LBS Variation

Variation of Intergovernmental Agreement in relation to the Management of the Contract for the National Emergency Warning System

between

The State of Victoria

and

The State of New South Wales;
The State of Queensland;
The State of South Australia;
The State of Tasmania;
The Australian Capital Territory;
The Northern Territory of Australia; and
The State of Western Australia.
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Date  
2012  

The State of Victoria  
(Victoria)  

and  

The State of New South Wales;  
The State of Queensland;  
The State of South Australia;  
The State of Tasmania;  
The Australian Capital Territory; and  
The Northern Territory of Australia  
(Participating Jurisdictions)  

and  

The State of Western Australia  
(Western Australia)  

Background  
A. Victoria and the Participating Jurisdictions are parties to the IGA.  
B. The parties wish to update the IGA to reflect various developments in respect of the National Emergency Warning System.  
C. Western Australia wishes to become a party to the IGA on the terms as revised by this Variation.  
D. The parties have agreed to vary or accept the terms of (as the case may be) the IGA as set out in this Variation.
Agreed terms

1. Definitions and Interpretation

1.1 Definitions

In this Variation, unless the context otherwise requires or a contrary intention appears:

Annexure means the annexure to this Variation.

Effective Date means the LBS Acceptance Date as defined in the Telstra NEWS Contract.


Revised IGA means the amended form of the IGA set out in the Annexure.

Telstra NEWS Contract has the meaning given in the Revised IGA.

Variation means this document and any schedules, annexures or attachments to this document.

1.2 Interpretation

In this Variation, unless the context otherwise requires:

(a) a defined word or expression in the IGA has the same meaning in this Variation; and

(b) headings are included for convenience and do not affect the interpretation of this Variation.

2. Effective Date

This Variation takes effect, and the parties are bound by the IGA as varied by this Variation, on and from the Effective Date.

3. Variation

3.1 Revised version of IGA accepted by Participating Jurisdictions

On and from the Effective Date the IGA is varied by replacing the original version of the IGA with the version set out in the Annexure.

3.2 Accession of Western Australia

On and from the Effective Date, Western Australia agrees to become a party to the IGA on the terms set out in the Annexure.

4. Confirmation of Agreement

Except as expressly varied by this Variation, the IGA remains in full force and effect.
5. **Inconsistency**

If there is any conflict between the IGA and this Variation the terms of this Variation prevail.

6. **Confidentiality**

6.1 **Obligations**

The provisions of clause 2.4 of the IGA form part of this Variation (mutatis mutandis).

6.2 **Survival**

This clause 6 survives the termination or expiry of this Variation.

7. **Costs**

Each party shall pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Variation.

8. **General**

8.1 **Counterparts**

This Variation may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
Signing page

Signed for and on behalf of:

The State of Victoria

Name of jurisdiction (print)

by:

in the presence of:

Signature of authorised person

Signature of witness

Name of authorised person (print)

Name of witness (print)

Date:

Signed for and on behalf of:

Name of jurisdiction (print)

by:

in the presence of:

Signature of authorised person

Signature of witness

Name of authorised person (print)

Name of witness (print)

Date: 3.1.13
Annexure

Revised IGA

[attach revised IGA]
INTERGOVERNMENTAL AGREEMENT

INTERGOVERNMENTAL AGREEMENT IN RELATION TO THE MANAGEMENT OF THE CONTRACTS FOR THE NATIONAL EMERGENCY WARNING SYSTEM
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INTERGOVERNMENTAL AGREEMENT IN RELATION TO THE MANAGEMENT OF THE CONTRACTS FOR THE NATIONAL EMERGENCY WARNING SYSTEM

Date of Operation

This Agreement comes into operation on the date on which it has been signed by all Parties.

Parties

This Intergovernmental Agreement is made between the following parties:

The State of Victoria
The State of New South Wales;
The State of Queensland;
The State of South Australia;
The State of Tasmania;
The Australian Capital Territory;
The Northern Territory of Australia; and
The State of Western Australia.

Context

This Agreement is made in the following context:

A. At the 30 April 2009 meeting of the Council of Australian Governments (COAG) it was agreed to take immediate steps to develop a telephone-based national emergency warning system (NEWS) that will enable States and Territories to deliver warnings to landline and mobile telephones based on the billing address of the subscriber and, when technically feasible, based on the last-known location of mobile telephone handsets. This agreement was documented in the National Partnership Agreement.

B. On 12 May 2009 it was agreed that Victoria would lead the procurement and technical processes for NEWS.

C. Telstra Corporation Limited (Telstra) was appointed to establish the NEWS system under a contract with the State of Victoria as lead jurisdiction dated 30 September 2009 (Telstra NEWS Contract) and the NEWS system (V1) commenced operation in December 2009 in respect of messages to landline and mobile telephones based on the billing address of the subscriber.

D. In respect of messages to mobile telephone handsets based on the last-known location of the handset, Victoria has secured a variation of the Telstra NEWS Contract and a new contract with each of Vodafone Hutchison Australia Pty Limited (VHA LBS Contract) and Optus Mobile Pty Ltd (Optus LBS Contract)
for the provision of a 'Location Based Solution' service to each carrier's own subscriber-base (together referred to as the Emergency Alert Contracts).

E. The Commonwealth has entered into an agreement with Intech Solutions Pty Ltd for the design, development, implementation and maintenance of the Location Based Number Store that will be used by the NEWS Contractor under the NEWS Contract and there is a separate intergovernmental agreement addressing this capability.

F. The Parties agree that the effective operation of NEWS requires that all Parties act in good faith and that a cooperative and collaborative approach is adopted and appropriate information exchange takes place.

G. The Parties wish to record their agreement as to the arrangements which will apply to govern the management of the Emergency Alert Contracts, including through changes to this Agreement effected by the LBS Variation, effective on and from the LBS Acceptance Date.

H. The purpose of this Agreement is to set out the agreed management arrangements for the Emergency Alert Contracts.

Operative provisions

The Parties agree as follows:

1. Interpretation

1.1. Definitions

1.1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement</td>
<td>means this intergovernmental agreement.</td>
</tr>
<tr>
<td>Budget Sector</td>
<td>means each Victorian Government department (as defined in section 3 of the Financial Management Act 1994 (Vic), as amended from time to time).</td>
</tr>
<tr>
<td>Carriers</td>
<td>means Telstra, VHA and Optus.</td>
</tr>
<tr>
<td>COAG</td>
<td>means the Council of Australian Governments.</td>
</tr>
<tr>
<td>Commonwealth</td>
<td>means the Commonwealth of Australia.</td>
</tr>
<tr>
<td>Contract Management Fee</td>
<td>means the costs of Victoria in administering the Emergency Alert Contracts as set out in Schedule 3.</td>
</tr>
<tr>
<td>Contract Management Oversight Committee (CMOC)</td>
<td>means the committee comprising representatives of Victoria, New South Wales, Queensland, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory of Australia established to oversight the management of the Emergency Alert Contracts pursuant to clause 3.1 of this Agreement.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Department Contract Authority</td>
<td>means the 'Department Contract Authority' as defined in the Emergency Alert Contracts.</td>
</tr>
<tr>
<td>Emergency Alert Contracts</td>
<td>means the Telstra NEWS Contract, the VHA LBS Contract and the Optus LBS Contract.</td>
</tr>
<tr>
<td>Establishment Costs</td>
<td>means the costs for the initial set up of NEWS including for software development and the provision of all necessary supporting items.</td>
</tr>
<tr>
<td>Facility Charge</td>
<td>means the annual cost charged by Carriers under their respective contracts for the operation and maintenance of NEWS, including training, 24/7 service desk, support and all other ongoing contractual obligations.</td>
</tr>
<tr>
<td>Incident Charge</td>
<td>means the applicable Incident Rate multiplied by the number of warning messages sent by a Party through NEWS during the period of an emergency incident.</td>
</tr>
<tr>
<td>Incident Rate</td>
<td>means the rate charged by Carriers under their respective contracts for each voice or text message sent by a Party to an individual device (fixed line or mobile phone) through NEWS during an emergency event.</td>
</tr>
<tr>
<td>LBS Acceptance Date</td>
<td>means the &quot;LBS Acceptance Date&quot; as defined in the Telstra NEWS Contract.</td>
</tr>
<tr>
<td>LBS Project Agreement</td>
<td>means the Project Agreement for the Location-Based Solution - National Telephone-Based Emergency Warning Capability between the Commonwealth and Victoria dated 13 June 2012.</td>
</tr>
<tr>
<td>LBS Variation</td>
<td>means the variation of this agreement effected by the variation instrument executed by the Parties on or about [9 November 2012].</td>
</tr>
<tr>
<td>National Partnership Agreement</td>
<td>means the National Partnership Agreement on the Development of a Telephone-Based National Emergency Warning System between the Commonwealth of Australia and the Parties dated on or about 28 November 2009.</td>
</tr>
<tr>
<td>NEWS</td>
<td>means the National Emergency Warning System solution that is provided by the Carriers under the Emergency Alert Contracts, known as &quot;Emergency Alert&quot;.</td>
</tr>
<tr>
<td>Nomination Form</td>
<td>means the 'Nomination Form' as defined in each of the Emergency Alert Contracts.</td>
</tr>
<tr>
<td>Optus</td>
<td>means Optus Mobile Pty Ltd ABN 65 054 365 696.</td>
</tr>
</tbody>
</table>
Optus LBS Contract | means the State Purchase Contract entered into by Victoria with Optus on 21 September 2012 for the National Emergency Warning System, a copy of which is attached at Schedule 1, as may be amended from time to time.
---|---
Participating Jurisdictions | means all of the Parties aside from Victoria.
---|---
Parties | means the parties to this Agreement.
---|---
Solution Requirements | means the 'Solution Requirements' as defined in each of the Emergency Alert Contracts.
---|---
Telstra | means Telstra Corporation Limited ABN 33 051 775 556.
---|---
Telstra NEWS Contract | means the State Purchase Contract entered into by Victoria with Telstra on 30 September 2009 for the National Emergency Warning System (as amended up to and including the date of this Agreement), a copy of which is attached at Schedule 1, as may be amended from time to time.
---|---
VHA | means Vodafone Hutchison Australia Pty Limited ABN 76 096 304 620.
---|---
VHA LBS Contract | means the State Purchase Contract entered into by Victoria with VHA on 3 September 2012 for the National Emergency Warning System, a copy of which is attached at Schedule 1, as may be amended from time to time.
---|---
Victoria | means the State of Victoria.

1.1.2. Any term that is used in this Agreement but which is not set out in clause 1.1.1 will have the meaning given to that term in the Emergency Alert Contracts.

2. Acknowledgements

2.1. Victoria as lead Jurisdiction

2.1.1. The Participating Jurisdictions acknowledge that Victoria is the Party that is contracting with the Carriers. As a result, Victoria will have primary day to day contract management responsibility for the Emergency Alert Contracts in accordance with this Agreement.

2.1.2. The Participating Jurisdictions also acknowledge that in order for Victoria to meet its contractual obligations under the Emergency Alert Contracts it is reliant upon the Participating Jurisdictions to fully comply with and meet their obligations to Victoria as set out in this Agreement.
2.1.3. The Parties acknowledge the importance of this Agreement and confirm their intention to comply with its terms. However, this Agreement is not, and is not intended to be, legally binding and enforceable.

2.1.4. The Parties acknowledge that the Emergency Alert Contracts may be contract managed by one or more Victorian government departments. Accordingly, to the extent it is not otherwise specified in this Agreement, Victoria will notify each Participating Jurisdiction of the details of who Victoria's representative will be for the purpose of exercising or fulfilling certain of its rights and obligations under this Agreement.

2.1.5. Subject to clause 2.1.6, whilst Victoria will, through the CMOC, use its reasonable endeavours to consult in good faith with other Participating Jurisdictions before taking any action under the Emergency Alert Contracts, the Parties agree that Victoria may however exercise its contract management responsibilities with respect to such matters as it deems appropriate.

2.1.6. Victoria agrees that, in its role as contract manager for NEWS, it is required to act in the interests of not only itself but of all the Parties to the extent provided for under this Agreement.

2.2. Compliance with Emergency Alert Contracts

2.2.1. Each Participating Jurisdiction confirms that it has read, fully understood, agrees and will comply with the arrangements for the provision of NEWS as set out in the Emergency Alert Contracts including, but not limited to, the description of the Solution Requirements, the agreed service levels and the provision of the Solution (as such concepts are defined in the Emergency Alert Contracts), the Carriers' proposed recommended user guidelines, the caps on liability and restrictions on indemnification, the proposed fees, contract duration and termination rights.

2.2.2. Each Participating Jurisdiction acknowledges that it will manage and take responsibility for all entities (including non Crown bodies) within its jurisdiction that require access to and use of NEWS.

2.3. Nomination of Participating Jurisdictions

2.3.1. Immediately following execution of this Agreement each Participating Jurisdiction will complete a Nomination Form and submit this form to Victoria without delay. Victoria will notify each Participating Jurisdiction of the details of who its representative will be for receipt of these Nomination Forms.

2.3.2. Each Participating Jurisdiction acknowledges that in completing a Nomination Form, (a) they will provide Carriers with a specific acknowledgement agreeing to be bound by the specific caps on the Carriers' liability as described in clause 6 of this Agreement; and (b) that specification of jurisdiction specific NEWS requirements will be limited to the subject matter listed in the Nomination Form, namely:

a. applicable laws;
b. applicable policies, procedures, rules, regulations and standards of conduct;

c. confidentiality requirements;

d. listing of installation sites and delivery dates;

e. user acceptance testing requirements;

f. training needs; and

g. licensing arrangements for access to jurisdiction specific intellectual property.

2.3.3. Following receipt of a complete Nomination Form from each Participating Jurisdiction, Victoria will nominate each of the Participating Jurisdictions as a Nominated Third Party pursuant to the Emergency Alert Contracts.

2.3.4. Each Party is responsible for ensuring that its use of NEWS complies with all applicable legislative requirements, jurisdiction specific operational requirements and protocols, the Carriers' recommended use guidelines, and all applicable national operational protocols.

2.4. Confidentiality of this Agreement

2.4.1. Unless disclosure by a Participating Jurisdiction is required in order to comply with an applicable State or Territory policy or legislative requirement, the Parties agree to keep the terms of this Agreement confidential and to not provide any details of this Agreement to any third party without the prior consent of the other Parties. Such consent is not to be unreasonably withheld.

2.4.2. The Parties agree that it would prejudice their commercial interests for this Agreement to be made available to the Carriers.

3. Governance

3.1. Establishment of Contract Management Oversight Committee (CMOC)

3.1.1. The Parties will establish a Contract Management Oversight Committee.

3.1.2. The CMOC will be comprised of:

a. a representative and one observer from each of the Participating Jurisdictions; and

b. two representatives and one observer from the Victorian Government.

3.1.3. One Victorian representative will be the Chair of the CMOC.

3.1.4. Victoria and each Participating Jurisdiction may, in addition to their nominated representatives and observers, also nominate an alternate representative and/or observer who may then attend meetings of the CMOC when the originally nominated representative/observer is unavailable to attend.
3.2. Role of Contract Management Oversight Committee

3.2.1. The CMOC will be responsible for the high level monitoring of Victoria's oversight of the supply, management and operational performance arrangements of the Carriers in accordance with the provisions of the Emergency Alert Contracts so as to ensure that NEWS meets the requirements as defined in the Emergency Alert Contracts for the effective operation of NEWS. It will also provide a forum for key decision making and information sharing.

3.3. Procedures for the Contract Management Oversight Committee

3.3.1. The CMOC will meet from time to time as required and will comply with the procedures set out in Schedule 2.

3.4. Information Sharing

3.4.1. Participating Jurisdictions may request the Department Contract Authority in writing to provide information in relation to the Emergency Alert Contracts. The Department Contract Authority will provide the requested information unless there are reasonable grounds for the information to be withheld.

3.5. Governance resource requirements

3.5.1. Victoria will arrange for appropriate resources for the management of the Emergency Alert Contracts. These include:

a. Contract management,

b. Operational management; and

c. Systems Controller,

with particulars of these activities set out in Schedule 2.

3.6. Participating Jurisdiction representatives

3.6.1. Each Participating Jurisdiction acknowledges that its representatives on the CMOC will be the sole point of contact for the purposes of this Agreement.

4. Licensing Arrangements

4.1. Telstra

4.1.1. Pursuant to clauses 4.8, 4.12, 4.14 and 20.1 of the Telstra NEWS Contract, Victoria grants to each other Party a sub-licence, on the same terms as the licence granted to Victoria under and subject to any restrictions set out in the Telstra NEWS Contract.

4.2. VHA

4.2.1. Pursuant to clause 4.1.4 of the VHA LBS Contract, Victoria grants to each other Party a sub-licence, on the same terms as the licence granted to Victoria under and subject to any restrictions set out in the VHA LBS Contract.
4.3. Optus

4.3.1. Pursuant to clause 4.1.5 of the Optus LBS Contract, Victoria grants to each other Party a sub-licence, on the same terms as the licence granted to Victoria under and subject to any restrictions set out in the Optus LBS Contract.

5. Financial arrangements

5.1. Payment of Emergency Alert Contracts administration costs

5.1.1. Each Party will bear its own costs of participation in the CMOC and in respect of this Agreement.

5.1.2. In recognition of the fulfilment by Victoria of its obligations under the Emergency Alert Contracts, and the provision by Victoria of administrative support for the CMOC including the management of billing arrangements under the Emergency Alert Contracts, upon execution of this Agreement and annually thereafter, each Participating Jurisdiction agrees to pay to Victoria a Contract Management Fee as set out at Schedule 3 to this Agreement.

5.1.3. The Contract Management Fee will be reviewed annually by the CMOC and may be then adjusted to reflect actual cost movements.

5.1.4. Prior to implementing any adjustment to the Contract Management Fee, Victoria will provide information supporting the adjustment to the other Participating Jurisdictions for their consideration. If a Participating Jurisdiction objects to the adjustment proposed it may notify a dispute in which event the matter will then be resolved in accordance with the dispute resolution procedures set out in clause 13.

5.2. Payment of Fees under the Emergency Alert Contracts

5.2.1. In accordance with the Emergency Alert Contracts, Victoria will receive consolidated invoices from the Carriers for Facility Charges setting out the costs associated with providing access to NEWS and ongoing support arrangements for each Party. Pursuant to the Emergency Alert Contracts, Victoria will pay the Carriers following receipt of a correctly rendered invoice. Victoria will send a corresponding invoice to each Participating Jurisdiction based on the financial distribution set out in Schedule 3, specifying the particulars of the Participating Jurisdiction's contribution as calculated by reference to the population model. Each Participating Jurisdiction will pay the relevant amount to Victoria within 30 days.

Payment of Establishment Costs

5.2.2. The Parties acknowledge that the funding for the Establishment Costs will be provided jointly by the Commonwealth and Victoria as set out in the National Partnership Agreement and the LBS Project Agreement and that accordingly no Participating Jurisdiction will be obliged to contribute towards these Establishment Costs.
Payment of Facility Charges and Location Based Number Store (LBNS) Access Charges

5.2.3. Each Participating Jurisdiction agrees that it will pay its share of the Facility Charges and Location Based Number Store Access Charges (if any) together with an amount equal to the amount of Goods and Services Tax (GST) which Victoria is obliged to pay (and cannot otherwise recover by way of input tax credit) in respect of their share of the Facility Charges as set out in Schedule 3 promptly on receipt of an invoice from Victoria.

5.2.4. The Parties acknowledge that it is not currently expected that Telstra (as the EA System service provider as defined in the Telstra NEWS Contract) will be obliged to pay for access to the Location Based Number Store but in the event this occurs, Victoria will be obliged to refund these charges to Telstra in which event the Participating Jurisdictions will then become obliged to pay the Location Based Number Store Access Charges as provided for and in accordance with clause 5.2.3.

Payment of Incident Charges

5.2.5. In accordance with the Emergency Alert Contracts, Victoria will receive invoices from the Carriers for Incident Charges setting out the costs associated with each Party's use of NEWS in respect of an emergency incident. Pursuant to the Emergency Alert Contracts, Victoria will pay invoices from the Carriers following receipt of a correctly rendered invoice. Victoria will send a corresponding invoice to the relevant Participating Jurisdiction, specifying the particulars of the Participating Jurisdiction's use of NEWS (including a detailed breakdown of charges). Each Participating Jurisdiction will promptly pay the relevant amount to Victoria.

5.3. Additional payments under the Emergency Alert Contracts

5.3.1. Where, in accordance with the Emergency Alert Contracts (and/or as a result of other agreed arrangements between Victoria and the Participating Jurisdictions relating to the operation of NEWS), Victoria is required to make additional payments above and beyond those payments which are set out in Schedule 3, each Party agrees to contribute an amount for these additional payments that is equivalent (as a percentage) to their share of the Facility Charges, except where the CMOC unanimously determines otherwise.

5.4. Failure to pay in accordance with this clause 5

5.4.1. Each Participating Jurisdiction acknowledges that:

a. as Victoria is the Party contracting with the Carriers, Victoria is legally liable to make payment to the Carriers in accordance with the Emergency Alert Contracts;

b. a failure by the Participating Jurisdiction to make payments as required in this clause 5 could lead to Victoria defaulting on its obligations under the Emergency Alert Contracts, and
c. as a result it is of critical importance to ensure that all payments under this Agreement are made on or before the date required in this clause 5.

5.4.2. Any disputes relating to payments under this Agreement will be dealt with under clause 13.

6. **Emergency Alert Contract Indemnities**

6.1. **Carrier indemnities**

6.1.1. The Parties acknowledge that clause 27.1 of the Telstra NEWS Contract provides that subject to certain agreed exclusions and limitations, Telstra indemnifies Victoria and the Participating Jurisdictions as Nominated Third Parties and that Victoria holds the benefit of these indemnities on trust for each Participating Jurisdiction.

6.1.2. The Parties acknowledge that clause 28.1 of the VHA LBS Contract provides that subject to certain agreed exclusions and limitations, VHA indemnifies Victoria and the Participating Jurisdictions as Nominated Third Parties and that Victoria holds the benefit of these indemnities on trust for each Participating Jurisdiction.

6.1.3. The Parties acknowledge that clause 28.1 of the Optus LBS Contract provides that subject to certain agreed exclusions and limitations, Optus indemnifies Victoria and the Participating Jurisdictions as Nominated Third Parties and that Victoria holds the benefit of these indemnities on trust for each Participating Jurisdiction.

6.2. **Enforcement of indemnities**

6.2.1. The Parties further acknowledge that, under the Emergency Alert Contracts, Victoria can seek to enforce the indemnities referred to in clause 6.1 for itself and/or as trustee for each Participating Jurisdiction and that Victoria can authorise a Participating Jurisdiction to act on its behalf in enforcing these indemnities.

6.2.2. The Parties agree that in exercising their legal rights against the Carriers in reliance on these indemnities no action will be taken until the prior approval of the Department Contract Authority has first been obtained.

6.2.3. In seeking the approval of the Department Contract Authority, the Party concerned must provide to the Department Contract Authority:

a. details of the claim it seeks to be indemnified for including the factual circumstances which gave rise to the claim and the monetary quantum of the claim;

b. a copy of legal advice endorsed by that Party's Attorney-General as to the merits of the claim (which advice must be kept strictly confidential by the other Parties and must not otherwise be dealt with in any manner that would result in a loss of legal privilege);
c. an assessment of the likely impact on the other Parties if the claim is made;
   and

d. such other information as the Department Contract Authority may
   reasonably require in order to assist the Department Contract Authority to
   determine whether or not to give its approval.

6.2.4. In considering whether or not to give approval to a Party to the enforcement of
the indemnities against the Carriers under the Emergency Alert Contracts, the
Department Contract Authority must have regard to:

a. the information provided by the requesting Party;

b. the impact of the proposed enforcement of these indemnities on the rights
   and liabilities of Victoria under the Emergency Alert Contracts; and

c. any legal advice obtained by Victoria relating to the exercise of these rights.

6.2.5. The Department Contract Authority will on request provide to the relevant Party
a copy of any legal advice obtained by Victoria as set out in clause 6.2.4.c
(which advice must be kept strictly confidential by the other Party and must not
otherwise be dealt with in any manner that would result in a loss of legal
privilege).

6.2.6. Where the Department Contract Authority has not approved the enforcement of
indemnities against the Carriers under the Emergency Alert Contracts by a
Party, the Party concerned agrees not to seek to enforce these rights of
indemnification unless and until it has subsequently obtained approval to do so
as a result of the dispute resolution process set out in clause 13.

6.2.7. Any Participating Jurisdiction which is authorised by the Department Contract
Authority to take action to enforce the indemnities under the Emergency Alert
Contracts agrees to co-operate fully with Victoria in enforcing the indemnities
including providing Victoria with regular updates on the progress of the
enforcement action.

6.3. Liability caps

6.3.1. The Parties further acknowledge that, under clause 28 of the Telstra NEWS
Contract, the liability of Telstra is capped and that as a result the Parties agree
to be bound by and limit any recovery action they may take against Telstra to
claims for amounts which are only up to the agreed caps.

6.3.2. The Parties further acknowledge that, under clause 29 of the VHA LBS
Contract, the liability of VHA is capped and that as a result the Parties agree to
be bound by and limit any recovery action they may take against VHA to claims
for amounts which are only up to the agreed caps.

6.3.3. The Parties further acknowledge that, under clause 29 of the Optus LBS
Contract, the liability of Optus is capped and that as a result the Parties agree to
be bound by and limit any recovery action they may take against Optus to
claims for amounts which are only up to the agreed caps.
5 November 2012

7. **Official Orders for Project Services**

7.1.1. Where a Participating Jurisdiction intends to place an Official Order with a Carrier for Project Services under an Emergency Alert Contract, it must first notify the Department Contract Authority of its intention and provide details of the Project Services that are to be sought.

7.1.2. If in the reasonable opinion of the Department Contract Authority the Official Order for Project Services would impact on any other Party to this Agreement or would increase the costs to any other Party with respect to the Emergency Alert Contracts, the Official Order must be approved by the Department Contract Authority in writing, and Participating Jurisdictions agree that they will not proceed with any Official Order subject to this clause 7.1.2 without first receiving such approval in writing.

8. **Variation of Agreement**

8.1.1. Subject to Schedule 2, this Agreement can only be varied with the written agreement of all Parties.

9. **Withdrawal of a Party**

9.1.1. Should any Participating Jurisdiction wish to withdraw from this Agreement and from its involvement in NEWS prior to the expiry of the Emergency Alert Contracts (but excluding for this purpose any option to renew the Emergency Alert Contracts which may be exercised), it must first seek approval for its withdrawal from the CMOC.

9.1.2. Subject to Clause 9.1.3, any decision by the CMOC to approve the withdrawal of a Participating Jurisdiction must be unanimous. Any decision by the CMOC to approve the withdrawal may be subject to any conditions that are agreed by CMOC.

9.1.3. Failing unanimous agreement being reached, the Participating Jurisdiction concerned agrees not to withdraw from this Agreement and NEWS until expiry of the current term of the Emergency Alert Contracts (but excluding for this purpose any option to renew the Emergency Alert Contracts which may be exercised).

9.1.4. A Participating Jurisdiction may withdraw from this Agreement and from its involvement in NEWS on expiration of the initial term or following the expiry of any option to extend the term of the Emergency Alert Contracts without the approval or consent of any other Party.

9.1.5. If a Party withdraws by consent from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

10. **Accession of the Commonwealth**

10.1.1. If, after the commencement date of this Agreement, the Commonwealth wishes to join the Agreement, the CMOC will meet with the Commonwealth regarding its accession to the Agreement.
If the Commonwealth agrees to sign up to this Agreement Victoria will arrange for any necessary amendments to the Emergency Alert Contracts and this Agreement to be made to allow for its accession.

Termination

This Agreement will continue to have effect unless:

a. it is replaced by a new Agreement between all Parties; or

b. it is terminated by agreement by all Parties.

Execution of this Agreement

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement between the Parties.

Dispute resolution

A Party may give notice to another Party of a dispute under this Agreement.

Officials of the relevant Parties will attempt to resolve any dispute in the first instance.

If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers and if necessary, the relevant Standing Council.

If a dispute cannot be resolved by the relevant Ministers, it may be referred by a Party to COAG for consideration.
5 November 2012

Signatures

Signed for and on behalf of:

The State of Victoria

Name of jurisdiction (print)

by:

Signature of authorised person

in the presence of:

Signature of witness

Name of authorised person (print)

Name of witness (print)

Date: ____________

Signed for and on behalf of:

Name of jurisdiction (print)

by: 

Signature of authorised person

in the presence of:

Signature of witness

Name of authorised person (print)

Name of witness (print)

Date: ____________
SCHEDULE 1 EMERGENCY ALERT CONTRACTS

Telstra NEWS Contract

VHA LBS Contract
Attach: The National Emergency Warning System State Purchase Contract for the Vodafone Hutchison Australia Location Based Solution, executed 3 September 2012.

Optus LBS Contract
Attach: The National Emergency Warning System State Purchase Contract for the Optus Mobile Pty Ltd Location Based Solution, executed 21 September 2012.
SCHEDULE 2 GOVERNANCE

A. Contract Management Oversight Committee

A.1. CMOC Operation

A.1.1. This Schedule 2 Section A sets out the procedures for operation of the CMOC and is intended as a guide to the expectations of the Parties for the operation of the CMOC.

A.1.2. This Schedule 2 Section A may be changed by agreement of the Parties through their CMOC representatives.

A.2. CMOC Procedures

A.2.1. The CMOC will hold its first meeting within three months of execution of the Telstra NEWS Contract by Victoria. Thereafter the CMOC will meet once each quarter throughout the duration of the term of the Emergency Alert Contracts. All meetings of the CMOC will be held at a time and at a venue nominated by Victoria.

A.2.2. Participation in meetings of the CMOC may, subject to the agreement of all Parties, be either in person or by way of teleconference or video conference.

A.2.3. Victoria may on its own volition, or upon receipt of a request from a Participating Jurisdiction, convene other meetings of the CMOC as and when necessary. Victoria agrees that, upon receipt of a written request from a Participating Jurisdiction, it will convene a meeting of the CMOC as soon as is reasonably practicable.

A.2.4. Victoria will provide secretariat support for the CMOC. The CMOC Secretariat will circulate to all Participating Jurisdictions an agenda for each scheduled meeting of the CMOC.

A.2.5. Participating Jurisdictions may nominate matters for inclusion in the agenda by contacting the CMOC Secretariat. If a matter has for some reason not been included in the agenda it may nevertheless still be raised at a meeting of the CMOC with the consent of the Committee’s Chair (which consent must not be unreasonably withheld).

A.2.6. After each meeting of the CMOC, the CMOC Secretariat will circulate to each Participating Jurisdiction a copy of the meeting minutes for review and confirmation. Each Participating Jurisdiction will be considered to have provided sign off on these minutes unless advice to the contrary is received by the CMOC Secretariat. Nothing in this clause however precludes a member of the CMOC raising matters covered in the minutes at the next CMOC meeting.

A.3. CMOC decisions

A.3.1. Victoria and each Participating Jurisdiction may only exercise one vote each on the CMOC regardless of the number of representatives they may have on the CMOC or attending CMOC meetings.
A.3.2. The members of the CMOC will use their best endeavours to seek to resolve or minimise issues and risks in a collaborative and cooperative manner.

A.3.3. CMOC decisions must be supported by a special majority of CMOC members comprising at least 5 members of the CMOC including Victoria.

A.3.4. Under this Agreement, if any member is not present and voting or specifically chooses to abstain from voting on any unanimous CMOC decision, the member concerned will, for the purposes of this Agreement, be then deemed to have voted in favour of that decision.

A.3.5. Failing a decision being taken by the CMOC, or the matter being otherwise resolved via the dispute resolution process set out in clause 13, no contract management action relating to the matter concerned will be taken by Victoria unless this has the effect of exposing Victoria to a breach of contract or some other form of contractual liability arising out of the Emergency Alert Contracts in which event, Participating Jurisdictions agree that Victoria will then be entitled to act as it deems appropriate to avoid or mitigate its liability having due regard however to the views of the majority of the Participating Jurisdictions. Where Victoria takes any such action in accordance with the provisions of this clause it will, on request, provide its reasons for doing so to Participating Jurisdictions.

B. Contract management activities of Victoria

B.1. Contract management

B.1.1. Victoria will arrange for the carrying out of the following CMOC administration activities, as necessary:

a. Organising meeting times, agenda, papers etc for CMOC
b. Chairing CMOC meetings
c. Follow up on any CMOC actions (escalations, activities etc)

B.1.2. Victoria will arrange for the carrying out of the following contract management activities, as necessary:

a. Implementation of the Emergency Alert Contracts across national scope
b. Development and execution of a category management plan for the Emergency Alert Contracts
c. Identification and execution of continuous improvement initiatives as agreed by CMOC
d. Development and execution of annual communication plan of engagement with supplier and stakeholders
e. Contract issue identification and management
f. Opportunity analysis for contract extension, expiration activity
g. Management of Participating Jurisdiction process
5 November 2012

h. Management of contract variations and Official Orders
i. Review of contractual obligations and associated processes

B.2. Operational Management

B.2.1. Victoria will arrange for the carrying out of the following operations management activities, as necessary:

a. Authorisation of special service requests
b. Managing communication to Users regarding EA specific outages, issues, planned changes, incidents
c. Manage administration processes and updates to Customer Support Plan including: standard forms, Agency Authoriser lists, non standard reports,
d. Public enquiry management and follow up
e. Stakeholder management
f. Evaluations and reviews
g. Co-ordination of technology roadmap and business case development
h. Financial budgeting, payments and jurisdictional invoicing
i. Risk and issue management
j. Documentation management
k. Change control
l. Analysis of EA usage and historical data updating

B.3. Systems Control

B.3.1. Victoria will appoint a Systems Controller to interface with the Carriers on technical matters and matters relating to system incident occurrences, reporting and resolution, including:

a. Approval of system changes, incidents, planned and unplanned outages,
b. Review and authorisation of non standard requests,
c. Approval of all EA Change Requests,
d. Escalation point for customer "EA functionality" issues, and
e. Oversight/monitoring of system performance where required.

C. Contract Management Report

C.1.1. Prior to each scheduled meeting of the CMOC, the Department Contract Authority will prepare and circulate to all Participating Jurisdictions a NEWS Contract Management Report which will broadly cover the following information:
5 November 2012

a. A summary of activities related to contract management, operations management and systems control since the last report to the CMOC

b. Issues for resolution by the CMOC

c. Guidance sought from the CMOC.

d. EA/LBS system performance and usage.
SCHEDULE 3 FEES

A. Contract Management Fee

The Contract Management Fee in respect of the contract management activities of Victoria set out in Sections B & C of Schedule 2 is as follows:

A.1. Contract management

A.1.1. $150,000 (ex GST) p.a., adjusted annually in accordance with CPI (All Groups CPI for Melbourne) (equivalent to one full time equivalent), with review of this resourcing required annually.

A.2. Operational Management

A.2.1. $150,000 (ex GST) p.a., adjusted annually in accordance with CPI (All Groups CPI for Melbourne) (equivalent to one full time equivalent), with review of this resourcing required annually.

A.3. Systems Control

A.3.1. $50,000 (ex GST) p.a., adjusted annually in accordance with CPI (All Groups CPI for Melbourne) (part-time role, equivalent to approximately 0.5 full time equivalent), with review of this resourcing required annually.

B. Apportionment of fees amongst the Parties

Each Party will be responsible for meeting the percentage of:

(a) the Contract Management Fee;

(b) the Facility Charges; and

(c) the LBNS Access Charges (if any),

under the Emergency Alert Contracts which equates to the percentage of the Australian population which the population in their State or Territory (as applicable) bears to the overall total Australian population as calculated in accordance with the following table:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Population '000</th>
<th>% of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>7,272.8</td>
<td>32.19%</td>
</tr>
<tr>
<td>Victoria</td>
<td>5,603.1</td>
<td>24.80%</td>
</tr>
<tr>
<td>Queensland</td>
<td>4,537.7</td>
<td>20.08%</td>
</tr>
<tr>
<td>South Australia</td>
<td>1,650.6</td>
<td>7.31%</td>
</tr>
</tbody>
</table>
5 November 2012

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Australia</td>
<td>2,410.6</td>
<td>10.67%</td>
</tr>
<tr>
<td>Tasmania</td>
<td>512.1</td>
<td>2.27%</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>233.3</td>
<td>1.03%</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>373.1</td>
<td>1.65%</td>
</tr>
<tr>
<td>Australia</td>
<td>22,693.3</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

C. Incident Charges

As set out in Schedule 2 of the Emergency Alert Contracts