding Licences:
- (i) where the term of the Concessionaire Branding Licence expires after the Term, provide for amounts payable under that Concessionaire Branding Licence after the expiry of the Term that are no greater than those that apply during the Term, allowing for reasonable increases in line with inflation;
 - (ii) limits any obligation to include marks, symbols or words on SNP Products identifying the licensor's rights with respect to the relevant names, logos, designs symbols, trade marks or images to what the RTA has confirmed it is able to do from time to time;
 - (iii) include a right to sub-license to the RTA that:
 - A. is consistent with the rights granted to the RTA under clause 24.1 of this agreement;
 - B. provides that for all SNP Products issued with a proprietary name, logo, design, symbol, trade mark or image pursuant to the Concessionaire Branding Licence, the RTA obtains a perpetual, irrevocable, royalty-free licence to such Intellectual Property comprised in those SNP Products as is required to enable the RTA to deal with those SNPs as the owner of the SNP Products, including to:
 - 1) renew a SNP Customer's right to display such SNP Products on their motor vehicle or rights in relation to SNP Products held in storage or transfer such rights to another person;

- 2) allow a SNP Customer to take such a SNP Product out of storage with the RTA and display the SNP Product on a motor vehicle,

after the expiry or termination of the Concessionaire Branding Licence; and

- C. provides the RTA with a perpetual, irrevocable, royalty-free licence to such Intellectual Property as is required for it to replace SNP Products that have been lost, damaged or stolen after the expiry or termination of the Concessionaire Branding Licence;
 - (iv) includes a right to sub-license the manufacturer of SNP Products from time to time as necessary to facilitate any design, manufacture or distribution activities undertaken by the manufacturer; and
 - (v) include provisions providing that the Concessionaire may assign or novate the Concessionaire Branding Licence to the RTA or to a new concessionaire of the SNP Business without any consent from the relevant licensor and requiring that licensor to do all things necessary to effect such assignment or novation.
- (c) The Concessionaire must promptly notify the RTA after executing any Concessionaire Branding Licence and provide the RTA with a copy of the executed Concessionaire Branding Licence as soon as possible after execution.
- (d) The Concessionaire must promptly provide RTA with any amendments to any Concessionaire Branding Licences.

25. Privacy

25.1 Privacy compliance

The Concessionaire must:

- (a) comply with the Privacy Obligations and the Concessionaire's Privacy Plan;
- (b) provide all reasonable assistance to enable the RTA to comply with the Privacy Obligations to the extent to which it is required by Law to comply with them and the RTA Privacy Management Plan; and
- (c) operate the SNP Business, including performing the Concessionaire Services:
 - (i) in compliance with the Privacy Obligations, the RTA Privacy Management Plan and the Concessionaire's Privacy Plan; and
 - (ii) in a manner that ensures:
 - A. the Concessionaire complies with the Privacy Obligations and the Concessionaire's Privacy Plan; and
 - B. the RTA can comply with the Privacy Obligations to the extent to which it is required by Law to comply with them and the RTA Privacy Management Plan.

25.2 Use of Personal Information

Without derogating from clause 25.1, the Concessionaire must ensure that Personal Information is collected, used, disclosed and handled by it in accordance with the Concessionaire's Privacy Plan, the RTA Privacy Management Plan and this agreement.

25.3 Concessionaire's Privacy Plan

The Concessionaire's Privacy Plan must include procedures which:

- (a) ensure that the Concessionaire will comply with the Privacy Obligations;
- (b) are consistent with the Privacy Obligations as they apply to the RTA;
- (c) are consistent with the RTA Privacy Management Plan; and
- (d) are consistent with any additional measures specified in this agreement.

25.4 Updating the Concessionaire's Privacy Plan and Procedures

- (a) The Concessionaire must update its procedures in relation to privacy protection and the Concessionaire's Privacy Plan as technology and security threats evolve at all times in accordance with best practice and this agreement, and must immediately provide any updated Concessionaire's Privacy Plan to the RTA.
- (b) If the RTA requests any amendments to the Concessionaire's Privacy Plan, the Concessionaire must take into account any comments of the RTA and must within 5 Business Days or promptly upon receiving a request, provide the RTA with an updated Concessionaire's Privacy Plan.

25.5 Subcontractors

- (a) The Concessionaire must ensure that its contract with any Subcontractors who collect, use, store, dispose or disclose Personal Information contains provisions to the same or similar effect as this clause 25.
- (b) The RTA may require the Concessionaire and its Subcontractors to have their privacy procedures audited by a qualified and nationally recognised firm.
- (c) The Concessionaire and its Subcontractors must take such action as is reasonable to comply with any exceptions or discrepancies discovered by any such audit.

25.6 Changes to the RTA Privacy Management Plan

The RTA may change the RTA Privacy Management Plan at any time.

25.7 Personal Information provided by the RTA

The Concessionaire must only collect and use Personal Information to which it is given access by the RTA, whether it is contained in the RTA's driver licence register or the register of registrable vehicles or otherwise solely in relation to operating the SNP Business for:

- (a) servicing existing SNP Customers;
- (b) verifying the identity of an existing RTA customer in order to provide them with a SNP Product;

- (c) where the individual concerned has consented, for any purposes specified in the consent; and
- (d) such other purposes as are approved in writing by the RTA from time to time.

25.8 Privacy disclosures and consents

The Concessionaire must ensure that any privacy disclosures and consents it uses are in a form approved by the RTA and include:

- (a) consent for the Concessionaire to disclose the Personal Information to the RTA and for the RTA to collect, use and disclose the Personal Information for the purposes that the RTA notifies the Concessionaire should be included in the consent; and
- (b) disclosure of any matters in relation to the RTA's collection, use and disclosure of Personal Information that the RTA notifies the Concessionaire should be included in the disclosure.

26. Insurance

26.1 Insurances

- (a) The Concessionaire must effect and maintain the Insurances in accordance with the requirements set out in Schedule 7. The Concessionaire must pay all insurance premiums for the Insurances as soon as they are due for payment.
- (b) Where applicable, the Concessionaire must obtain certificates of currency for professional indemnity, public liability and products liability and industrial special risks insurance from the Subcontractors.

26.2 Evidence of insurances

The Concessionaire must provide to the RTA evidence of the Insurances:

- (a) within 14 days after a request by the RTA; and
- (b) promptly following any change or alteration to, or renewal of, those policies.

26.3 Failure to provide evidence of insurances

If the Concessionaire fails to comply with clause 26.1, the RTA may, but is not obliged to, effect the Insurances and may:

- (a) recover the cost of doing so as a debt due from the Concessionaire; or
- (b) deduct the premiums payable for the Insurances from amounts payable to the Concessionaire.

26.4 Notification of claims

The Concessionaire must:

- (a) promptly provide the RTA with written notice of any policy cancellations it receives from the insurers for the Insurances and in any event within 5 Business Days of receipt of such notices;

- (b) give notice to the RTA of any claim and any event which is likely to give rise to a claim against the Insurances;
- (c) ensure that the RTA is kept fully informed about each of those claims; and
- (d) ensure that all Subcontractors take all steps required to enable the Concessionaire to comply with this clause 26.4.

26.5 Additional or top-up insurance by the RTA

The Concessionaire must, if requested by the RTA, complete and provide relevant information for the completion of any proposal for any policy with respect to any of the Insurances which may be effected by the RTA, which policy will be at the cost of the RTA.

26.6 Concessionaire must co-operate

The Concessionaire must co-operate with and provide reasonable assistance to the RTA if the RTA makes any claim under any policy with respect to any of the Insurances.

26.7 Further obligations

The Concessionaire must:

- (a) ensure that Subcontractors have sufficient and enforceable insurance to satisfy their obligations arising out of or in relation to this agreement; and
- (b) provide, at the RTA's request, evidence satisfactory to the RTA of the insurance specified in this clause 26.7.

27. Temporary suspension

27.1 RTA notice

If there is an Emergency, the RTA may, by notice to the Concessionaire, stop or suspend:

- (a) the Concessionaire's operation of all or any portion of the SNP Business, including the performance of all or any portion of the Concessionaire Services; and/or
- (b) the provision of all or any portion of the RTA Services,

for such period as the RTA deems necessary (**Emergency Period**).

27.2 SNP Business continuation

Following the cessation or suspension of the Concessionaire's operation of all or any part of the SNP Business and/or the provision of RTA Services under clause 27.1(a), (as the case may be) the RTA may in its sole discretion do anything necessary to continue the operation of the SNP Business during the Emergency Period and the Concessionaire must act reasonably, cooperate with the RTA and comply with any reasonable directions of the RTA in relation to any such activities, including in respect of maintaining and managing the operation of any distribution channels for the SNP Business.

27.3 Concessionaire to suspend

The Concessionaire must comply immediately with the notice given by the RTA under clause 27.1 to suspend the operation of the SNP Business wholly or in part.

27.4 Consequences of suspension

The parties acknowledge and agree that:

- (a) the RTA will not have any Liability to the Concessionaire, and the Concessionaire will not be entitled to make any Claim, in respect of any losses incurred by the Concessionaire arising out of or in connection with the exercise by the RTA of its rights under clause 27.1 or 27.2, except where:
 - (i) there is any negligent act or omission by the RTA in the exercise of those rights; or
 - (ii) there is any fraudulent act or omission by the RTA in the exercise of those rights.
- (b) notwithstanding clause 27.4(a)(i) and 27.4(a)(ii) above, the RTA will have no Liability to the Concessionaire, and the Concessionaire will not be entitled to make any Claim, arising out of the exercise by the RTA of its rights under clauses 27.1 and 27.2 to the extent that any losses incurred by the Concessionaire are caused by or relate to the Concessionaire's refusal to cooperate with the RTA as required under clause 27.2; and
- (c) the exercise by the RTA of its rights under clause 27.1 or 27.2 does not limit any other right of the RTA under this agreement, including any rights arising pursuant to a Default or an Emergency.

27.5 No relief from obligations

- (a) The exercise by the RTA of its rights under clause 27.1 or 27.2 does not relieve the RTA from the performance of its obligations under this agreement, including the obligation to pay amounts due to the Concessionaire under this agreement or to perform the RTA Services, except to the extent that such obligations cannot be performed as a result of the exercise by the RTA of its rights under clause 27.1 or 27.2.
- (b) The exercise by the RTA of its rights under clause 27.1 or 27.2 does not relieve the Concessionaire of its obligations under this agreement, including performing the Concessionaire Services, except to the extent that such obligations cannot be performed as a result of the exercise by the RTA of its rights under clause 27.1 or 27.2.

27.6 Impact on revenue

If, at the conclusion of an Emergency Period, the Concessionaire, acting reasonably, considers that the SNP Revenue has been directly and materially adversely affected by the cessation or suspension of the SNP Business and/or the provision of the RTA Services under this clause 27, it may notify the RTA of this, specifying details regarding the actual or estimated loss of SNP Revenue caused by such cessation or suspension. Following such notice being given to the RTA by the Concessionaire, the parties will co-operate and use reasonable endeavours to agree it is appropriate to adjust the Forecast Annual SNP Revenue for the relevant Financial Year to reflect the direct impact of the Emergency on the SNP Revenues and, if so, by what amount.

27.7 Resumption

- (a) The RTA may at any time cease to exercise its rights under clause 27.1 by giving the Concessionaire a written direction to resume operating the SNP Business which was wholly or partially suspended under clause 27.1.
- (b) Upon receipt of a written direction under clause 27.7(a), the Concessionaire must as soon as practicable, but in any event within 5 Business Days of receipt of that written direction, resume operating the SNP Business which was wholly or partially suspended under clause 27.1.

28. Force majeure

28.1 Notice

- (a) If the RTA or the Concessionaire is of the opinion that a Force Majeure Event has occurred, it must immediately provide written notice to the other party of that occurrence (**Force Majeure Notice**).
- (b) A party must, within 5 Business Days of giving a Force Majeure Notice under clause 28.1(a), provide a further notice in writing to the other party (**Force Majeure Particulars Notice**), which must include full particulars of all relevant matters including:
 - (i) details of the Force Majeure Event;
 - (ii) details of the obligations affected;
 - (iii) details of the action that the relevant party has taken and proposes to take to avoid or minimise the consequences of the Force Majeure Event;
 - (iv) an estimate of the timing during which the relevant party will be unable to carry out the affected obligations due to the Force Majeure Event; and
 - (v) in the case of the Concessionaire, an estimate of the costs that the Concessionaire would incur to remedy the situation were it able to do so.

28.2 Actions after Force Majeure Notice

After a party gives a Force Majeure Particulars Notice it will:

- (a) continue to provide the other party with all relevant information relating to the Force Majeure Event; and
- (b) promptly take proper and reasonable steps (including expenditure of money, rescheduling of resources and implementing appropriate temporary measures) to remedy, avoid or minimise the consequences of the Force Majeure Event.

28.3 Meeting

The parties must, within 2 Business Days from receipt of a Force Majeure Particulars Notice by the relevant party, meet to discuss and use reasonable endeavours to agree the consequences of the Force Majeure Event including:

- (a) how long the Force Majeure Event is estimated to continue;

- (b) what obligations (if any) will be affected by the Force Majeure Event; and
- (c) in the case of the Concessionaire providing a Force Majeure Particulars Notice, whether the Force Majeure Event is covered by insurance.

28.4 Suspension of obligations

- (a) The obligations of each party under this agreement which are affected by the Force Majeure Event will be suspended, but only to the extent that the Force Majeure Event prevents that party from meeting its obligations in a timely manner under this agreement.
- (b) Any suspension of obligations under clause 28.4(a) will terminate promptly upon the later of:
 - (i) cessation of the Force Majeure Event; or
 - (ii) cessation of the impact of the Force Majeure Event on a party's performance of its obligations under this agreement, or the time when that impact should have ceased to prevent performance of the relevant obligations if clause 28.2(b) were observed by that party.

28.5 Alternative arrangements

Where a Force Majeure Event occurs in respect of the Concessionaire, the RTA may make its own arrangements for alternative means of providing any of the Concessionaire Services for which the Concessionaire's obligations to provide have been suspended under clause 28.4(a) at no cost to the Concessionaire, and without the RTA incurring any liability whatsoever to the Concessionaire.

28.6 Force Majeure ceases

- (a) When the period of suspension of performance of obligations affected by the Force Majeure Event ceases in accordance with clause 28.4(b), the party affected by the Force Majeure Event will promptly notify the other party to that effect, and that party affected by the Force Majeure Event will promptly recommence performance of all obligations that were suspended under clause 28.4(a).
- (b) Once the effect of a Force Majeure Event has ceased, the parties may no longer exercise its rights under this clause 28 in respect of that Force Majeure Event.

28.7 Costs of Force Majeure

Unless otherwise expressly provided in this agreement, each party will bear its own costs incurred as a result of the occurrence of a Force Majeure Event.

28.8 Termination for Force Majeure

If there is a Force Majeure Event that substantially prevents the performance by a party of its material obligations under this agreement for a continuous period of more than 90 Business Days, the RTA may by written notice to the Concessionaire immediately terminate this agreement.

29. Default and termination

29.1 Default

Each of the events set out in this clause 29.1 is a default by the Concessionaire, whether or not the cause is beyond the control of the Concessionaire or any other person:

- (a) **(Breach)** a breach by the Concessionaire of any obligation under this agreement including, without limitation, failing to comply with clause 22 in relation to a Probity Event;
- (b) **(Untrue warranty)** any representation, warranty or statement (including any certificate that is delivered by the Concessionaire to the RTA under clauses 11.2 or 11.3) made, repeated or taken to have been made or repeated by the Concessionaire in this agreement or in any document, of any nature, issued under this agreement is proved to be untrue in any material respect when made or repeated or taken to be made or repeated by the Concessionaire, as the case may be;
- (c) **(Security)** a Security Document does not create the Encumbrance it purports to create; and
- (d) **(Fraud)** an act of fraud by the Concessionaire in relation to the SNP Business or the performance of its obligations under this agreement.

29.2 Notice of Default

Without prejudice to any other right the RTA may have under this agreement or at Law, if a Default occurs, the RTA may give the Concessionaire a notice stating that a Default has occurred, specifying the particular Default, and requiring the Concessionaire to remedy that Default within the Cure Period.

29.3 Cure Plan

- (a) Where the RTA has given a Default Notice to the Concessionaire, the Concessionaire must, within 5 Business Days of receiving that Default Notice, provide to the RTA a cure plan which must set out the details of how the Concessionaire will remedy the Default (**Cure Plan**).
- (b) A Cure Plan must include:
 - (i) full details of the Default;
 - (ii) a work plan setting out each task to be undertaken, the time for each task to be completed and the additional resources to be applied to cure the Default; and
 - (iii) any temporary measures being undertaken and the mechanics of effecting the remedy while continuing to operate the SNP Business, including performing the Concessionaire Services in accordance with this agreement.

29.4 Cure Plan and remedy

The Concessionaire must:

- (a) upon receipt of a Default Notice, promptly commence and continue to pursue the remedy of the Default;
- (b) diligently implement any Cure Plan; and
- (c) at the request of the RTA, meet with such persons nominated by the RTA to provide an update in relation to the Concessionaire's progress in implementing the Cure Plan.

29.5 Major Default

Each of the events set out in this clause 29.5 is a major default by the Concessionaire, whether or not the cause is beyond the control of the Concessionaire or any other person:

- (a) **(Revenue)** in any 2 consecutive Financial Years, after the first Financial Year of the Term, the Actual Annual SNP Revenue for a Financial Year is less than 85% of the Forecast Annual SNP Revenue for that relevant Financial Year;
- (b) **(Default not remedied)** the Concessionaire fails to remedy a Default within the Cure Period, as required under the relevant Default Notice under clause 29.2;
- (c) **(Default not capable of remedy)** where there is a Default, and the RTA reasonably believes that the Default is not capable of remedy;
- (d) **(Wilful breach)** a material wilful breach by the Concessionaire of any obligation under this agreement;
- (e) **(Multiple Defaults)** the occurrence of 2 or more Defaults within a Financial Year, for each of which the Concessionaire has been given a Default Notice;
- (f) **(Event of Insolvency)** an Event of Insolvency occurs in respect of:
 - (i) the Concessionaire;
 - (ii) while they are members of the Concessionaire Group:
 - A. LicenSys Pty Ltd (ACN 057 588 137); or
 - B. the trustee of the Ian Trust from time to time;
- (g) **(Assignment)** an assignment by the Concessionaire of any of its rights, title or interest in or under this agreement in breach of clause 44.1; or
- (h) **(Change in control)** a Change of Control Event occurs in breach of clause 45.

29.6 Termination for Major Default

Without prejudice to any other right that the RTA may have under this agreement or at Law, if a Major Default occurs, the RTA may terminate this agreement by notice to the Concessionaire stating that a Major Default has occurred and that this agreement is immediately terminated in accordance with this clause 29.6.

29.7 Meaning of remedy

Where the word "remedy" or any other grammatical form of that word is used in this clause 29, it means to remedy or redress the relevant occurrence or overcome its consequences so that there ceases to be any continuing detrimental effect of that potential or actual occurrence.

30. Termination for convenience

Despite any other provision of this agreement and without prejudice to any right that the RTA may have under this agreement or at Law, the RTA may at any time in its sole discretion terminate this agreement by written notice to the Concessionaire, effective from the time stated in the notice or if no such time is stated, at the time the notice is received by the Concessionaire.

31. Consequences of termination

31.1 RTA's rights not affected

- (a) Subject to clauses 31.2 and 31.6, upon termination of this agreement, the RTA will not be liable to pay any compensation or other money to the Concessionaire.
- (b) Any termination of this agreement by the RTA, any payment of any money upon termination to the Concessionaire (including any payment under clause 31.2 or clause 31.6) and any deduction of money by the Concessionaire under clause 31.5 shall:
 - (i) not in any way prejudice the RTA's rights to claim and recover damages for any prior breach of this agreement by the Concessionaire; and
 - (ii) entitle the RTA to recover such other damages as the RTA may suffer or incur arising out of the termination of this agreement.

31.2 Termination payments

- (a) Upon the termination or expiry of this agreement and compliance by the Concessionaire with:
 - (i) its obligations under clauses 32 and 33; and
 - (ii) all other obligations of the Concessionaire under this agreement,to the reasonable satisfaction of the RTA, the RTA must within 20 Business Days of such termination or expiry pay the Concessionaire:
 - (iii) if the agreement is terminated pursuant to a notice given by the RTA under clause 30, the Convenience Termination Payment; and
 - (iv) if the agreement is terminated pursuant to a notice given by the RTA under clause 28.8, the Force Majeure Termination Payment.
- (b) The Concessionaire acknowledges and agrees that any amount payable under clause 31.2(a) will be full compensation for the termination of this agreement and the RTA will not be liable upon any Claim (insofar as is permitted by Law) in respect of that termination other than for the amount payable under clause 31.2(a).

- (c) If the RTA terminates or purports to terminate this agreement other than for convenience under clause 30, and it is subsequently found by any court that the action was wrongful:
 - (i) that action will be deemed to have been a termination in accordance with clause 30; and
 - (ii) to the extent permitted by law, the Concessionaire's sole rights in those circumstances will be as set out in clause 31.2(a).

31.3 Retention of Concessionaire revenue payments

If this agreement is terminated under clause 29.6 or clause 30, the RTA may as security retain the Retained Amount from the Termination Date for the period commencing on the Termination Date until:

- (a) the expiry of 12 months from the Termination Date; or
- (b) such earlier date that the RTA has paid to the Concessionaire all of the Retained Amount under clauses 31.6(a) and 31.6(b),

(Retention Period).

31.3A Minimum Payment Shortfall Adjustments

If the Concessionaire Payment for the Month in which this agreement expires or is terminated is a negative amount, then the amount equal to the absolute value of that negative amount is a debt due and payable by the Concessionaire to the RTA within 20 Business Days of the date of expiry or termination of this agreement.

31.4 Determination of Post-termination Liabilities

During the Retention Period, the RTA must use reasonable endeavours to:

- (a) determine whether there are any Post-termination Liabilities; and
- (b) if there are Post-termination Liabilities, calculate the amount of the relevant Post-termination Liabilities to the extent that they are able to be calculated.

31.5 Deductions for Post-termination Liabilities

Without limiting RTA's rights with respect to any Post-termination Liabilities, if during the Retention Period the RTA determines that there are Post-termination Liabilities and has either:

- (a) calculated the amount of the relevant Post-termination Liabilities in accordance with clause 31.4, or
- (b) where the amount of the relevant Post-termination Liabilities is not able to be calculated, has determined its best estimate of such Liabilities,

the RTA may deduct the aggregate amount of all the Post-termination Liabilities so calculated or estimated from the Retained Amount and will be entitled to keep and use the amount deducted for its purposes.

31.6 Payment of part or all of the Retention Amount

- (a) As soon as practicable after the RTA has made the deduction from the Retained Amount in accordance with clause 31.5, if the amount deducted is less than the Retained Amount, the RTA must pay to the Concessionaire the amount equal to the Retained Amount less the amount deducted in accordance with clause 31.5.
- (b) If the RTA determines in accordance with clause 31.4 that there are no Post-termination Liabilities, the RTA must immediately pay to the Concessionaire all of the Retained Amount.
- (c) If neither of clauses 31.6(a) or 31.6(b) apply by the expiry of 12 months from the Termination Date, the RTA must immediately pay to the Concessionaire all of the Retained Amount.

31.7 Contracting following termination or expiry

The Concessionaire acknowledges and agrees that following the termination or expiry of this agreement, the RTA will be entitled in its sole discretion to enter into other contractual arrangements in relation to the SNP Business.

32. Exit and Hand-back Plan

32.1 Preparation of Exit and Hand-back Plan

Each SNP Business Plan prepared by the Concessionaire and submitted to the Concession Management Committee under clause 15.3 of this agreement must include a draft Exit and Hand-back Plan for that Financial Year.

32.2 Content of Exit and Hand-back Plan

The Exit and Hand-back Plan must comprehensively specify how the Concessionaire will transfer the SNP Business back to the RTA or the RTA's nominees upon the expiry or termination of this agreement and must include full details of:

- (a) how the Concessionaire will transfer all Material Contracts and Concessionaire Branding Licences, Brand, physical manifestations of the Concessionaire IP and Customer Data to the RTA or the RTA's nominees;
- (b) how the Concessionaire will manage the transfers, including a detailed timetable of all activities required to effect the transfers;
- (c) all data migration activities to be carried out to effectively transfer all Customer Data to the RTA or the RTA's nominees;
- (d) analysis of reasonably known likely impacts of the activities to be undertaken and the steps to be put in place to minimise any adverse impacts upon the SNP Business;
- (e) a list of all Material Contracts and Concessionaire Branding Licences;
- (f) a list of all systems (computer and otherwise) used in operating the SNP Business;
- (g) a list of all updated procedure and process documentation used to provide support in operating the SNP Business;

- (h) a list outlining the names and contact details of all Concessionaire's Personnel; and
- (i) details of all Customer Data held by the Concessionaire, including the format of all Customer Data and how the Customer Data is kept, backed up and stored.

33. Hand-back

33.1 Hand-back obligation

Upon

- (a) receipt of a notice from the RTA indicating that hand-back of the SNP Business in accordance with the Exit and Hand-over Plan is to commence; or
- (b) the expiry or termination of this agreement,

whichever is the earlier, the Concessionaire must do all things necessary to transfer the SNP Business and hand over responsibility for the SNP Business to the RTA or the RTA's nominees, including:

- (c) as far as practicable, commence carrying out the work and tasks set out in the Exit and Hand-back Plan;
- (d) do all things reasonably requested by the RTA, and cooperate with the RTA or any third party engaged or employed by the RTA, to continue to operate the SNP Business until all of the Concessionaire's obligations under this clause 33.1 have been completed to the satisfaction of the Concessionaire;
- (e) if requested by the RTA, work with the nominees of the RTA to further develop and amend the Exit and Hand-back Plan to facilitate transfer of the SNP Business to those nominees;
- (f) if required by the RTA, assign or novate all or any Material Contracts or Concessionaire Branding Licences to the RTA or the RTA's nominee; and
- (g) deliver to the direction of the RTA or the RTA's nominees the Operational Manuals and Reports and physical manifestations of all of the Concessionaire's IP, including installing a functioning copy of any customer relationship management system used by the Concessionaire onto appropriate computer hardware of the RTA, in accordance with any reasonable directions of the RTA;
- (h) migrate all Customer Data to the RTA or the RTA's nominees; and
- (i) procure that its Related Parties act in a manner consistent with the Concessionaire's obligations under this clause 33.

33.2 No disruption

The Concessionaire must carry out its obligations under this clause 33 in a manner that minimises:

- (a) any disruption to the RTA; and
- (b) any adverse or negative impact on the SNP Business.

33.3 Access and assistance for subsequent tenders

The Concessionaire must provide the RTA with such assistance, documents, information and materials that are reasonably requested by RTA for use in relation to any Tender or proposed Tender, including:

- (a) a copy of this agreement excluding any pricing or cost information;
- (b) details of all subcontracts of the Concessionaire; and
- (c) copies of all documented business processes and procedures (to the extent that they have not already been provided to the RTA).

The Concessionaire agrees that any of the information that it provides under this clause 33.3 or any information which the RTA otherwise obtains from the Concessionaire, may be used or disclosed by the RTA for any purpose, including in relation to any Tender.

33.4 No limit

Nothing in this clause 33 derogates from any right that the RTA has under this agreement or at Law with respect to the SNP Business or any documents or information in the possession of the Concessionaire or its Associates.

33.5 Power of Attorney

The Concessionaire irrevocably appoints the RTA, or such other person as the RTA nominates from time to time, as the Concessionaire's attorney to do such acts and things, in the Concessionaire's name, as the Concessionaire reasonably requires in order to:

- (a) give effect to the RTA's rights under this clause 33; and
- (b) to implement any of the Concessionaire's obligations under this clause 33.

33.6 Costs

The performance of the Concessionaire's obligations under this clause 33 is at the Concessionaire's cost and expense.

33.7 Concessionaire not to injunct

The Concessionaire warrants and agrees that it will not take any action with respect to any Claim it may have under this agreement or at Law that would restrain, injunct or otherwise prevent any person from:

- (a) participating in, or carrying out any work in relation to any Tender or proposed Tender; or
- (b) taking over the operation of the SNP Business,

and agrees that damages will be an adequate remedy in respect of any such Claims.

34. Dispute resolution

34.1 Interpretation

This clause 34 applies to any dispute or difference arising between the parties in relation to this agreement including:

- (a) **(Interpretation)** its interpretation;
- (b) **(Rights)** any right or liability of any party under this agreement;
- (c) **(Obligations)** the performance of any obligation by any party under or arising out of this agreement prior to its termination under clause 30;
- (d) **(Specific Disputes)** a dispute arising under clause 10.7(d); or
- (e) **(Deadlock)** a Deadlock referred to in clause 14.10(c),

excluding a dispute or difference in respect of the Direct Costs payable to the Concessionaire by the RTA under clause 20.2.

34.2 Notification of Dispute

If the RTA or the Concessionaire wishes to claim that a Dispute has arisen, the relevant party must give written notice to the other party giving details of the Dispute, except in the case of a Deadlock or a Specific Dispute in which case the parties must comply with the relevant requirements of this agreement in respect of notification of a Deadlock or Specific Dispute.

34.3 Reasonable endeavours by parties

The parties must use reasonable endeavours to resolve the Dispute within 20 Business Days after a Dispute Notice is given, or such longer period as has been agreed in writing by the parties.

34.4 Referral to Operational Review Committee

Where the Dispute Notice is not a Deadlock Notice given under clause 14.10(b) in respect of a meeting of the Concession Management Committee, and the parties are unable to resolve the relevant Dispute within 20 Business Days after the relevant Dispute Notice is given, either party may refer that Dispute for resolution to the Operational Review Committee.

34.5 Referral to senior management

Where:

- (a) a Deadlock Notice is deemed to be a Dispute Notice under clause 14.10(c), and the parties are unable to resolve the relevant Dispute within 20 Business Days after the Deadlock Notice is given; or
- (b) a Dispute referred to the Operational Review Committee under clause 34.4 is the subject of a Deadlock Notice in respect of a meeting of the Concession Management Committee under clause 14.10(b),

either party may refer the Dispute for resolution to the senior management or equivalent of each party by giving notice to those senior management or equivalent outlining the details of the Dispute. For the purposes of this clause 34.5, the senior management or equivalent of the:

- (i) RTA is the chief executive of the RTA, from time to time; and
- (ii) Concessionaire is the chief executive of the Concessionaire, from time to time.

34.6 Reasonable endeavours by senior management

The senior management or equivalent of each party must negotiate in good faith and use reasonable endeavours to resolve the Dispute within 20 Business Days after notice is given to the senior management under clause 34.4, or such longer period agreed in writing by the parties.

34.7 Mediation

Where the senior management or equivalent have not been able resolve the Dispute within 20 Business Days of a referral under clause 34.4 or such longer period agreed in writing by the parties, then either party may refer the Dispute to the Australian Centre for International Commercial Arbitration (**ACICA**) to be resolved by mediation in accordance with the ACICA Mediation Rules. The mediation shall take place in Sydney, Australia and be administered by ACICA.

34.8 Referral to arbitration

If:

- (a) the dispute has not been settled through mediation under clause 34.7 within 20 Business Days of a referral under clause 34.7 or within such other period as the parties may agree in writing; or
- (b) the dispute resolution process in clauses 34.4 to 34.7 otherwise fails or a step in that process is not taken within the time stipulated,

a party may give notice to the other party requiring that the dispute be referred to arbitration and clauses 34.9 to 34.12 of this agreement will apply to that dispute.

34.9 Reference to arbitration

- (a) Any arbitration pursuant to this clause 34 shall be conducted in accordance with the Australian Centre for International Commercial Arbitration Expedited Arbitration Rules (**ACICA Rules**) current at the time of the reference to arbitration and as otherwise set out in this clause.
- (b) The seat of the arbitration will be Sydney, Australia.

34.10 Basic principles relating to arbitration

The parties agree:

- (a) that the purposes of the dispute resolution procedures are to achieve a just, quick and cheap resolution of any dispute;
- (b) that any arbitration conducted pursuant to this clause shall not mimic court proceedings of the seat of the arbitration or, if different, of the place where the hearing takes place and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator;

- (c) that the arbitrator will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration; and
- (d) that in conducting the arbitration the arbitrator must take into account the matters set out in (a) and (c) above.

34.11 Powers of the arbitrator

The arbitrator has the power to grant all legal, equitable and statutory remedies, including specific performance.

34.12 Governing law of the arbitration agreement

The law governing this arbitration agreement is the law in the state of New South Wales.

34.13 Compliance with agreement

Irrespective of the existence of a Dispute being resolved under this clause 34 or a Direct Costs Dispute, the parties must continue to observe their obligations under this agreement except that the RTA will be under no obligation to make any payment in respect of any amounts which are in dispute.

34.14 Interlocutory relief

Except where a party seeks urgent interlocutory relief (including interim injunctions) or declaratory relief each party may not commence court proceedings relating to this agreement before it has complied with the procedures set out in this clause 34.

34.15 Limitation

Nothing in this clause 34 limits, delays or prevents a party from exercising any right or remedy that they may have under this agreement.

34.16 Costs

To the extent that a party is successful in a dispute, the unsuccessful party will pay the successful party's costs incurred in resolving the dispute, calculated from:

- (a) in the case of a Dispute, the date on which the Dispute is referred to mediation under clause 34.7; and
- (b) in the case of a Direct Costs Dispute, the date the Direct Costs Dispute is referred to expert determination under clause 20.2,

until the date the Dispute or Direct Costs Dispute is resolved in accordance with this clause 34 or the process is otherwise terminated. For the avoidance of doubt, each party will pay its own costs up until the dates specified in clauses 34.16(a) and 34.16(b) above. For the purpose of this clause, "costs" includes a party's legal costs on an indemnity basis, the time costs of personnel involved in resolving the Dispute or Direct Costs Dispute calculated on an hourly basis and the cost of disbursements actually incurred.

35. GST

35.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings ascribed to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) (**GST Law**).
- (b) Any part or progressive or periodic component of a supply that is treated as a separate supply for Goods and Services Tax (**GST**) purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) Unless stated to the contrary, any amount, payment or consideration referred to under or in connection with this agreement is exclusive of GST.
- (d) A reference to GST includes GST that is notionally payable and a reference to an input tax credit is to a notional input tax credit that is claimable.

35.2 Reimbursements and similar payments

If a party is required under this agreement to reimburse or pay another party an amount calculated by reference to a cost, expense, or amount paid or incurred by that other party, the reimbursement or payment will be the GST inclusive cost, expense or amount less the amount of any input tax credit entitlement arising in respect of any acquisition to which that cost, expense or amount relates.

35.3 GST payable

- (a) If GST is payable on a supply made by a party, or by an entity through which the party acts (**Supplier**) under or in connection with this agreement, the party providing consideration for that supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier in relation to the supply. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable on a supply for the purposes of this clause.
- (b) Any additional amount referred to in clause (a) above must be paid by the Recipient at the same time as any other consideration is to be first provided for that supply and, unless the Recipient issues a recipient created tax invoice (**RCTI**) pursuant to clause 35.4, the Supplier must provide a tax invoice to the Recipient by no later than that time.
- (c) If the GST payable on a supply made under or in connection with this agreement (not taking into account any consideration that is inclusive of GST) varies from the additional amount paid by the Recipient under clause (a) in respect of that supply (as adjusted to take account of any previous payment made pursuant to this clause) then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any amount payable under this clause must be paid no later than 14 days after the Supplier, or the Recipient where clause 35.4 is applicable, provides an adjustment note to the other party.

35.4 Recipient created tax invoices

- (a) (**Scope of RCTIs issued**) Where the GST Law permits, the RTA may (following

the provision of a notice by the RTA to the Concessionaire in accordance with clause 35.4(g)), issue to the Concessionaire a RCTI for each taxable supply made by the Concessionaire to the RTA pursuant to this agreement (other than an excluded supply as defined in this clause). The parties may agree in writing from time to time on any taxable supply made by the Concessionaire under this agreement for which the RTA will not issue RCTIs (**excluded supply**). The RTA will issue the RCTI in a format that states the total amount payable on account of GST. The RTA will issue a recipient created adjustment note (**RCAN**) for any adjustment event relating to any supply in respect of which it issues a RCTI pursuant to this agreement.

- (b) (**Obligations of the Concessionaire**) The Concessionaire authorises the RTA to prepare RCTIs and RCANs pursuant to clause 35.4(a) of this agreement. Where the RTA is permitted by the GST law and under this agreement to issue RCTIs and RCANs in respect of taxable supplies referred to in clause 35.4(a) that are made by the Concessionaire to the RTA (other than an excluded supply), the Concessionaire must not issue a tax invoice or adjustment note in respect of these taxable supplies.
- (c) (**Warranty**) The Concessionaire warrants that its details as set out in section 5 of Schedule 6 of this agreement are correct for the purposes of the RTA populating RCTIs or RCANs. The Concessionaire will notify the RTA if it ceases to be registered for GST or ceases to comply with any Requirement or criteria in the GST law or any ruling or determination relating to the issue of RCTIs (**Requirement**). The Concessionaire confirms that the RTA should classify the supplies made to it under the agreement for GST purposes as described in section 6 of Schedule 6 of this agreement.
- (d) (**Obligations of the RTA**) The RTA warrants that it is registered for GST purposes at the Execution Date. The RTA will notify the Concessionaire if it ceases to be registered for GST or ceases to comply with any Requirement.
- (e) (**Cessation of RCTI issue**) Both the RTA and the Concessionaire agree that clauses 35.4(a) and 35.4(b) will not apply after the RTA or the Concessionaire cease to be registered for GST, after the RTA or the Concessionaire cease to comply with any Requirement, or after the RTA notifies the Concessionaire in writing of a date after which the RTA will no longer issue RCTIs and RCANs for supplies to which this agreement relates.
- (f) (**Indemnity by the Concessionaire**) The Concessionaire relinquishes any right to pursue legal action or a legal claim against the RTA and must indemnify or reimburse the RTA on demand for any liability for GST, penalties or general interest charge or any other cost or loss (direct or indirect) that may arise from an understatement of the GST payable on any supply for which the RTA is authorised to prepare and issue a RCTI or RCAN pursuant to this agreement.
- (g) (**No effect until notice provided by RTA**) The RTA and the Concessionaire agree that clauses 35.4(a) to 35.4(f) will have no effect unless and until the RTA provides a notice in writing to the Concessionaire stating that the RTA will commence issuing RCTIs and RCANs in respect of taxable supplies made by the Concessionaire under this agreement. The notice provided by the RTA to the Concessionaire under this clause 35.4(g) must specify the date from which the RTA will issue RCTIs and RCANs, which must be no earlier than the first day of the next tax period to commence after the date on which the notice is issued.

35.5 GST and set-off

Where there is a set-off between the RTA and the Concessionaire, for GST purposes each party must recognise that there are two separate supplies. Each party must issue a tax invoice disclosing the gross amount and the GST applicable to each taxable supply, unless both supplies are included on a RCTI or RCAN. If a RCTI or RCAN is issued in respect of both supplies, the RCTI or RCAN must disclose the appropriate details of each separate supply and each supplier must include the relevant GST amount in determining its own GST net amount.

36. Confidentiality, public announcements and public disclosure

36.1 Confidentiality

- (a) Subject to clause 36.2, each party will treat as confidential all information obtained under or in connection with this agreement and:
 - (i) will not disclose such information to any third party without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of this agreement; and
 - (ii) will not use any of that information otherwise than for the purposes of this agreement.
- (b) Each party will take all necessary precautions to ensure that all information obtained from the other party under or in connection with this agreement is:
 - (i) treated as confidential and not disclosed (without prior written approval of the other party) or used by any Related Party otherwise than for the purposes of this agreement; and
 - (ii) is given to each Related Party only to the extent necessary for activities in relation to operation of the SNP Business and the performance of obligations under this agreement.
- (c) Where it is considered necessary in the reasonable opinion of the RTA, the Concessionaire will procure that any of its Related Parties specified by RTA sign a confidentiality undertaking in the form set out in Annexure D.

36.2 Exceptions

The restrictions imposed by clause 36.1 will not apply to the disclosure of any information:

- (a) which is now or after the Execution Date comes into the public domain, except through breach of this agreement, breach of the confidentiality undertaking given pursuant to clause 36.1(c) or through breach of any other obligation of confidence owed by the person or their Related Parties to the other party;
- (b) which is required to be disclosed:
 - (i) by law, including, in the case of RTA, as required to comply with its obligations under Standing Order 52 of the Legislative Council of the NSW Parliament, the Freedom of Information Act 1989 (NSW) or, once it commences, the Government Information (Public Access) Act 2009 (NSW), including publishing part or all of this agreement on the RTA's website in accordance with those obligations; or

- (ii) the listing rules of any recognised stock exchange (if applicable); and
- (iii) by the RTA to any person or Authority within the government of the State of New South Wales including to a Minister or a Minister's staff.

36.3 Public announcements

Except for:

- (a) promotions of the SNP Business that comply with the requirements of this agreement, including the Marketing Guidelines; and
- (b) such other categories as are advised from time to time by the RTA,

the Concessionaire must not, and must procure that its Related Bodies Corporate and Subcontractors do not, make any public statements or issue any press releases in respect of or in any way in connection with the SNP Business or this agreement without the prior written consent of RTA.

36.4 Public disclosure obligations

- (a) Upon request by RTA, the Concessionaire must give the RTA:
 - (i) full and immediate access to information referred to in s. 121(1) of Government Information (Public Access) Act 2009 (NSW) (but excluding information referred to in s.121(2) of the Government Information (Public Access) Act 2009 (NSW) contained in records held by the Concessionaire in such medium as the RTA may reasonably require;
 - (ii) such other assistance as the RTA may reasonable require in order to meet its obligations under the Freedom of Information Act 1989 (NSW) or the Government Information (Public Access) Act 2009 (NSW).
- (b) The Concessionaire acknowledges that RTA may be required to publish certain information concerning this agreement in accordance with sections 27 to 35 of the Government Information (Public Access) Act 2009 (NSW).
- (c) If the Concessionaire reasonably believes that any part of this agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Concessionaire must advise the RTA in writing of such within 5 Business Days of the date of this Agreement, identifying the provisions and providing reasons so that the RTA may consider seeking to exempt those provisions from publication.

37. Representations and warranties

37.1 General representations and warranties

The RTA and the Concessionaire each represents and warrants for the benefit of the other party:

- (a) **(Legally binding obligation)** its obligations under this agreement are valid and legally binding and are enforceable against it in accordance with its terms;

- (b) **(Execution, delivery and performance)** the execution, delivery and performance of this agreement and each transaction contemplated by this agreement does not violate or breach any Law or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(Authorisation)** all Authorisations required to be obtained by it in connection with the execution, delivery and performance of this agreement, the transactions contemplated by it and the legality, validity and enforcement of this agreement have been obtained and are valid and subsisting and it is not aware of any breach of any of the conditions of any of those Authorisations or aware of any fact or circumstance which may cause any of those Authorisations to be suspended, forfeited, cancelled or rendered void;
- (d) **(No violation)** its execution, delivery and performance of this agreement does not violate its constitution;
- (e) **(Power)** it has the power to enter into, deliver and perform this agreement and to carry out the transactions contemplated by it;
- (f) **(Due authority)** it has taken all corporate action required to enter into, deliver and perform this agreement and to carry out the transactions contemplated by it;
- (g) **(No trust)** it does not enter into this agreement in the capacity of trustee of a trust or settlement and will not act at any time during the Term as trustee of a trust or settlement; and
- (h) **(Corporate benefit)** the entry into and the performance of its obligations under this agreement is in its best interests and for a proper purpose.

37.2 Additional representations and warranties by the Concessionaire

The Concessionaire represents and warrants to the RTA that:

- (a) **(No litigation)** no litigation, arbitration, criminal or administrative proceedings are current, pending or to its knowledge threatened which is reasonably likely to be adversely determined to it or any other Concessionaire Group Member and, if so adversely determined, could have a Material Adverse Effect;
- (b) **(Financial Liabilities)** it is not in default in the payment of any amount, or in the satisfaction of any obligation in respect of any Financial Liability for a sum in excess of \$500,000 and no event has occurred which with the giving of notice, lapse of time or other condition could constitute a default in respect of any such Financial Liability and require its prepayment;
- (c) **(Solvency)** no Event of Insolvency has occurred in relation to it;
- (d) **(No misrepresentation)** all information relating to the Concessionaire, the Concessionaire Group and any Concessionaire Group Member provided by the Concessionaire or on its behalf to the RTA or any advisor of the RTA in connection with this agreement was at the time it was provided true in all material respects and was not, by omission or otherwise, misleading in any material respect at that time;
- (e) **(Accuracy of certificates)** each certificate provided by the Concessionaire to the RTA under this agreement is true and correct;

- (f) **(Immunity)** neither it nor any of its assets enjoys any immunity from set-off, suit or execution; and
- (g) **(Conflict)** it does not hold any office or possess any property, is not engaged in any business, trade or calling, and does not have any obligations under any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with its duties and interests under this agreement.

37.3 Separate

Each representation and warranty in this agreement is to be construed independently of each other representation and warranty in, and each other provision of, this agreement.

37.4 Repetition

Each representation and warranty in clause 37.2, other than (a) **(No Litigation)** will be taken to be repeated on the first and each subsequent anniversary of the Execution Date, with reference to the facts and circumstances prevailing on that day.

38. Indemnity and liability

38.1 Indemnity

The Concessionaire must indemnify and will keep indemnified the RTA from and against all Claims or Liabilities that the RTA may suffer, incur or become liable for arising from or incurred in connection with:

- (a) **(Breach)** a breach of this agreement or any delegation under clause 18(a) (to the Concessionaire by the RTA) by or on behalf of the Concessionaire;
- (b) **(Act or omission)** any act or omission by or on behalf of the Concessionaire, including any act or omission by the Concessionaire's Personnel; or
- (c) **(Warranty breach)** a breach of a representation or warranty given by the Concessionaire under this agreement;

except to the extent that any such Claim or Liability is a consequence of:

- (d) a fraudulent, negligent or wilful act or omission of the RTA;
- (e) any breach by the RTA of this agreement; or
- (f) a Force Majeure Event in respect of which the Concessionaire has complied with its obligations under this agreement.

38.2 Liability for Indirect or Consequential Loss

Despite any other provision of this agreement, the RTA has no Liability to the Concessionaire, nor will the Concessionaire be entitled to make any Claim, in respect to any Indirect or Consequential Loss incurred or sustained by the Concessionaire as a result of any act or omission of the RTA (whether negligent or otherwise) or as a result of a breach of this agreement by the RTA.

38.3 Indirect or Consequential Loss

For the purposes of clause 38.2, "**Indirect or Consequential Loss**" suffered by a person means any special, indirect, or consequential loss or damage incurred or sustained by that person, including, liability for any loss of goodwill, revenue, profits, business, or any interruption to business or services or for any failure to realise anticipated savings, but excluding any loss or damage which may fairly and reasonably be considered to arise naturally or in the ordinary course from a relevant breach or act or omission of this agreement.

38.4 Enforcement

- (a) Each indemnity in this clause 38 is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause 38.
- (c) A party must pay on demand any amount it must pay under an indemnity in this clause 38.

39. Remedies

Without prejudice to other rights of the RTA, the Concessionaire acknowledges that:

- (a) a breach or threatened breach of this agreement by the Concessionaire could cause irreparable harm and significant injury to the RTA that may be difficult to ascertain;
- (b) damages are not a sufficient remedy for the RTA in respect of any breach or threatened breach of this agreement; and
- (c) the RTA has the right to seek specific performance or injunctive or other relief (as appropriate) as a remedy for any breach or threatened breach of this agreement, in addition to other rights and remedies available to the RTA at law or in equity.

40. No fettering of discretion

- (a) Subject to clause 40(b), the Concessionaire acknowledges and agrees that:
 - (i) nothing in this agreement will in any way restrict or otherwise affect the unfettered discretion of the RTA to exercise any of its statutory functions or powers; and
 - (ii) anything the RTA does, fails to do, or purports to do, pursuant to its statutory functions or powers, will be deemed not to be an act or omission of the RTA under this agreement and will not entitle the Concessionaire to make any Claim against the RTA arising out of the subject matter of this agreement.
- (b) Clause 40(a) does not, however, limit any liability for damages which, but for clause 40(a), RTA would have had to the Concessionaire under this agreement to the extent that it is expressly provided for in the agreement or as a result of a breach by the RTA of a term of the agreement.

41. Assessment and reliance

41.1 Assessment and own investigations

The Concessionaire warrants that prior to the Execution Date it:

- (a) examined this agreement and the Due Diligence Materials for the purpose of submitting a proposal to operate the SNP Business, including performing the Concessionaire Services;
- (b) examined, and relied solely upon its own investigations, assessment, skill, expertise and enquiries in respect of all information relevant to the risks, contingencies and other circumstances having an effect on its proposal to operate the SNP Business including performing the Concessionaire Services and its obligations under this agreement; and
- (c) satisfied itself as to the correctness and sufficiency of its proposal to satisfy its obligations under this agreement, has made adequate allowance for the costs of complying with all the obligations of the Concessionaire, and of all matters and things necessary for the due and proper performance of the Concessionaire Services in accordance with this agreement.

41.2 Reliance

The Concessionaire:

- (a) acknowledges that the Due Diligence Materials do not form part of this agreement;
- (b) warrants that it did not in any way rely upon:
 - (i) any Due Diligence Material or any other information, data, representation, statement or document made, or provided to the Concessionaire, by the RTA or anyone on behalf of the RTA; or
 - (ii) the accuracy, adequacy, suitability or completeness of such Due Diligence Material or any other information, data, representation, statement or document provided to the Concessionaire, by the RTA or anyone on behalf of the RTA,for the purposes of entering into this agreement;
- (c) agrees that it enters into this agreement solely based on its own independent investigations, interpretations, deductions, information and determinations, and acknowledges that this agreement is a commercial agreement between the parties; and
- (d) acknowledges that it is aware that RTA has entered into this deed relying upon the warranties, acknowledgments and agreements in this clause 41.

41.3 Information provided

The Concessionaire acknowledges that, except as expressly provided by this agreement, no representation, warranty or advice of any kind has been or is given by or on behalf of RTA, in respect of the accuracy or completeness of the Due Diligence Materials and that no RTA Related Party assumes any duty of care or other responsibility for any such Due Diligence Material or any other information, data or material.

41.4 Release by the Concessionaire

The Concessionaire releases and indemnifies the RTA and each RTA Related Party, on demand, from and against any Liability or Claim incurred, suffered or arising from:

- (a) any reliance or use by the Concessionaire or any Concessionaire Related Party on the Due Diligence Materials, including any information, data or material which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 52 and 53 (respectively) of the Trade Practices Act 1974 (Cth) or any equivalent provision of state or territory legislation);
- (b) any inaccuracy, omission or inadequacy or incompleteness of any kind whatsoever in the Due Diligence Materials; and
- (c) any failure to make available to the Concessionaire any information, data, material or other information relating to the SNP Business except where such failure constitutes a breach by the RTA or a RTA Related Party (as applicable) of its express obligations under this agreement.

41.5 RTA warranty of certain Due Diligence Materials

Despite clauses 41.1 to 41.4, the RTA makes the warranty set out in Annexure E.

41.6 Time limits for Warranty Claims

The RTA is not liable in respect of a Warranty Claim unless:

- (a) the Concessionaire gives the RTA notice describing in reasonable detail each fact, matter or circumstance giving rise to the Warranty Claim and stating why such fact, matter or circumstance gives rise to a Warranty Claim and including an estimate of the amount of the Warranty Claim (**Warranty Claim Notice**) no later than 40 Business Days after the Concessionaire first becomes aware of that fact, matter or circumstance;
- (b) the Warranty Claim Notice is received by the RTA no later than 1 year after the Start Date; and
- (c) within 6 months after the Warranty Claim Notice is received by the RTA either the Warranty Claim has been satisfied or settled or the Concessionaire refers the matter for dispute resolution in accordance with clause 34.

41.7 Minimum amount for Warranty Claims

The RTA is not liable in respect of a Warranty Claim unless the amount that the
would be entitled to recover in relation to that Warranty Claim is at least

Section 32 (1) (b) and (e)

41.8 Maximum recovery

The maximum aggregate amount recoverable by the Concessionaire from the RTA in relation to all Warranty Claims is Section 32 (1) (a)

41.9 Reimbursement of benefits subsequently received

If the RTA has made a payment to the Concessionaire in respect of a Warranty Claim (**Warranty Claim Amount**) and after such payment is made the Concessionaire receives any payment, benefit or credit (including any benefit in relation to Tax) by reason of the fact, matter or circumstance to which the Warranty Claim relates (**Recovery Amount**), then the Concessionaire must as soon as reasonably practicable repay to the RTA an amount equal to the lesser of the Warranty Claim Amount and the Recovery Amount less:

- (a) all costs incurred by the Concessionaire in recovering the Recovery Amount (including any increase in insurance premiums in respect of future periods); and
- (b) any Tax payable by the Concessionaire as a result of receiving the Recovery Amount.

42. Relationship between parties

42.1 Relationship of the RTA and the Concessionaire

Subject to clause 42.2, the relationship of the parties established by this agreement is solely that of independent contractors, and nothing in, or contemplated by, this agreement will be construed or interpreted as constituting a relationship between the RTA and the Concessionaire as that of partners, joint venturers, participants in a joint or common undertaking, fiduciaries, employer and employee or principal and agent.

42.2 Concessionaire acts as principal

Except in the performance of its obligations under clause 18(a) and the instrument delegating authority to the Concessionaire, the Concessionaire performs the Concessionaire Services as principal, not agent of the RTA, and except as expressly set out in this agreement, does so at its own cost and liability without the right to require reimbursement or any other form of cost recovery by the Concessionaire from the RTA.

43. Proportionate liability

43.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of the RTA and the Concessionaire under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

43.2 Contractor not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the Concessionaire must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any claim by the RTA against the Concessionaire (whether in contract, tort or otherwise); and

- (b) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any claim by the RTA against the Concessionaire (whether in contract, tort or otherwise), the Concessionaire will indemnify the RTA against any loss, damage, cost or expense that forms part of a claim by the RTA against the Concessionaire which the RTA cannot recover from the Concessionaire because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

43.3 Subcontracts

The Concessionaire must:

- (a) in each subcontract into which it enters for the performance of its obligations under this agreement, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under each subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the performance of obligations under this agreement, a term that (to the extent permitted by Law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

44. Assignment

44.1 Assignment by the Concessionaire

The Concessionaire must not assign, novate or transfer or otherwise dispose of any of its rights, title or interest in or under this agreement without the prior written consent of the RTA which consent may be given, given on conditions or withheld in the RTA's discretion.

44.2 Assignment by the RTA

- (a) The RTA may assign, novate or transfer or otherwise dispose of any of its rights, title or interest in or under this agreement:
 - (i) to an Authority; and
 - (ii) to any other person with the consent of the Concessionaire, such consent not to be unreasonably withheld.
- (b) Upon written request by the RTA, the Concessionaire hereby irrevocably agrees to enter into new agreements upon the same terms and conditions as this agreement pursuant to which the relevant person that the assignment or other disposal is permitted under clause 44.2(a) agrees to perform and observe the RTA's obligations under this agreement as if it were named in this agreement instead of the RTA.
- (c) The Concessionaire will execute such documents and do such things as and when reasonably requested by the RTA to do so in order to enable or facilitate such assignment, novation or transfer or other disposal in accordance with this clause 44.2.

45. Change in Control

45.1 Prohibition

The Concessionaire must not permit any Change of Control Event to occur without the prior written consent of the RTA, which consent may be given, given on conditions or withheld in the RTA's discretion, subject to clause 45.3.

45.2 Notice of proposed Change of Control Event

The Concessionaire must immediately give notice to the RTA of any proposed Change of Control Event and must provide the RTA with details of:

- (a) the identity of each proposed Controller;
- (b) the address of each proposed Controller;
- (c) the extent and nature of the proposed Change of Control Event; and
- (d) any other information necessary for the RTA to determine whether to consent, or not to consent, to the Change of Control Event.

45.3 Restrictions on RTA discretion

- (a) Where the change of Control Event is in respect of the Concessionaire, the RTA will not unreasonably withhold its consent to a Change of Control Event. For the purposes of this clause 45.3(a) the parties agree that it will not be unreasonable for the RTA to withhold consent in these circumstances if the RTA is of the reasonable opinion that:
 - (i) the proposed person gaining the Control of the Concessionaire following the Change of Control Event:
 - A. is not solvent or reputable;
 - B. has an interest that conflicts in a material way with the interests of the RTA or is involved in a business or activities that are incompatible with, or inappropriate in relation to the SNP Business; or
 - C. Section 32 (1) (a) and (e)
 - D. does not have an appropriate level of technical capacity in the opinion of the RTA;
 - (ii) the proposed change is against the public interest; or
 - (iii) the proposed change will impact materially adversely on the ability of the Concessionaire to perform its obligations under this agreement.
- (b) Where the Change in Control Event is in respect of a Concessionaire Group Member other than the Concessionaire:
 - (i) the RTA may only withhold consent if the RTA reasonably forms the view that the proposed change will materially adversely impact upon the

ability of the Concessionaire to perform its obligations under this agreement; and

- (ii) the RTA will be deemed to have consented to the Change in Control Event if it has not notified the Concessionaire in writing of its refusal to give consent within 10 Business Days of the date on which it receives notice of the Change in Control Event from the Concessionaire in accordance with clause 45.2.

45.4 Change of trustee of the Ian Trust

For the purposes of clause 45.1, it will not be a Change in Control Event if all shares in the Concessionaire are transferred by the trustee from time to time of the Ian Trust to a transferee which is a successor trustee of that trust, provided that the successor trustee continues to be Controlled by Ian Douglas George or is Ian Douglas George.

46. General

46.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) must be in writing, except in relation to notices given by the RTA under clause 27.1, which may be written or unwritten;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Roads and Traffic Authority of NSW

Name: Roads and Traffic Authority of NSW
Address: 101 Miller Street, North Sydney NSW 2060
For the attention of: Director, Commercial Services

Plate Marketing Pty Ltd

Name: Plate Marketing Pty Ltd
Address: 93 Wolston Road, Sumner QLD 4074
For the attention of: Andy Olsson

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address of the addressee, in accordance with clause 46.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail; and
 - (iii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

46.2 Governing law

This agreement is governed by and must be construed according to the law applying in New South Wales.

46.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 46.3(a).

46.4 Precedence regime

- (a) If there is or arises any inconsistency, ambiguity, or discrepancy between:
 - (i) any of:
 - A. clauses 1 to 46 of this agreement;
 - B. the Schedules; and
 - C. the Annexures; or
 - (ii) this Agreement and any Security Document,the following order of precedence will apply:
 - (iii) clauses 1 to 46 of this agreement and Schedule 1;
 - (iv) Schedule 6;
 - (v) Schedule 8;
 - (vi) the Schedules, other than Schedules 1, 6 and 8;
 - (vii) the Annexures; and
 - (viii) the Security Documents.
- (b) If there is or arises any inconsistency, ambiguity or discrepancy within:
 - (i) clauses 1 to 46 of this agreement;
 - (ii) a Schedule;

- (iii) each Annexure;
- (iv) any Security Document; or
- (v) the policies and procedures of the RTA, including the RTA's Operating Manual,

the Concessionaire must notify the RTA, or the RTA may notify the Concessionaire, in writing within 10 Business Days of becoming aware of any such inconsistency, ambiguity or discrepancy. The RTA must determine the intention of the parties and notify the Concessionaire of the resolution of the inconsistency, ambiguity or discrepancy within 20 Business Days of the RTA being so notified. No direction by the RTA under this clause 46.4 will constitute a variation.

- (c) If there is or arises any inconsistency, ambiguity, or discrepancy between the policies and procedures of the RTA, including the RTA's Operating Manual, and any of:
 - (i) clauses 1 to 46 of this agreement;
 - (ii) the Schedules;
 - (iii) the Annexures; or
 - (iv) the Security Documents,

the Concessionaire must notify the RTA, or the RTA may notify the Concessionaire, in writing within 10 Business Days of becoming aware of any such inconsistency, ambiguity or discrepancy and the Concession Management Committee will determine the order of precedence that will apply having regard to:

- (v) the Concessionaire's interest in having discretion and flexibility to operate the SNP business in a commercial manner and to enhance value; and
- (vi) the RTA's regulatory and policy aims..

46.5 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

46.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

46.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

46.8 Consents

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

46.9 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one document.

46.10 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this agreement.

46.11 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

46.12 Set-off

The RTA may deduct from money otherwise due to the Concessionaire any debt that is immediately due and payable by the Concessionaire to the RTA under this agreement.

46.13 Stamp duties

The Concessionaire:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement; and
- (b) indemnifies each other party against any liability arising from failure to comply with clause 46.13(a).

46.14 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(b) supersedes any prior written or other agreement of the parties.

Schedule 1 Dictionary

1. Definitions

In this agreement:

Act of Prevention means:

- (a) a breach of this deed by the Concessionaire;
- (b) an act or omission by the Concessionaire or its Related Parties;
- (c) a Force Majeure Event; or
- (d) any change in Law.

Actual Annual SNP Revenue means the aggregate amount of the Monthly SNP Revenue for a Financial Year.

Additional Products has the meaning given in clause 3.9.

Annual Adjustment Amount has the meaning given in Schedule 6.

Approval Notice has the meaning given in clause 7.6(b).

Approved Insurer means:

- (a) an Australian registered insurance company which is approved by the Australia Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
- (b) Lloyds Underwriters.

Associate has the same meaning as "associate" in the Corporations Act and includes a person deemed to be an associate of a designated body within the meaning of section 12 of the Corporations Act.

Authorisations means any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing, registration or waiver required by any Authority or by any law or regulation.

Authorised New Vehicle Inspection Scheme or **ANVIS** means the scheme that allows new motor vehicle dealers and other approved organisations to inspect, certify and register new vehicles in New South Wales.

Authority means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation.

Beneficially Owned means, with respect to any Securities, to have or to share, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, (whether subject to a condition or not):

- (a) voting power, which includes the power to vote, or to direct the costing of such Security, and/or
- (b) investment power, which includes the power to dispose of, or to direct the disposition of, or in any way encumber such Security,

and **Beneficial Ownership** has a corresponding meaning.

Bike Rack Plates means a certain type of Regulatory Plate issued for vehicles with a bike rack attached to the rear of that vehicle that obstructs the view of that vehicle's Plate, with the same Content Format and Content as the relevant vehicle's Plate.

Black On White Plates means a Plate that has a white background with black Characters, no design features and, in respect of a vehicle, a Content Format of "###:*#", where "#" means any combination of letters and "*" means any combination of numbers.

Brand means all goodwill associated with the SNP Business including:

- (a) all registered and unregistered trademarks;
- (b) all names including business names, domain names, product names and company names; and
- (c) all telephone numbers, email addresses and all other addresses used by the general public in relation to the SNP Business to make contact using a telecommunications network.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, Australia.

Business Hours means between 9.00 am and 5.00 pm on a Business Day.

Capital Works Projects means:

- (a) the SNP Enablement Project;
- (b) the Content and Product Management Project - Phase 1;
- (c) the Content and Product Management Project - Phase 2;
- (d) the Direct Delivery Project - Phase 1; and
- (e) the Direct Delivery Project - Phase 2.

Capital Works Schedule means the document that comprises Schedule 5 to this agreement.

Change of Control Event means, in respect of a Concessionaire Group Member, where, at any time, any person, alone or together with any Associate or Associates, ceases to, or commences to, directly or indirectly have Control of the Concessionaire Group Member.

Characters includes numbers, letters, punctuation and spaces.

Charity Plate means any combination of any or all of Style, Content, Content Range and Registration use that is the subject of a notice by the RTA under clause 8.2(a) and any Plates that are issued or assigned with such combinations.

Claim means any claim or action:

- (a) under, arising out of, or in connection with this agreement;
- (b) arising out of, or in connection with the SNP Business;
- (c) otherwise at Law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; and
 - (iii) in restitution, including restitution based on unjust enrichment.

CMC Representative has the meaning given in clause 12.3(a).

Commencement End Date means the date that is 180 Business Days from the Execution Date.

Committee means the Concession Management Committee or the Operational Review Committee (as the case may be).

Committee Representative means a CMC Representative or an ORC Representative (as the case may be).

Completion means, in respect of:

- (a) the SNP Enablement Project, when the capability and documentation of processes specified in Section 4 of the Capital Works Schedule;
- (b) the Content and Product Management Project - Phase 1, when the capability and documentation of processes specified in Section 3.1 of the Capital Works Schedule;
- (c) the Content and Product Management Project - Phase 2, when the capability and documentation of processes specified in Section 3.2 of the Capital Works Schedule;
- (d) the Direct Delivery Project - Phase 1, when the capability and documentation of processes specified in the Section 2.1.1 of the Capital Works Schedule;
- (e) the Direct Delivery Project - Phase 2, when the capability and documentation of processes specified in Section 2.1.2 of the Capital Works Schedule;

has been completed, except for minor defects which do not prevent the relevant Capital Work Project from being used for its intended purpose.

Concessionaire Branding Licence means any arrangement entered into by the Concessionaire to allow the inclusion of proprietary names, logos, designs, symbols, trade marks or images on a SNP Product.

Concessionaire Group means the Concessionaire and its Related Bodies Corporate.

Concessionaire Group Member means any person who is a member of the Concessionaire Group.

Concessionaire IP means all Intellectual Property:

- (a) comprised in any:
 - (i) website including any software required to operate or support that website and all graphics and other content included on that website;
 - (ii) information technology system, infrastructure, software or application, including any:
 - A. inventory management system; or
 - B. customer relationship management system;
 - (iii) contact centre scripts or procedures;
 - (iv) Operational Manuals and Reports;
 - (v) marketing or advertising collateral, artwork or other material; and
 - (vi) marketing data (excluding Customer Data),
developed or used by the Concessionaire or its Related Parties in connection with the SNP Business; or
- (b) to the extent not included in sub-clause (a), procured by the Concessionaire for use in connection with the SNP Business by the RTA, including any Intellectual Property rights licensed under the Concessionaire Branding Licences in accordance with clause 24.13,

excluding:

- (c) any Intellectual Property owned or licensed by the RTA other than under this agreement;
- (d) the Existing Plate Branding Property; and
- (e) any Intellectual Property comprised in the SNP Products or the Customer Data.

Concession Management Committee or **CMC** means the committee to be established under clause 12.1 to carry out the functions set out in clause 12.

Concessionaire IT Procedures means the procedures approved by the RTA in accordance to clause 4.3.

Concessionaire Payment means the amount calculated by the Concessionaire in accordance with Schedule 6 (Payments).

Concessionaire Payment Invoice means the invoice provided by the Concessionaire in accordance with clause 10.3.

Concessionaire Services Schedule means Schedule 3 as amended or varied in accordance with this agreement from time to time.

Concessionaire Services means the services to be performed by the Concessionaire in connection with the SNP Business during the Term as set out in the Concessionaire Services Schedule.

Concessionaire's Personnel means all employees and any Subcontractor of the Concessionaire.

Concessionaire's Privacy Plan means the plan that sets out the privacy procedures that the Concessionaire will adopt in operating the SNP Business that is developed and maintained by the Concessionaire in accordance with the Mobilisation Plan and clause 25 of this agreement.

Condition means each condition specified in clause 2.1.

Content means any unique combination of Characters.

Content Format means the sequencing and arrangement of Characters on a Plate.

Content Range means a continuous and incremental range of Content with a specific start and end where the rules for incrementing are determined by the RTA.

Content and Product Management Project - Phase 1 Date for Completion means 1 January 2011, as amended from time to time in accordance with clause 5.8 or as otherwise agreed in writing between the parties.

Content and Product Management Project - Phase 2 Date for Completion means 1 July 2011, as amended from time to time in accordance with clause 5.8 or as otherwise agreed in writing between the parties.

Content and Product Management Project - Phase 1 means the project set out in section 3.1 of the Capital Works Schedule.

Content and Product Management Project - Phase 2 means the project set out in section 3.2 of the Capital Works Schedule.

Control means:

- (a) in relation to a body corporate:
 - (i) the ability to control, directly or indirectly, the composition of the board of the body corporate;
 - (ii) the Beneficial Ownership of more than 50% of the voting shares or other form of voting equity in the body corporate; or
 - (iii) the capacity to determine, directly or indirectly, the outcome of decisions about the financial and operating policies of the corporation;
- (b) in relation to a trust estate:
 - (i) the ability to remove any trustee of the trust estate or to appoint any trustee in place of or in addition to any trustee of the trust estate;
 - (ii) the ability to control, whether directly or indirectly, the decision-making of the trustee of the trust estate or the manner in which the trustee of the trust estate deals with the income or the capital of the trust estate at any time;

- (iii) the ability to nominate or alter the beneficiaries or unitholders of the trust estate at any time; or
 - (iv) where the trust is a unit trust, the Beneficial Ownership of more than 50% of the units in the unit trust estate; and
- (c) in relation to an association or a partnership, firm or other body, the ability, whether directly or indirectly, generally to determine how the affairs of that association, partnership, firm or other body are to be conducted and managed and the ability to make decisions in relation to those affairs.

Controller means, in relation to a Change of Control Event, the person or body corporate to whom Control will pass.

Convenience Termination Payment means the amount required to be paid by the RTA to the Concessionaire under clause 31.2(a)(iii), as calculated by the RTA in accordance with Schedule 6 (Payments).

Corporations Act means the Corporation Act 2001 (Cth).

CP End Date means the date that is 80 Business Days from the Execution Date.

Customer Data means all records, data and information:

- (a) provided by the RTA to the Concessionaire; or
- (b) collected by the Concessionaire from any other source,

relating to the SNP Customers or potential SNP Customers.

Cure Period means 15 Business Days (or such longer period as is determined by the RTA) from the date of receipt of the Default Notice by the Concessionaire under clause 29.2.

Cure Plan has the meaning given in clause 29.3.

Daily Order Report means a daily RTA system produced report that lists all SNP Product orders recorded on that relevant day via the Sales Channels.

Deadlock means the occurrence of the events under clause 14.10.

Deadlock Notice has the meaning given in clause 14.10(b).

Dealer Online or **DOL** means an internet-based application which allows ANVIS and DVRS dealers to perform registration transactions without visiting a Motor Registry.

Dealer Vehicle Registration Scheme or **DVRS** means the scheme that allows new motor vehicle dealers, and other approved organisations to inspect, certify and register new vehicles; and dealers of new and second hand vehicles to register second-hand vehicles, transfer and renew registration of vehicles, and advise of the disposal of vehicles.

Deed of Charge means the fixed and floating charge in the form annexed to this agreement as Annexure C.

Deed of Priority means the deed of priority in the form annexed to this agreement as Annexure C.

Default means any of the events outlined in clause 29.1.

Default Notice means the notice of Default given by the RTA to the Concessionaire under clause 29.2.

Direct Costs means the reasonable incremental direct costs incurred by the Concessionaire which, for the avoidance of doubt, exclude any allocation of overhead costs and Concessionaire profit margin.

Direct Costs Dispute means a dispute with respect to the Direct Costs payable by the RTA to the Concessionaire under clause 20.2.

Direct Delivery means the delivery of SNP Products directly to the nominated address of SNP Customers.

Direct Delivery Project - Phase 1 Date for Completion means 1 April 2011 as amended from time to time in accordance with clause 5.8 or as otherwise agreed in writing between the parties.

Direct Delivery Project - Phase 2 Date for Completion means 1 July 2011 as amended from time to time in accordance with clause 5.8 or as otherwise agreed in writing between the parties.

Direct Delivery Project - Phase 1 means the project set out in section 2.1.1 of the Capital Works Schedule.

Direct Delivery Project - Phase 2 means the project set out in section 2.1.2 of the Capital Works Schedule.

Disapproval Notice has the meaning given in clause 7.6(b).

Dispute means any of the disputes or differences identified in clause 34.1.

Dispute Notice means the notice of Dispute given under clause 10.7(d) or clause 34.2 or a Deadlock Notice given under clause 14.10(b) in respect of a meeting of the Concession Management Committee.

Disputing Party has the meaning given in clause 10.7(a).

Document has the meaning given in clause 4.4(a).

Domain Names means www.myplates.com.au and any other domain names approved by the RTA as part of a Brand under clause 19.6.

DRIVES means the Driver and Vehicle System, maintained by the RTA which controls all motor registration and driver licensing functions within New South Wales.

DRIVES Green Screens means the front end interface of DRIVES that allows users to access specific DRIVES data and execute transactions.

Due Diligence Material means all documents and data provided to the Concessionaire or its Related Parties by or on behalf of the RTA during the process leading to the execution of this agreement, including any documents provided on the online data room.

Emergency means a circumstance where there is a risk of potential and immediate threat to:

- (a) public interest or safety; or

- (b) the general operations of the RTA that could have a material adverse impact upon the RTA's ability to carry out its general functions and activities.

Emergency Period has the meaning given in clause 27.1.

Emergency SNP Business Continuation Plan has the meaning given in clause 27.2.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person.

Escalated Submission means any matters that are escalated to the Concession Management Committee from the Operational Review Committee in accordance with clause 13.6.

Event of Insolvency means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 Business Days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the RTA under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;

- (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Execution Date means:

- (a) where the parties execute this agreement on the same date, that date; or
- (b) where the parties execute this agreement on separate counterparts each on a different date, the date on which a party last executes this agreement.

Existing Plate Branding Licences means:

- (a) the Merchandising Agreement between the RTA and the Australian Rugby Football League Limited (ACN 003 107 293) and the National Rugby League Investments Pty Limited (ACN 081 778 538) dated 8 February 2008;
- (b) the Trade Mark Licence Agreement between the RTA, GM Holden Limited and Premoso Pty Ltd dated 20 May 2010; and
- (c) any other agreements specified in writing by the RTA.

Existing Plate Branding Property means the names, logos, designs, symbols and trade marks licensed to the RTA under the Existing Plate Branding Licences.

Exit and Hand-back Plan means the plan prepared by the Concessionaire under clause 32.1 setting out the procedures that the Concessionaire will implement upon expiry or termination of this agreement in transferring the SNP Business back to the RTA.

Expert means, as appropriate:

- (a) an expert appointed under clause 15.4(f) to determine a SNP Business Plan for a Financial Year; or
- (b) an expert appointed under clause 20.3(a) to determine the Direct Costs Amount.

Financial Liability of a person means any Liability or indebtedness (whether present or future, actual or contingent) of that person for or in respect of:

- (a) money borrowed or raised and debit balances at banks or financial institutions;
- (b) its obligations as lessee under any lease;
- (c) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a bank or financial institution;
- (d) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any Financial Liability (as referred to in any other paragraph of this definition) of another person; or
- (e) amounts raised under any other transaction or series of transactions having the commercial effect of a borrowing or raising of money.

Financial Year means, in relation to this agreement:

- (a) the period beginning on the Start Date and ending on 30 June in the following year; and
- (b) the period of 12 months commencing on 1 July in each year after the expiration of the period referred to in paragraph (a) and ending on 30 June in the following year.

First Changeover Date has the meaning given in clause 5.2(b)(i).

First Financial Year means the period beginning on the Start Date and ending on 30 June in the following year.

First Resolution has the meaning given in clause 14.10(a)(i).

FLEX means the Adobe Flex software development kit for the development and deployment of cross-platform applications.

Force Majeure Event means an event or cause which is beyond the reasonable control of the party claiming that an obligation under this agreement is frustrated by such event or cause including:

- (a) an act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone, tidal wave, landslide or adverse weather conditions;
- (b) a strike, lockout or other industrial dispute not caused by the Concessionaire or any of its Related Bodies Corporate;
- (c) an act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic; and
- (d) enactment of any Commonwealth legislation or regulation, or any change to existing Commonwealth legislation or regulation, which materially impacts the design, specifications, manufacture and/or regulation and issue of number plates in New South Wales, excluding a Regulatory Change Event that requires a Material Plate Change as defined in clause 3.4(d).

Force Majeure Notice has the meaning given in clause 28.1(a).

Force Majeure Particulars Notice has the meaning given in clause 28.1(b).

Force Majeure Termination Payment means the amount required to be paid by the RTA to the Concessionaire under clause 31.2(a)(iv), as calculated by the RTA in accordance with Schedule 6 (Payments).

Forecast Annual SNP Revenue means the forecast aggregate amount of the SNP Revenue for a Financial Year.

Frontline Help means the section within the RTA intranet that provides help pages to RTA staff.

Fulfilment Channel means a place, process or mechanism by which SNP Products may be distributed for physical collection by the SNP Customer.

General Issue Plates means Plates where customers or their agents do not specify any of:

- (a) the colour of the background;
- (b) the colour of the characters;

- (c) the design; and
- (d) the Content Format,

other than Plates referred to in paragraphs (b) to (m) of the definition of Regulatory Plates.

General Issue Plates Features means a yellow coloured background with black Characters, no design features and,

in respect of Plates for vehicles only, a Content Format of "##:**:##" or "###:***"

where:

- (a) "#" means a letter and "*" means a number; or
- (b) "#" means a number and "*" means a letter.

General Ledger or **GL** means a consolidated view of the SNP Business's financial information comprising various accounts.

Heavy Vehicle Plates means Plates for vehicles that have a gross vehicle mass equal to or greater than 4.5 tonnes or such other gross vehicle mass as specified by the RTA from time to time.

Heavy Trailer Plates means Plates for trailers that have a gross vehicle mass equal to or greater than 4.5 tonnes or such other gross vehicle mass as specified by the RTA from time to time.

Ian Trust means the trust named the "Ian Trust" constituted under the Deed of Settlement between Eileen Florence Stockwell and Aboyne Pty Ltd dated 1 July 1975, as amended by:

- (a) the Deed of Amendment - the Ian Trust of Aboyne Pty Ltd dated 10 August 1999;
- (b) the Deed of Amendment Retirement and Appointment between Aboyne Pty Ltd and Harringe Pty Ltd dated 7 December 2001;
- (c) the Deed of Variation between Harringe Pty Ltd, Elspeth Margaret Meakin and Ian George dated 13 May 2004;
- (d) the deed titled "Deed The Ian Trust" of Harringe Pty Ltd dated 21 August 2006; and
- (e) the deed titled "Deed of Amendment The Ian Trust" of Harringe Pty Ltd dated 22 August 2006.

Inappropriate Content means any Content that is deemed inappropriate by the RTA or the Concessionaire based on common public standards of offensiveness or socially unacceptable words or meanings, including:

- (a) any word that may be acceptable to the broader community, but offensive to a particular person or persons;
- (b) a word that may be acceptable when displayed on one vehicle, but might be inappropriate or offensive when displayed on another vehicle;

- (c) a word that is inappropriate or offensive in a foreign language; or
- (d) a word that may have multiple meanings, where at least one of those meanings, whether colloquial, formal, figurative or literal, and depending on the contemporary social context, is inappropriate or offensive.

Individual means a natural, living person.

Information Release Request or IRR means a request for information or a data extract from DRIVES.

Insurances means the following insurances which are further described in Schedule 7:

- (a) broadform public liability and product liability insurance for an amount not less than \$20 million for each and every occurrence and in the aggregate annually in respect of any liability for:
 - (i) bodily injury and/or illness (including death) of any person; and
 - (ii) loss of, damage to, loss of use of, or destruction of tangible property (including property of the RTA),arising out of or in connection with the performance of the Concessionaire Services or this agreement.
- (b) motor vehicle comprehensive or third party property damage insurance for an amount of not less than \$20 million for each and every occurrence and in the aggregate annually in respect of liability for all plant and motor vehicles owned or used by the Concessionaire directly or indirectly engaged in performing the Concessionaire Service;
- (c) professional indemnity insurance for an amount not less than \$10 million for each and every claim and in the aggregate annually;
- (d) workers compensation insurance as required under applicable laws to cover all persons directly or indirectly engaged in the performance of the Concessionaire Services for loss, damage, claims and all direct and associated costs and expenses arising under any workers compensation legislation or at common law;
- (e) industrial special risks insurance in respect of physical loss, destruction or damage to or loss of use of, any property owned or used by the Concessionaire in connection with this agreement, including the property of the RTA, to be insured for an amount not less than the full replacement value of such property (including property acquired from time to time), including the provision for removal of debris and increased cost of working; and
- (f) directors and officers indemnity insurance for an amount not less than \$10 million for each and every claim and in the aggregate annually.

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;

- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the Circuit Layouts Act 1989 (Cth),

whether created or in existence before or after the Execution Date and includes any thing, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in clauses (a) to (f) inclusive of this definition.

IT Change Request Form means the form of the RTA so named, as amended by the RTA from time to time.

IT Variation means a variation to the RTA's IT Systems that the RTA is not otherwise obliged to make under the RTA Services Schedule.

Key Personnel means those persons set out in Schedule 9.

Law means:

- (a) common law; and
- (b) Commonwealth, New South Wales or local government legislation, regulations, by-laws and other subordinate regulations.

Liability includes any debt, obligation, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or liability of any kind, actual, prospective or contingent and whether or not currently ascertainable and whether arising for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law or equity.

List of Intellectual Property means a list of each item of Intellectual Property used or to be used by the Concessionaire or its Related Parties in operating the SNP Business, which specifies in relation to each item of Intellectual Property:

- (a) the nature and, if applicable, name of the material in which the Intellectual Property is comprised;
- (b) the owner of the Intellectual Property and, if relevant, the licensor and the licensee of that Intellectual Property;
- (c) the duration of any licence and maintenance agreements; and
- (d) the licence and maintenance fees and similar fees.

Major Accounting Firms means the Australian firms of PricewaterhouseCoopers, KPMG, Ernst & Young, Deloitte Touche Tohmatsu, PKF and BDO Kendalls.

Major Default means any of the events set out in clause 29.5.

Marketing Guidelines means the guidelines set out in Part 1 of Schedule 8.

Material Adverse Effect means any effect or series of effects, or any event or series of events which, in the reasonable opinion of the RTA is, or is reasonably likely to be, materially adverse to:

- (a) in the case of clause 29 (default and termination), and clause 37 (other than clause 37.2(a)), the operation of the SNP Business, including the performance of the Concessionaire Services or the ability of the Concessionaire to perform its obligations under this agreement; and
- (b) in the case of clause 11.2(c) (information required on the Operative Date), clause 11.3(c) (Notification of certain events) and clause 37.2(a) (no litigation):
 - (i) the operation of the SNP Business, including the performance of the Concessionaire Services and the ability of the Concessionaire to perform its obligations under this agreement;
 - (ii) the business, assets or financial condition of the Concessionaire; or
 - (iii) the financial condition of the Concessionaire Group taken as a whole.

Material Plate Change has the meaning given in clause 3.4(a).

Material Plate Change Dispute means a dispute with respect to a Material Plate Change Payment payable by the RTA to the Concessionaire under clause 3.4.

Material Plate Change Notice has the meaning given in clause 3.5(a).

Material Plate Change Payment has the meaning given in clause 3.4(c).

Material Contract means any contract entered into by the Concessionaire:

- (a) for the distribution or storage of SNP Products;
- (b) for the operation of a contact centre in relation to SNP Product sales, SNP Customer service and the servicing of new customer enquiries in respect of SNP Products;
- (c) for the establishment and provision of any other arrangements with respect to a New SNP Product or new Sales Channel;
- (d) in connection with the operation of the SNP Business, including performing the Concessionaire Services, that:
 - (i) requires the Concessionaire to pay as consideration an amount in excess of \$250,000 at any time during the term of the relevant contract;
 - (ii) is for a term greater than 3 years; or
 - (iii) is for a term that expires after the Term; and
- (e) any contract entered into or proposed to be entered into by the Concessionaire which the RTA notifies the Concessionaire is to be regarded as a Material Contract for the purposes of this agreement,

excluding any Concessionaire Branding Licence, employment contract, personnel service contract other than those contracts outlined above in sub-clauses (a) to (e), any lease in relation to the Concessionaire's premises, or any Concessionaire Branding Licence.

Minimum Payment Shortfall Adjustment has the meaning given in Schedule 6.

Mobilisation Plan means the Mobilisation Plan set out in Annexure A.

Month means a calendar month.

Monthly Management Reports means the reports prepared by the Concessionaire in accordance with clause 16.2.

Monthly Revenue has the meaning given in Schedule 6.

Moral Rights has the meaning given to it in the Copyright Act 1968 (Cth).

myPlates Website means the website hosted comprising two main components:

- (a) a html based web user interface (the front-end interactive myPlates.com.au domain), which can further be broken down into two components:
 - (i) a static browser component comprising of website graphics and website content; and
 - (ii) an interactive flash-player component used for plate order and design which integrates to the FLEX component; and
- (b) a flex component (the back-end transaction engine that reads back to DRIVES).

New SNP Products means any SNP Product developed by the Concessionaire in accordance with this agreement after the Start Date, excluding Charity Plates, Numeral Only Plates and Bike Plates.

Net Proceeds means the gross revenue generated from an auction of Numeral Only Plates under clause 8.1(i), less:

- (a) any relevant auctioneer cost;
- (b) the estimated third party incremental costs approved under 8.1(d); and
- (c) any other costs related to the auction of the Numeral Only Plates.

Nominee of the RTA, means, an employee, agent, officer, director, advisor, consultant or contractor of the RTA nominated to examine or audit the Concessionaire's records under clause 22.2, 23.2 or clause 23.3.

Non-Disputing Party has the meaning given in clause 10.7(a).

NSW Metro Region means the Sydney area including Wollongong to the south, Katoomba to the west and Newcastle to the North.

NSW Police means the Police Force of New South Wales.

NSW State Government means the government of the state of New South Wales.

Numeral Only Plates means Content with Characters that are only numbers and any Plates with such Content.

Numeral Only Plates Auction Management Fee means 2% of the Net Proceeds raised at the auction of any Numeral Only Plates.

Operational Manuals and Reports means all operational manuals, internal and external reports, work schedules and timetables and any other documented business processes or procedures.

Operational Review Committee or **ORC** means the committee to be established under clause 13.1 to carry out the functions set out in clause 13.

Operative Date means the date on which all of the Conditions have been satisfied or waived by the relevant party under clauses 2.3 and 2.4.

ORC Representative means a person appointed by the RTA or the Concessionaire (as the case may be) as its representative on the Operational Review Committee and includes any alternate of that person.

Organisation means any person to whom an SNP Product may be issued that is not an Individual.

Payment Channel means a manner by which payment may be made in relation to SNP Products by a SNP Customer.

Personal Information means:

- (a) while the PPIPA is in force, that term as defined in the PPIPA; and
- (b) if the PPIPA is repealed, that term as defined in any Commonwealth or New South Wales legislation that replaces the PPIPA in whole or in part.

Personalised means a SNP Product in respect of which a SNP Customer selects the Style and the Content where the Content falls within Content Format rules specified by the RTA.

Personalised Plus means a SNP Product in respect of which the Customer selects the Style, Content and Content Format within the range of Content Format allowed by the RTA.

Plate means any number plate issued in accordance with the Road Transport (Vehicle Registration) Act 1997 and the Road Transport (Vehicle Registration) Regulation 2007.

Plate Category means the field of that name in the RTA's IT Systems.

Plate Style means the field of that name in the RTA's IT Systems.

Plate Style Group means the field of that name in the RTA's IT Systems known as 'Plate Style Group'.

Plates Administration System or **PAS** means a front-end software interface designed to set up information in the RTA DRIVES database in order to create and administer number plate products and pricing.

Post-termination Liabilities means all Claims or Liabilities that the RTA has, may suffer, incur or become liable for arising from or incurred in connection with a breach of this agreement by or on behalf of the Concessionaire or any act or omission by or on behalf of the

Concessionaire in respect of the SNP Business which have arisen before the Termination Date or that arise on or after the Termination Date.

Potential Default means any event or circumstance which, with the giving of notice, lapse of time, satisfaction of a condition or a determination (or any combination of these) would be a Default.

Potential Major Default means any event or circumstance which, with the giving of notice, lapse of time, satisfaction of a condition or a determination (or any combination of these) would be a Major Default.

PPIPA means the Privacy and Personal Information Protection Act 1998 (NSW).

Privacy Obligations means any privacy obligations to which the RTA or the Concessionaire is subject under any Law from time to time including:

- (a) while the PPIPA is in force, obligations imposed on public sector agencies under the PPIPA;
- (b) if the PPIPA is repealed, obligations imposed on Authorities and private sector organisations by any Commonwealth or New South Wales legislation that replaces the PPIPA in whole or in part; and
- (c) the Health Records and Information Privacy Act 2002 (NSW).

Probity Event includes an event, matter or thing that, in the reasonable opinion of the RTA:

- (a) has a material adverse effect upon the character, honesty or integrity of any of the Concessionaire's Personnel and directors;
- (b) is a breach by the Concessionaire of the Concessionaires IT Procedures;
- (c) relates to any of the Concessionaire's Personnel or a Concessionaire Group Member and has a material adverse effect upon the public interest (having regard to the policy objectives of the NSW State Government) or the reputation of and public confidence in the RTA;
- (d) in relation to a Concessionaire Group Member, involves a material failure to achieve or maintain:
 - (i) reasonable standards of ethical behaviour;
 - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Concessionaire Group Member to perform and observe its obligations in respect of the SNP Business (if relevant); or
 - (iii) standards of behaviour expected of a person engaged in a NSW State Government project; or
- (e) in relation to a Concessionaire Group Member, involved any person, alone or together with any Associate or Associates acquiring Beneficial Ownership of any Securities in that Concessionaire Group Member and that person is not fit and proper to have any involvement in, directly or indirectly, the SNP Business (having regard to the policy objectives of the NSW State Government).

Probity Event Meeting has the meaning given in clause 22.3(a)

Probity Event Notice has the meaning given in clause 22.1(a).

Probity Investigation means such probity and criminal investigations to report on the character, honesty and integrity of persons as are required by Law or the RTA from time to time to ensure that a person is fit and proper for its proposed or continued involvement in, or in relation to, the SNP Business.

Quarter means, in any Financial Year, the period of three months commencing on the first day of July, October, January and April (as the case may be).

Quarterly Management Reports means the reports prepared by the Concessionaire in accordance with clause 16.3.

Recovery Amount has the meaning given in clause 41.9.

Registration Use means any classification applied to the use of a vehicle by RTA from time to time.

Registries means any customer contact centres operated from time to time by the RTA in New South Wales, excluding any other customer contact centres operated from time to time by other NSW State Government Authorities that provide certain services in connection with Plates.

Regulatory Change Event means:

- (a) the enactment of a new Law or a change to an existing Law;
- (b) any applicable requirements of any Authority; or
- (c) any national reform program in which the RTA becomes a participant.

Regulatory Plates means any Content Range, Style or Content Format allocated for, or issued by New South Wales Transport and Infrastructure or the RTA to:

- (a) General Issue Plates;
- (b) Heavy Vehicle Plates;
- (c) Heavy Trailer Plates;
- (d) Bike Rack Plates;
- (dd) Plates for tow trucks;
- (e) Plates for certain heavy vehicles under the Federal Interstate Registration Scheme;
- (f) Plates for historic vehicles;
- (g) Plates for consular vehicles;
- (h) Plates for police and emergency vehicles;
- (i) Plates for public passenger vehicles, including buses, taxis and hire cars;
- (j) Plates for Australian Government agency vehicles that are required to be registered in New South Wales;

- (k) Plates for vehicles that have a conditional registration;
- (l) Plates for such other vehicles or vehicle types as specified by New South Wales Transport and Infrastructure or the RTA from time to time; and
- (m) Plates for such other Registration Use as specified by New South Wales Transport and Infrastructure or the RTA from time to time,

and any Plates that are issued or assigned with such Content Range, Style or Content Format.

Related Body Corporate has the meaning given in section 9 of the Corporations Act.

Related Party means, in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or advisor of that person or that Related Body Corporate and:

- (a) in the case of the Concessionaire, includes the Subcontractors and their respective Related Parties (but does not include the RTA or any of its Related Parties); and
- (b) in the case of the RTA does not include the Concessionaire or its Related Parties.

Remake means where an existing Plate that is damaged, destroyed, stolen (and subsequently destroyed), or where the Content of that Plate cannot be read or recognised, is remade into the exact same Plate.

Restyle means where existing Content on a Plate is remade in a different Plate Style.

Restricted Words Filter means the RTA's electronic library of restricted words that have already been identified as Inappropriate Content and automatically acts as a filter for future orders of SNP Products.

Retained Amount means, in respect of the Month in which the Retention Date occurred:

- (a) any unpaid Concessionaire Payment for the Month prior to that Month;
- (b) the Concessionaire Payment for that Month; and
- (c) any Concessionaire Payment payable to the Concessionaire after that Month.

Retire means, in relation to a SNP Product, to cease the ability to order, remake or restyle that SNP Product, and **Retiring** and **Retirement** have the corresponding meanings.

RTA Annual Minimum Revenue Amount has the meaning given in Schedule 6.

RTA Camera Enforcement Branch or **CEB** means the branch of the RTA that is responsible for the management and maintenance of cameras to detect offences at fixed speed, red-light, bus lane, "T-Way" and "Safe-T-Cam" (heavy vehicle offences) sites.

RTA Change means a change to the RTA Services under clause 6.1, a change to any relevant RTA policies and procedures, a change to the RTA SNP Policies under clause 19.2 or a change to the RTA Privacy Management Plan under clause 25.6 (as the case may be).

RTA Dealer Incentive Amount means the total amount payable to motor vehicle dealers by the RTA under the SNP Business Dealer Incentive Program in the relevant Month.

RTA IP means any Intellectual Property comprised in:

- (a) any materials or other matters provided by or on behalf of the RTA to the Concessionaire to be used by the Concessionaire in operating the SNP Business; and
- (b) the Trade Marks,

excluding any Intellectual Property owned or licensed to the Concessionaire other than under this agreement and the Existing Plate Branding Property.

RTA's IT Systems means:

- (a) DRIVES;
- (b) PAS; and
- (c) any other information technology system of the RTA, access to which the RTA must provide to the Concessionaire under the RTA Services Schedule.

RTA Monthly Minimum Revenue Amount has the meaning given in Schedule 6.

RTA Monthly Revenue Amount has the meaning given in Schedule 6.

RTA Privacy Management Plan means the RTA's privacy management plan.

RTA Revenue Share Amount has the meaning given in Schedule 6.

RTA Royalty Costs means:

- (a) all royalties or other fees paid to licensors under the Existing Plate Branding Licences and any Plate branding licence(s) entered into by the RTA after the Execution Date; and
- (b) all royalties or other fees paid to third parties in respect of the Brand or the use by the Concessionaire of any software, hardware or communication facility made available by the RTA to the Concessionaire pursuant to this agreement,

incurred during the relevant Month.

RTA Services means the functions and activities to be performed by the RTA in connection with the SNP Business, as set out in the RTA Services Schedule.

RTA Services Charges means the sum of:

- (a) charges for certain of the RTA Services calculated in accordance with section 10 of the RTA Services Schedule;
- (b) RTA Royalty Costs; and
- (c) RTA Dealer Incentive Amount.

RTA Services Charges Invoice means an invoice provided by the RTA in accordance with clause 10.5.

RTA Services Schedule means Schedule 4, as amended or varied in accordance with this agreement from time to time.

RTA SNP Policies means the policies of the RTA as set out in Schedule 8 as amended from time to time in accordance with clause 19.2.

RTA's Operating Manuals means the document titled "RTA SNP Concession Project Operating Manuals" as amended by the RTA from time to time.

sale or sell means, unless the context indicates a contrary intention, the first time that the RTA allocates, sets aside or reserves a Plate (whether or not this involves the delivery of possession of the Plate and including arrangements under which the RTA retains possession of the Plate).

Sales Channel means a place, process or mechanism by which a SNP Transaction may occur, including, Registries, contact centres in relation to SNP Product Sales and the MyPlates website.

SC Representative means a person appointed by the RTA or the Concessionaire (as the case may be) as its CMC Representative and includes any alternate of that person.

Securities has the meaning given under section 9 of the Corporations Act 2001 (Cth).

Security Document means each security required to be provided by the Concessionaire in accordance with clause 11.1.

Second Resolution has the meaning given in clause 14.10(a)(ii).

Service Changeover Date means any date in respect of a particular RTA Service part of a particular RTA Service, particular Concessionaire Service or part of a particular Concessionaire Service set out in a notice under clause 5.3(f).

SNP Business means the Special Number Plate business of the RTA as described in Schedule 2 (SNP Business).

SNP Business Dealer Incentive Program means the contractual arrangements between the Concessionaire or the RTA, and any relevant motor vehicle dealers, where motor vehicle dealers are paid a defined commission as an incentive for the sale of certain SNP Products.

SNP Business Plan means the business plan approved, deemed to be varied or determined in accordance with clause 15.

SNP Complaint means all expressions of dissatisfaction where a response or resolution is explicitly expected, which are related to SNP sales, service or product.

SNP Customer means a person that, at any particular time, has:

- (a) reserved a SNP Product;
- (b) placed an order for a SNP Product;
- (c) been entered into DRIVES as the owner of a registrable vehicle to which a SNP Product is to be attached; or
- (d) placed a SNP Product in storage with the RTA or the Concessionaire, as appropriate.

SNP Enablement Project means the project set out in section 4 of the Capital Works Schedule.

SNP Product means any combination of any or all of Style, Content Format, Content that can be contained on a Plate, Content Range that can be contained on a Plate and any combination of any or all of these matters with Registration Use that, subject to any product parameters imposed by the RTA, is, or has been, offered to potential SNP Customers and any Plates that are issued or assigned with such combinations, excluding Charity Plates, Numeral Only Plates, Bike Rack Plates and Regulatory Plates.

SNP Revenue has the meaning given in Schedule 6.

SNP Transaction means any services provided that generate a fee from a SNP Customer.

SOE means Standard Operating Environment.

Specific Dispute means a dispute arising under clause 10.7(d).

Standard Content means the Content of a SNP Product in respect of which a SNP Customer selects the Style only, and where the Content is arbitrarily allocated to the SNP Product in accordance with the available Content list generated by the Concessionaire and within Content Format rules specified by the RTA.

Start Date means the date on which the Concessionaire must commence operating the SNP Business in accordance with clause 7.7.

Style means the colour or design of a Plate excluding Content Format.

Subcontractor means a contractor engaged by the Concessionaire to perform the Concessionaire Services or any part of them.

Subsidiary has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

Target Service Changeover Date in respect of a particular Concessionaire Service means the date specified as such in respect of that Concessionaire Service in the Concessionaire Services Schedule.

Tax means any taxes, levies, imposts, deductions, charges and withholdings assessed, imposed, collected or withheld under any legislation and, in each case, all interest, fines, penalties, charges, fees or other amounts in respect of them.

Teamsite means the enterprise content management software application that is accessible via the RTA intranet.

Tender means any tender process or other activities which the RTA wishes at any time to undertake in relation to the operation of the SNP Business.

Term means the period determined in accordance with clause 9.1.

Termination Date means the date this agreement is terminated under clause 29.6 or clause 30.

Trade Marks means "myPlates" and any other trade marks approved by the RTA as part of a Brand in accordance with clause 24.12.

Unanimous Consent means any decision made, voted, resolved or passed at any time with the consent of:

- (a) in relation to any decision of the Concession Management Committee, all CMC Representatives; or

- (b) in relation to any decision of the Operational Review Committee, all ORC Representatives.

Up Front Licence Fee means Section 32 (1) (a) and (e)

Variation Notice has the meaning given in clause 6.2(a).

Warranty Claim means any Claim by the Concessionaire arising out of a breach of the warranty in clause 41.5.

Warranty Claim Notice has the meaning given in clause 41.6.

Warranty Claim Amount has the meaning given in clause 41.9.

Warranted Materials means the data set out in Annexure E .

2. Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "**includes**" in any form is not a word of limitation;
- (k) a reference to "\$" or "**dollar**" is to Australian currency;

- (l) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not); and
- (m) a reference to a "**month**" is, where that month is the last month to occur in any period, a reference to a period starting on the relevant date in a calendar month and ending on the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the next calendar month, the period will end on the last Business Day in that calendar month.

Schedule 2

SNP Business

The SNP Business is the sale of SNP Products to SNP Customers in Australia and all related marketing, promotional, customer service, maintenance and functions and administrative activities (except those functions and administrative activities carried out by or on behalf of contractors under contracts entered into with the RTA in relation to SNP Products or those functions or administrative activities carried out by the RTA as described in the RTA Services Schedule) including:

- the marketing of SNP Products including market segmentation, targeting and positioning, branding, advertising and public relations;
- product development including new product development and manufacturer liaison;
- sales including promotions and pricing strategy;
- customer service including handling of all customer inquiries and complaints and carrying out transactions in relation to SNP Products and operating the contact centre in relation to SNP Product sales;
- channel management, including the management of Sales Channels and development and management of new Sales Channels;
- distribution management, including having responsibility for all distribution channels other than Registries, liaising with the plate manufacturer or outsourced delivery company in relation to delivery issues and inventory management of SNP Products; and
- administration including content management and product management.

**Schedule 3
Concessionaire Services Schedule**

Schedule 4
RTA Services Schedule

**Schedule 5
Capital Works Schedule**

**Schedule 6
Payments**

Section 32 (1) (b), (c) and (e)

Section 32 (1) (b), (c) and (e)

Section 32 (1) (b), (c) and (e)

Section 32 (1) (b), (c) and (e)

Section 32 (1) (b), (c) and (e)

Section 32 (1) (b), (c) and (e)

Section 32 (1) (b), (c) and (e)

**Schedule 7
Insurances**

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Broad form Public Liability and Product Liability	Public Liability \$20 million Each and every occurrence Product Liability \$20 million Each occurrence and in the aggregate annually	Annually for the duration of the Term plus the duration of any warranty or maintenance periods.	Is with an Approved Insurer; Lists the RTA as an additional named insured; and Includes a cross liability clause in accordance with Note 3 below. Includes a waiver of subrogation clause in accordance with Note 4 below.
Motor Vehicle Comprehensive or Third Party Property Damage	\$20 million For any single occurrence and in the aggregate annually	Annually for the duration of the Term.	Is with an Approved Insurer; and Covers motor vehicles owned or used by the Concessionaire and its Subcontractors directly or indirectly engaged in performance of the Concessionaire Services.
Professional Indemnity	\$10 million Each and every claim and in the aggregate annually	From the Execution Date until the Termination Date plus a further 6 year period following the Termination Date. The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the Execution Date.	Is with an Approved Insurer; A description of the risk covered by the policy; and One automatic restatement per period of insurance.
Workers Compensation	As per the relevant Workers Compensation legislation.	Annually	As per relevant Workers Compensation legislation.
Industrial Special Risks (including Accidental	Full replacement value, and including removal of debris and increased cost of	Annually for the duration of the Term	Is with an Approved Insurer; Lists the RTA as an additional named insured; and

Damage, Burglary, Theft and Transit Insurance) whilst in the care, custody and control of the Concessionaire	working A loss sub-limit of \$200,000 on any single occurrence of burglary or theft		Includes a waiver of subrogation clause in accordance with Note 4 below.
Directors and officers indemnity	\$10 million	Annually	N/A

Notes

1. Where the insurance risk is insured by a insurer which is not an Approved Insurer then a 'fronting' placement is acceptable from an Approved Insurer.
2. All contracts for the Insurances must be governed by the law of the state of New South Wales and the subject to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.
4. A waiver of subrogation clause is where the insurers agree to waive all rights of subrogation that they may have or acquire against the RTA where required to do so under the contract.

Schedule 8 RTA SNP Policies

1. Marketing Guidelines

1.1 General obligation

The Concessionaire acknowledges that the SNP Business is operated in a regulatory environment and accordingly the Concessionaire must, in performing any marketing and advertising activities, comply with the guidelines under clause 1.2 of this Schedule 8 to ensure that any marketing and advertising activities do not damage or potentially damage the reputation of the RTA, or any other associated government authority.

1.2 Guidelines

In accordance with clause 1.1 of this Schedule 8, the Concessionaire must:

- (a) perform any marketing and advertising activities with due regard to the RTA's role and function as a regulatory body and a NSW State Government agency;
- (b) ensure that at each stage of all marketing and advertising, including the development, production and broadcast or dissemination, complies with all relevant Laws;
- (c) ensure that all marketing and advertising are accurate in the presentation of any facts, statistics, and comparisons, and that all statements and claims included in the marketing and advertising are able to be substantiated;
- (d) present, disseminate or broadcast any marketing and advertising in an objective, fair and accessible manner;
- (e) ensure that any marketing and advertising would not be interpreted by a reasonable person as serving any political party interests;
- (f) be sensitive to cultural needs and issues when communicating with people from diverse ethnic or religious backgrounds;
- (g) maintain the highest standards of decency and good taste in the portrayal of gender, sexuality or religious backgrounds;
- (h) consider the relevant communication requirements for persons with disabilities;
- (i) ensure that all marketing and advertising are produced and disseminated or broadcasted by the most appropriate and environmentally responsible manner, taking into consideration the size and location of the target audience;
- (j) ensure that the audience of the relevant marketing and advertising have a convenient means of contacting the Concessionaire for various purposes, including, making complaints and comments, asking questions and requesting further information;
- (k) activities which are expected to drive volumes are conducted outside of planned system maintenance periods so as to ensure there is no negative impact on the RTA (or associated) Brands due to system failure;

- (l) ensure that the underlying message or tone of any marketing and advertising does not conflict with RTA policy; and
- (m) ensure that activities which are expected to drive volumes are conducted outside of planned system maintenance periods to ensure no negative impact on the RTA Brand (or associated Brands) due to system failure.

2. SNP Product price change submission requirement

2.1 General obligation

If the Concessionaire wants to change the price of any SNP Product, including adding or removing an annual fee relating to an existing SNP Product, in accordance with clause 19.4(b), the Concessionaire must prior to implementing the relevant price change, prepare and submit to the RTA for approval a proposal outlining the details under clause 2.2 of this Schedule 8.

2.2 Price change proposal

The Concessionaire must set out the following matters in the proposal under clause 2.1 of this Schedule 8:

- (a) the description and specifications of the SNP Product, including, the name, style, content type and vehicle type of the relevant SNP Product that is the subject of the proposed price change under clause 2.1 of this Schedule 8;
- (b) details of the relevant proposed price change, including the nominal amount of the price change and the percentage price change, and also whether the price change relates to an increase or decrease in the price of relevant SNP Product;
- (c) the rationale for the price change of the relevant SNP Product and any supporting documentation, including:
 - (i) the number of units of that relevant SNP Product sold in the previous 6 Months;
 - (ii) the revenue received by the RTA from the sale of that relevant SNP Product by each Sales Channel in the previous 6 Months;
 - (iii) a forecast of the number of units of that relevant SNP Product that will be sold in the next 6 Months; and
 - (iv) a forecast of the revenue that will be received by the RTA from the sale of that relevant SNP Product by each Sales Channel in the next 6 Months;
- (d) a plan outlining the details of how the Concessionaire will implement the relevant price change; and
- (e) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

2.3 Implementation

If the RTA approves the proposal under clause 2.2 of this Schedule 8, the Concessionaire may implement the relevant price change in relation to the particular SNP Product in accordance with the approved proposal under clause 2.2 of this Schedule 8.

3. Price promotion submission requirement

3.1 General obligation

If the Concessionaire wants to conduct a price promotion with respect to a SNP Product or any combination of SNP Products in accordance with clause 19.5(b), the Concessionaire must prior to implementing the relevant price promotion, prepare and submit to the RTA for approval a proposal outlining the details under clause 3.2 of this Schedule 8.

3.2 Price promotion proposal

The Concessionaire must set out the following matters in the proposal under clause 3.1 of this Schedule 8:

- (a) the description and specifications of the SNP Product or SNP Products, including, the name, style, content type and vehicle type of each of the relevant SNP Products that are the subject of the proposed price promotion under clause 3.1 of this Schedule 8;
- (b) details of the relevant proposed price discount comprising the price promotion, including its proposed duration and the aggregate amount by which the relevant SNP Product or SNP Products is proposed to be discounted in the relevant Quarter and the percentage of total revenue in the relevant preceding Quarter that this discount constitutes;
- (c) details of any other proposed incentives or specials that form part of the relevant price promotion;
- (d) details of any proposed promotional devices and media to be utilised for the price promotion;
- (e) details of any material costs, other than as outlined under clause 3.2(b) of this Schedule 8, likely to be incurred by the Concessionaire or the RTA in connection with the relevant price promotion;
- (f) the rationale for the price promotion with respect to a SNP Product or SNP Products and any supporting documentation, including:
 - (i) the number of units of relevant SNP Product or SNP Products sold in the previous 6 Months;
 - (ii) the revenue received by the RTA from the sale of the relevant SNP Product or SNP Products by each Sales Channel in the previous 6 Months;
 - (iii) a forecast of the number of units of the relevant SNP Product or SNP Products that will be sold in the next 6 Months; and
 - (iv) a forecast of the revenue that will be received by the RTA from the sale of the relevant SNP Product or SNP Products by each Sales Channel in the next 6 Months;
- (g) a plan outlining the details of how the Concessionaire will implement the relevant price promotion;

- (h) a forecast per Registry of the number of units of the SNP Products that will be ordered by the Concessionaire on behalf of Registries to support the promotion of the SNP Product; and
- (i) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

3.3 Implementation

If the RTA approves the proposal under clause 3.2 of this Schedule 8, the Concessionaire may implement the relevant price promotion in relation to the particular SNP Product or SNP Products in accordance with the approved proposal under clause 3.2 of this Schedule 8.

4. New SNP Product development submission requirement

4.1 General obligation

If the Concessionaire has created the concept for and designed a New SNP Product in accordance with the Concessionaire Services Schedule, the Concessionaire must prior to launching the New SNP Product, prepare and submit to the RTA for approval a proposal outlining the details under clause 4.2 of this Schedule 8. A proposal for a proposed New SNP Product will not receive approval if the relevant product does not pass camera testing performed by the RTA in accordance with the RTA Services Schedule.

4.2 New SNP Product development proposal

The Concessionaire must set out the following matters in the proposal under clause 4.1 of this Schedule 8:

- (a) details of the New SNP Product, including the:
 - (i) Plate Category and Plate Style name;
 - (ii) vehicle class; and
 - (iii) proposed Content Format;
- (b) a high quality plate image for the proposed New SNP Product, indicating the colour and style of the proposed New SNP Product;
- (c) details of proposed manufacturing unit costs for the proposed New SNP Product;
- (d) details of the pricing of the proposed New SNP Product, including the:
 - (i) one-off fee; and
 - (ii) annual fee (if any);
- (e) the rationale for the launch of the New SNP Product, including:
 - (i) details of the relevant target market;
 - (ii) a forecast of the number of units of the New SNP Product that will be sold in the next 6 Months; and

- (iii) a forecast of the revenue that will be received by the RTA from the sale of the New SNP Product by each Sales Channel in the next 6 Months;
- (f) a plan outlining the details of how the Concessionaire will launch the New SNP Product and introduce it to the relevant target market, including a forecast per Registry of the number of units of the New SNP Product that will be ordered by the Concessionaire on behalf of Registries for the initial launch of the New SNP Product; and
- (g) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

4.3 Implementation

If the RTA approves the proposal under clause 4.2 of this Schedule 8 and the relevant New SNP Product passes camera testing performed by the RTA in accordance with the RTA Services Schedule, the Concessionaire:

- (a) must liaise with the RTA and ensure that DRIVES is updated with the relevant proposed New SNP Product; and
- (b) once DRIVES has been updated by the RTA in accordance with sub-clause (a) above, may launch the relevant New SNP Product in accordance with the approved proposal under clause 4.2 of this Schedule 8.

5. New Brand submission requirement

5.1 General obligation

If the Concessionaire wants to establish a new Brand, in addition to or in place of the myPlates Brand, to be used in the operation of the SNP Business, including the performance of the Concessionaire Services, the Concessionaire must prior to establishing the new Brand and using it in the operation of the SNP Business, including the performance of the Concessionaire Services, prepare and submit to the RTA for approval a proposal outlining the details under clause 5.2 of this Schedule 8.

5.2 New Brand proposal

The Concessionaire must set out the following matters in the proposal under clause 5.1 of this Schedule 8:

- (a) rationale for the creation of the new Brand;
- (b) market research in support of the new Brand;
- (c) details in relation to the values and connotations associated with the new Brand;
- (d) a copy of the Brand logo and an example of how it looks in-situ;
- (e) a plan outlining the details of how the Concessionaire will establish and implement the relevant new brand in the operation of the SNP Business, including the performance of the Concessionaire Services; and
- (f) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

5.3 Implementation

If the RTA approves the proposal under clause 5.2 of this Schedule 8, the Concessionaire may establish the relevant new Brand to be used in the operation of the SNP Business, including the performance of the Concessionaire Services, in accordance with the approved proposal under clause 5.2 of this Schedule 8.

6. New Sales Channel or Removal of Sales Channel submission requirement

6.1 General obligation

If the Concessionaire wants to establish and implement a new Sales Channel, the Concessionaire must at any time prior to implementing the new Sales Channel, prepare and submit to the RTA for approval a proposal outlining the details under clause 6.2 of this Schedule 8. If the Concessionaire wants to remove an existing Sales Channel, the Concessionaire must prior to removing the existing Sales Channel, prepare and submit to the RTA for approval a proposal outlining the details under clause 6.3 of this Schedule 8.

6.2 New Sales Channel proposal

The Concessionaire must set out the following matters in the proposal under clause 6.1 of this Schedule 8:

- (a) the rationale for the establishment of the new Sales Channel;
- (b) details in relation to the new sales opportunities created by the new Sales Channel;
- (c) details in relation to the relevant markets targeted or accessible by the new Sales Channel;
- (d) a forecast of the number of units of the SNP Products sold through that new Sales Channel in the next 6 Months;
- (e) details of any incentives or contra deal arrangements;
- (f) details of any material costs or savings likely to be incurred or gained by the Concessionaire or the RTA in connection with the new Sales Channel;
- (g) a plan outlining the details of how the Concessionaire will establish and implement the new Sales Channel; and
- (h) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

6.3 Removal of existing Sales Channel proposal

The Concessionaire must set out the following matters in the proposal under clause 6.1 of this Schedule 8:

- (a) the rationale for the removal of the existing Sales Channel;
- (b) a forecast of the number of units of the SNP Products sold through that existing Sales Channel for the last two years on a monthly basis;
- (c) details of any incentives or contra deal arrangements;

- (d) details of any material costs or savings likely to be incurred/gained by the Concessionaire or the RTA in connection with removing the existing Sales Channel;
- (e) a plan outlining the details of how the Concessionaire will remove the existing Sales Channel; and
- (f) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

6.4 Implementation

- (a) If the RTA approves the proposal under clause 6.2 of this Schedule 8, the Concessionaire may establish and implement the new Sales Channel, in accordance with the approved proposal under clause 6.2 of this Schedule 8.
- (b) If the RTA approves the proposal under clause 6.3 of this Schedule 8, the Concessionaire may remove the existing Sales Channel, in accordance with the approved proposal under clause 6.3 of this Schedule 8.

7. New Fulfilment Channel submission requirement

7.1 General obligation

If the Concessionaire wants to establish and implement a new Fulfilment Channel, the Concessionaire must prior to implementing the new Fulfilment Channel, prepare and submit to the RTA for approval a proposal outlining the details under clause 7.2 of this Schedule 8. If the Concessionaire wants to remove an existing Fulfilment Channel, the Concessionaire must prior to removing the existing Fulfilment Channel, prepare and submit to the RTA for approval a proposal outlining the details under clause 7.3 of this Schedule 8.

7.2 New Fulfilment Channel proposal

The Concessionaire must set out the following matters in the proposal under clause 7.1 of this Schedule 8:

- (a) the rationale for the establishment of the new Fulfilment Channel;
- (b) details in relation to the relevant markets targeted or accessible by the new Fulfilment Channel, including the expected impact on existing Fulfilment Channel;
- (c) details of any incentives or contra deal arrangements;
- (d) details of any material costs/savings likely to be incurred/gained by the Concessionaire or the RTA in connection with the new Fulfilment Channel;
- (e) details in relation to Plate security in connection with the new Fulfilment Channel;
- (f) a plan outlining the details of how the Concessionaire will establish and implement the new Fulfilment Channel; and
- (g) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

7.3 Removal of existing Fulfilment Channel proposal

The Concessionaire must set out the following matters in the proposal under clause 7.1 of this Schedule 8:

- (a) the rationale for the removal of the existing Fulfilment Channel;
- (b) a forecast of the number of units of the SNP Products distributed through that existing Fulfilment Channel for the last two years on a monthly basis;
- (c) details of any incentives or contra deal arrangements;
- (d) details of any material costs/savings likely to be incurred/gained by the Concessionaire or the RTA in connection with removing the existing Fulfilment Channel;
- (e) a plan outlining the details of how the Concessionaire will remove the existing Fulfilment Channel; and
- (f) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

7.4 Implementation

- (a) If the RTA approves the proposal under clause 7.2 of this Schedule 8, the Concessionaire may establish and implement the new Fulfilment Channel, in accordance with the approved proposal under clause 7.2 of this Schedule 8.
- (b) If the RTA approves the proposal under clause 7.3 of this Schedule 8, the Concessionaire may remove the existing Fulfilment Channel, in accordance with the approved proposal under clause 7.3 of this Schedule 8.

8. SNP Product name change submission requirement

8.1 General obligation

If the Concessionaire wants to change the name of a SNP Product, the Concessionaire must prior to changing the name of that SNP Product, prepare and submit to the RTA for approval a proposal outlining the details under clause 8.2 of this Schedule 8.

8.2 SNP Product name change proposal

The Concessionaire must set out the following matters in the proposal under clause 8.1 of this Schedule 8:

- (a) details of the relevant SNP Product, including the:
 - (i) Plate Category, Style group and Style name;
 - (ii) vehicle class; and
 - (iii) Content Format;
- (b) the proposed new name of the relevant SNP Product;
- (c) the rationale for the proposed new name of the relevant SNP Product;

- (d) market research in support of the proposed new name of the relevant SNP Product;
- (e) a plan outlining the details of how the Concessionaire will change the name of the relevant SNP Product; and
- (f) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

8.3 Implementation

If the RTA approves the proposal under clause 8.2 of this Schedule 8, the Concessionaire may change the name of the relevant SNP Product, in accordance with the approved proposal under clause 8.2 of this Schedule 8.

9. Creating a New Website

9.1 General obligation

If the Concessionaire wants to create a new SNP website, the Concessionaire must, prior to creating the new website, prepare and submit to the RTA for approval a proposal outlining the details under clause 9.2 of this Schedule 8.

9.2 New SNP Website proposal

The Concessionaire must set out the following matters in the proposal under clause 9.1 of this Schedule 8:

- (a) domain name and Brand;
- (b) website hosting details;
- (c) development and deployment strategy;
- (d) planned integration of RTA FLEX component into the website;
- (e) proposed website key functionalities; and
- (f) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

9.3 Implementation

If the RTA approves the proposal under clause 9.2 of this Schedule 8, the Concessionaire may create a new SNP website, in accordance with the approved proposal under clause 9.2 of this Schedule 8.

10. SNP Product retirement submission requirement

10.1 General obligation

If the Concessionaire wants to Retire a SNP Product, the Concessionaire must prior to Retiring that SNP Product, prepare and submit to the RTA for approval a proposal outlining the details under clause 10.2 of this Schedule 8.

10.2 SNP Product Retirement proposal

The Concessionaire must set out the following matters in the proposal under clause 10.1 of this Schedule 8:

- (a) details of the relevant SNP Product, including the:
 - (i) Plate Category and Style name;
 - (ii) vehicle class; and
 - (iii) Content Format types;
- (b) as at the date of the proposal under clause 10.1 of this Schedule 8, the number of SNP Customers that hold Plates of the relevant SNP Product;
- (c) the number of units of that relevant SNP Product sold in the previous 6 Months;
- (d) the number of restyles and replacements in relation to that relevant SNP Product in the previous 6 Months;
- (e) the rationale for the Retirement of that relevant SNP Product;
- (f) a plan outlining the details of how the Concessionaire will Retire the relevant SNP Product; and
- (g) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

10.3 Implementation

If the RTA approves the proposal under clause 10.2 of this Schedule 8, the Concessionaire may Retire the relevant SNP Product, in accordance with the approved proposal under clause 10.2 of this Schedule 8.

11. Marketing Material Placement Approval Requirements

11.1 General obligation

If the Concessionaire wants to place marketing or advertising materials in a Registry or on the RTA's general website (currently www.rta.nsw.gov.au), the Concessionaire must, prior to placing such materials in the Registry or requesting the RTA to include such materials on the RTA's general website, prepare and submit to the RTA for approval a proposal outlining the details under clause 11.2 of this Schedule 8.

11.2 Collateral proposal

The Concessionaire must set out the following matters in the proposal under clause 11.1 of this Schedule 8:

- (a) details of where the marketing or advertising materials are requested to be placed;
- (b) copies of the artwork and design for the materials that are required to be placed in the Registry or on the RTA's general website (e.g. poster, brochure, images); and

- (c) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

11.3 Implementation

If the RTA approves the proposal under clause 11.2 of this Schedule 8, the Concessionaire may proceed to execute the placement of the materials in Registries or the request for the RTA to include the materials on the RTA's general website, in accordance with the RTA's procedures and the approved proposal under clause 11.2 of this Schedule 8 and, in the case of materials to be included on the RTA's general website, section 4.2.1 of Schedule 4.

12. Content Management Guidelines

12.1 General obligation

The Concessionaire acknowledges that the SNP Business is operated in a regulatory environment and accordingly the Concessionaire must, in performing any Content management activities in respect of Plates in accordance with the Concessionaire Services Schedule, comply with the guidelines under clause 12.2 of this Schedule 8 to ensure that:

- (a) Standard Content is made available for the manufacture of SNP Products;
- (b) there is a review of the Content for General Issue Plates by the Concessionaire, and that any Content the Concessionaire reasonably considers to be valuable is removed and reserved as Personalised Content;
- (c) the Restricted Words Filter is updated; and
- (d) the RTA is able to make Content available for the manufacture of General Issue Plates.

12.2 Guidelines

In accordance with clause 12.1 of this Schedule 8, the Concessionaire must:

- (a) make Standard Content available to the manufacturer of SNP Products when:
 - (i) the manufacturer of SNP Products requests that more Standard Content is made available when it recognises that the available Standard Content list that the Concessionaire previously provided it is becoming low for one or more Plate Categories; and
 - (ii) the Concessionaire recognises at its discretion that the available Standard Content list that the Concessionaire previously provided the manufacturer of SNP Products is becoming low for one or more Plate Categories;
- (b) identify the next range of Standard Content to be released to the manufacturer of SNP Products based on the Content Format for the particular Plate Style;
- (c) prior to providing the manufacturer of SNP Products with the available Standard Content list, manually filter and remove from the available Standard Content list any Inappropriate Content, and any Content the Concessionaire reasonably considers to be valuable to be reserved as Personalised Content;

- (d) upon preparing the filtered available Standard Content list, manually input the relevant filtered available Standard Content into DRIVES;
- (e) communicate the filtered available Standard Content list to the manufacturer of SNP Products in the format agreed by the Concessionaire and the manufacturer of SNP Products;
- (f) in respect of the available Content list for General Issue Plates prepared by the RTA and provided to the Concessionaire, manually or automatically filter and remove from the available Content list for General Issue Plates any Content the Concessionaire reasonably considers to be valuable to be reserved as Personalised Content;
- (g) manage all Personalised Content (other than numeral only);
- (h) together with the RTA, maintain and update the Restricted Words Filter;
- (i) review the Daily Order Report on a daily basis to identify Inappropriate Content and prevent the manufacture of any SNP Products with any Inappropriate Content;
- (j) where a SNP Customer has placed an order for a Personalised Plate, consider all Personalised Content and ensure that a Personalised Plate with Inappropriate Content is not manufactured;
- (k) cancel all SNP Customer orders in relation to Inappropriate Content directly with the manufacturer of SNP Products and inform the SNP Customer of the relevant cancellation; and
- (l) forward all complaints in relation to Content to the RTA, in accordance with the complaint management process as agreed between the parties.

13. Stock Management Guidelines

13.1 General obligation

The Concessionaire acknowledges that the SNP Business is operated in a regulatory environment and accordingly the Concessionaire must, in performing any stock management activities in respect of SNP Products in accordance with the Concessionaire Services Schedule, comply with the guidelines under clause 13.2 of this Schedule 8 to ensure that:

- (a) the Concessionaire can order SNP stock for Registries for Standard Content New SNP Products and promotions;
- (b) the RTA is informed of all stock orders to be placed on behalf of Registries by the Concessionaire; and
- (c) that the management of SNP Product inventory in Registries is monitored.

13.2 Guidelines

In accordance with clause 13.1 of this Schedule 8, the Concessionaire has the right to:

- (a) order SNP Product stock on behalf of Registries from the manufacturer of SNP Products for New SNP Product launches and promotions in accordance with clauses 3 and 4 of this Schedule 8 and the following guidelines:

- (i) a new product or promotion order will be placed based on inventory levels, forecast sales and an understanding of storage capacities at Registries;
 - (ii) the order must be communicated to the RTA in a detailed ordering plan as part of the submission requirements in clauses 3.2 and 4.2 of this Schedule 8;
 - (iii) the RTA will be able to query any order made by the Concessionaire with the manufacturer on behalf of a Registry if it is not in accordance with the communicated ordering volumes;
 - (iv) if the RTA queries an order made by the Concessionaire, the Concessionaire will be required to provide reasons for the difference from the detailed ordering plan;
 - (v) if the order is not able to be accommodated by a particular Registry due to capacity issues, the Concessionaire will be required to cancel the order, or the Registry may return it to the manufacturer of SNP Products; and
- (b) raise any concerns it may have with the Operational Review Committee after monitoring and reviewing the SNP Product inventory levels at Registries.

14. New Payment Channel submission requirement

14.1 General obligation

If the Concessionaire wants to establish and implement a new Payment Channel, the Concessionaire must prior to implementing the new Payment Channel, prepare and submit to the RTA for approval a proposal outlining the details under clause 14.2 of this Schedule 8. If the Concessionaire wants to remove an existing Payment Channel, the Concessionaire must prior to removing the existing Payment Channel, prepare and submit to the RTA for approval a proposal outlining the details under clause 14.3 of this Schedule 8.

14.2 New Payment Channel proposal

The Concessionaire must set out the following matters in the proposal under clause 14.1 of this Schedule 8:

- (a) the rationale for the establishment of the new Payment Channel;
- (b) details in relation to the relevant markets targeted or accessible by the new Payment Channel, including the expected impact on existing Payment Channel;
- (c) details of any incentives or contra deal arrangements;
- (d) details of any material costs/savings likely to be incurred/gained by the Concessionaire or the RTA in connection with the new Payment Channel;
- (e) details in relation to security of payments in connection with the new Payment Channel;
- (f) a plan outlining the details of how the Concessionaire will establish and implement the new Payment Channel; and

- (g) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

14.3 Removal of existing Payment Channel proposal

The Concessionaire must set out the following matters in the proposal under clause 14.1 of this Schedule 8:

- (a) the rationale for the removal of the existing Payment Channel;
- (b) details of any incentives or contra deal arrangements;
- (c) details of any material costs/savings likely to be incurred/gained by the Concessionaire or the RTA in connection with removing the existing Payment Channel;
- (d) a plan outlining the details of how the Concessionaire will remove the existing Payment Channel; and
- (e) any other matters that the RTA, acting reasonably, notifies the Concessionaire must be set out in the proposal.

14.4 Implementation

- (a) If the RTA approves the proposal under clause 14.2 of this Schedule 8, the Concessionaire may establish and implement the new Payment Channel, in accordance with the approved proposal under clause 14.2 of this Schedule 8.
- (b) If the RTA approves the proposal under clause 14.3 of this Schedule 8, the Concessionaire may remove the existing Payment Channel, in accordance with the approved proposal under clause 14.3 of this Schedule 8.

Schedule 9

Key Personnel Roles

The following are the relevant roles for the purposes of clause 21.2:

- (a) The CMC representatives of the Concessionaire;
- (b) The Chief Executive Officer of the Concessionaire;
- (c) The Senior Marketing Manager of the Concessionaire;
- (d) The Sales Manager of the Concessionaire;
- (e) The Finance and Contract Manager of the Concessionaire; and
- (f) any other direct reports to the Chief Executive Officer of the Concessionaire.

Schedule 10

Existing Plate Branding Licences – Sub-licence terms and conditions

Terms and Conditions of the sub-licence to exercise the Existing Plate Branding Property under the merchandising agreement between the RTA and the Australian Rugby Football League Limited and National Rugby League Investments Limited dated 8 February 2008 ("the Merchandising Agreement")

1. RTA grants the Concessionaire a sublicense to:
 - (a) use and incorporate the Property on the Exclusive Licensed Products; and
 - (b) during the Term in the Territory to use and incorporate the Property on the non-exclusive Licensed Products,

to the extent necessary to enable the Concessionaire to undertake or perform for or on behalf of the RTA activities or services associated with the research, design, production, manufacture, product testing, distribution and sale to the public of the Licensed Products for or on behalf of the RTA.
2. The Merchandising Agreement is binding on the Concessionaire as if every reference in the Merchandising Agreement to the "Licensor" is read as a reference to "the RTA" and every reference to "the RTA" in the Merchandising Agreement is read as a reference to the "Concessionaire" other than to the extent specified in item 3 below.
3. Clauses 2, 8, 15.5 and 17 in the Merchandising Agreement are not binding upon the Concessionaire.
4. RTA may terminate this sublicense by notice in writing to the Concessionaire if the Merchandising Agreement or the Concession Agreement is terminated. Clause 9 of the Merchandising Agreement is to be read as if any reference to "termination by the Licensor under clause 8" is a reference to the RTA terminating the sublicense under this item.
5. Words defined in the Merchandising Agreement have the same meaning in this schedule 10.

Terms and Conditions of the sub-licence to exercise the Existing Plate Branding Property under the Trade Mark Licence Agreement between RTA, GM Holden Limited and Premoso Pty Ltd dated 20 May 2010 (the Trade Mark Licence Agreement).

6. RTA grants the Concessionaire a sublicense to:
 - (a) use each of the Licensed Trade Marks;
 - (b) use the Additional Intellectual Property; and
 - (c) exercise the copyright owned by GM Holden under clause 6.1 of the Trade Mark Licence Agreement,

for the purposes and subject to the limitations and terms and conditions specified in the Trade Mark Licence Agreement to the extent necessary to enable the Concessionaire to perform its obligations under this Concession Agreement.
7. The Trade Mark Licence Agreement is binding on the Concessionaire as if every reference in the Trade Mark Licence Agreement to "GM Holden" or "HSV" is read as a reference to "the RTA" and every reference to the "Licensee" in the Trade Mark Licence Agreement is read as a reference to the "Concessionaire" other than to the extent specified in items 10, 11 and 6 below

8. The Concessionaire must ensure that all Related Parties of the Concessionaire comply with the terms and conditions imposed on it under clause 7 of this Schedule 10.
9. Without limiting clause 7 of this Schedule 10, the Concessionaire must and must ensure that any Related Party of the Concessionaire comply with clauses 5, 7.11, 8.1 8.5 and 12.6 of the Trade Mark Licence Agreement.
10. Clauses 14, 16, 16A, 16B and 20 in the Trade Mark Licence Agreement are not binding upon the Concessionaire and clause 13 is deleted.
11. The reference to "any Concessionaire" in clause 8.1 of the Trade Mark Licence Agreement is amended to "any contractors".
12. RTA may terminate this sublicense by notice in writing to the Concessionaire if the Trade Mark Licence Agreement or the Concession Agreement is terminated. Clause 15 of the Trade Mark Licence Agreement is to be read as if any reference to "the termination or expiry of this Agreement" or "on expiry or termination of this Agreement" is a reference to the RTA terminating the sublicense under this item.
13. Words defined in the Trade Mark Licence Agreement have the same meaning in this schedule 10.

**Annexure A
Mobilisation Plan**

Section 32 (1) (d) and (e)

Annexure B
First SNP Business Plan

Section 32 (1) (a) - (e)

Annexure C
Deed of Charge & Deed of Priority

Annexure D Confidentiality Undertaking

Deed Poll of Confidentiality made at _____ **on** _____

in favour of Roads and Traffic Authority of NSW ("**RTA**")

[[name] of [address]] (the "**Covenantor**")

Recitals

- A. The RTA and the [insert name of Concessionaire] (the "**Concessionaire**") entered into the Concession Agreement in respect of the RTA Special Number Plates business ("**Concession Agreement**") dated [].
- B. The Covenantor is a Related Party of the Concessionaire for the purposes of the Concession Agreement and is involved in providing work and services under the Concession Agreement ("**the Work**").
- C. The Material to which the Covenantor will have access for the performance of any part of the Work is confidential.
- D. The RTA will allow the Covenantor access to this Material provided that the Covenantor has entered into this Deed Poll in order to acknowledge the conditions under which access to the Material will be granted.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed Poll, unless the context otherwise requires:

"Information" includes any statement, representation, estimate, prediction, advice, plans, drawings, inventions and ideas that may be:

- (a) oral, written, recorded or stored by electronic, magnetic, electromagnetic, or in other form, process, media or otherwise in a machine readable form; or
- (b) translated from the original form, re-compiled, made into a compilation, partially copied, modified, updated or otherwise altered.

"Material" means all Information disclosed to, received or accessed by the Covenantor at any time in connection with the Work.

"Party" means a party to this Deed Poll.

1.2 Interpretation

In this Deed Poll:

- (a) headings are for convenience only and will not affect the interpretation;

and unless the context indicates a contrary intention:

- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust and Governmental Authority;
- (c) a reference to party includes that party's executors, administrators, successors, permitted substitutes and assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Deed Poll) is to that document as varied, novated, ratified or replaced from time to time;
- (e) words importing the singular will include the plural (and vice versa) and words denoting a given gender will include all other genders;
- (f) where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning; and
- (g) "includes" in any form is not a word of limitation.

2. Confidentiality

- (a) Subject to clauses 2(d) and 2(e), the Covenantor covenants and agrees that:
 - (i) it will hold the Material in strict confidence;
 - (ii) it will only use the Material for the purposes of carrying out the Work and shall not allow any other person access to the Material except, in so far as access is necessary and appropriate, to other persons who have executed a deed poll in the form of this Deed Poll and who require access to the Material for the purposes of the performance of Work;
 - (iii) it will not, except as required to carry out the Work, copy or reproduce the Material (in whole or in part) without the approval of the RTA;
 - (iv) it will take all necessary precautions to prevent unauthorised access to the Material by any other person;
 - (v) it will comply with any security measures in connection with the Material that may reasonably be required by the RTA;
 - (vi) it will not use or appropriate any of the Material for the Covenantor's own benefit or gain for any purpose or in any manner which is, or may prove to be, detrimental to the RTA or which will or may give rise to a conflict of interest with the Covenantor's obligations to the RTA; and
 - (vii) it will notify the RTA upon ceasing to carry out the Work or becoming aware that the Covenantor has accidentally, inadvertently or otherwise breached or is likely to breach this Deed Poll and take all reasonable steps to limit the consequences of such breach and prevent any further disclosure.
- (b) The Covenantor acknowledges that damages may not be a sufficient remedy for the RTA for a breach of this Deed Poll and agrees that:

- (i) without limiting the relief the RTA is entitled to seek, the RTA may seek an injunction against the Covenantor for such breach or threatened breach; and
 - (ii) the Covenantor must not make and must procure that its associates do not make, any submission or contention in any relevant proceeding to the effect that granting an injunction is not appropriate because the payment of damages alone would be adequate to compensate the RTA.
- (c) The Covenantor's obligations under this Deed Poll commence on the date of this Deed Poll and continue, so long as they are relevant, indefinitely, during and after the performance of the Work or following the termination or expiration of the Concession Agreement.
 - (d) The Material shall not be confidential for the purposes of this Deed Poll if it is in the public domain (other than due to a breach of this Deed Poll by the Covenantor).
 - (e) Nothing in this Deed Poll prevents the Covenantor from disclosing Material if disclosure of that Material is required to be made by law.

3. Return of Material

If the RTA requests it or the Covenantor has ceased to carry out Work, the Covenantor must:

- (a) promptly return to the RTA all documents, other physical records and copies of all Material in its possession, custody, power or control that are capable of being delivered to the RTA, including any notes, reports, summaries, memoranda or other documents containing or referring to Material;
- (b) if any Material in the possession, custody power or control of the Covenantor is in a form that cannot be detached from valuable equipment (including, but not limited to, Material stored by electronic, electromagnetic or other means), the Covenantor must delete, erase or otherwise destroy the Material; and
- (c) provide a statutory declaration to the RTA confirming that all those records and any copies have been returned or deleted, erased or otherwise destroyed as appropriate.

4. General

- (a) This Deed Poll is governed by the law of New South Wales.
- (b) Any purported variation of a provision of this Deed Poll shall be ineffective unless in writing and executed by the RTA and the Covenantor.

Executed as a deed poll.

Signed sealed and delivered by ***[Note: Covenantor's name to be inserted.]*** in the presence of:

Signature

Signature of Witness

Name of Witness in full

Annexure E
Warranted Materials

Section 32 (1) (d) and (e)