

THE RECOGNITION OF JOINT ACCESS TO
INTERPROVINCIAL CHARTER BUS MARKETS

- MEMORANDUM OF UNDERSTANDING -

BETWEEN

THE GOVERNMENTS OF BRITISH COLUMBIA AND ALBERTA

THIS MEMORANDUM made as of the 28th day of April, 2006.

BETWEEN:

THE GOVERNMENT OF BRITISH COLUMBIA
as represented by the Minister of Transportation of British Columbia
(hereinafter called "British Columbia")

- and -

THE GOVERNMENT OF ALBERTA
as represented by the Minister of Infrastructure and Transportation of Alberta
(hereinafter called "Alberta")

RECITALS

WHEREAS by this Memorandum of Understanding ("MOU") the Governments of Alberta and British Columbia (hereinafter collectively referred to as "the Provinces") acknowledge that, consistent with the National Transportation Policy as set out in section 5 of the federal *Canada Transportation Act* [1996, c.10] ("CTA") and recognizing the obligations of regulators with respect to the promotion of vehicle and public safety as set out in section 5 of the CTA,

- competition and market forces are the prime agents in providing viable and effective transportation services, and
- the commercial viability of transportation services is a key to sustainable economic development in a Province;

AND WHEREAS by this MOU, and consistent with Article 1800 (Trade Enhancement Arrangements) of the Agreement on Internal Trade, the Provinces seek to

- promote the harmonization of measures to facilitate the cross border movement of British Columbia and Alberta charter bus operators, and
- further enhance trade and mobility between the Provinces by facilitating joint access to charter bus markets by those eligible British Columbia and Alberta bus operators identified in this MOU, without regard to the residency status of such operator,

by means of the reciprocal covenants set forth in the attached Schedules A and B respecting the issuance of such interprovincial licences, authorizations, certificates, and permits as will allow the operation of the extra-provincial bus undertakings as described in this MOU;

AND WHEREAS the authority for a Province to regulate extra-provincial bus undertakings as contemplated by section 5 of the federal *Motor Vehicle Transport Act, 1987* [R.S., 1985, c.29 (3rd Supp.)] (“MVTA”) which provides that a Province may, in its discretion, issue a licence to a person to operate an extra-provincial bus undertaking in the Province on the like terms and conditions and in the like manner as if the extra-provincial bus undertaking were a local bus undertaking;

AND WHEREAS in Alberta the bus industry is subject to economic regulation as set out in POLICY NUMBER TSS-CS-506: Operating Authority Certificate and Permits – Passenger Transportation and Part 2 of the *Commercial Vehicle Certificate and Insurance Regulation* (Alta. Reg. 314/2002), pursuant to the powers under the *Traffic Safety Act* [RSA 2000, c. T-6], and carriers operating commercial vehicles for the transportation of passengers may be required to satisfy the test of public need and convenience before being issued an operating authority certificate;

AND WHEREAS in Alberta all applications for an operating authority certificate (see definition below) must currently be referred to an independent tribunal, the Alberta Transportation Safety Board (“ATSB”), for review (pending imminent changes to the *Traffic Safety Act* which will transfer this responsibility to the Registrar of Motor Vehicle Services);

AND WHEREAS Alberta undertakes to take all reasonable efforts in order to gain the full support and co-operation of the ATSB for the initiatives outlined in this MOU;

AND WHEREAS in British Columbia general passenger vehicles are no longer subject to economic regulation by virtue of the recently enacted *Passenger Transportation Act* [SBC 2004, c. 39] which replaces the former *Motor Carrier Act* [RSBC 1996, c. 315];

NOW THEREFORE in consideration of the mutual terms and conditions hereinafter specified, the Provinces agree as follows:

RECITALS FORM PART OF MOU

1. The Recitals are incorporated as an integral part of this MOU.

DEFINITIONS

2. In this MOU:

(a) “**charter bus operator (Alberta)**” means a person to whom Alberta has issued an operating authority certificate under Part 2 of the *Commercial Vehicle Certificate and Insurance Regulation* (Alta. Reg. 314/2002), for the operation of a charter passenger service, a private bus, or an industrial bus, but does not include the operation of a scheduled passenger service or a site seeing tour;

(b) “commercial passenger vehicle (British Columbia)” means a motor vehicle operated on behalf of a person who charges or collects compensation for the transportation of passengers in that motor vehicle;

(c) “effective date” means the date specified in clause 8 of this MOU;

(d) “eligible bus operator” means a person who provides the services either of a charter bus operator (Alberta) or a general passenger vehicle (British Columbia) contemplated by Schedules A and B;

(e) “extra-provincial bus undertaking” means a work or undertaking for the transport of passengers by a commercial passenger vehicle that connects a Province with any other or others of the Provinces or extends beyond the limits of a Province;

(f) “general authorization” means, in relation to a motor vehicle, an authorization to operate the motor vehicle as a general passenger vehicle under section 25 of the *Passenger Transportation Act*;

(g) “general passenger vehicle” means a commercial passenger vehicle (as defined in section 1 of the *Passenger Transportation Act*) when it is not operated as an inter-city bus or as a passenger directed vehicle;

(h) “local bus undertaking” means a work or undertaking for the transport of passengers within the Provinces by an eligible bus operator and which is not an extra-provincial bus undertaking;

(i) “operating authority certificate” (“OAC”) means a certificate issued (under Part 2 of the *Commercial Vehicle Certificate and Insurance Regulation*) by Alberta to permit the operation of a motor vehicle as a commercial vehicle that is used or intended to be used to transport passengers (consistent with the laws of Alberta) and for the purposes of this MOU may be issued by Alberta to an eligible British Columbia bus operator from British Columbia pursuant to Schedule A;

(j) “passenger directed vehicle” pursuant to Division 3 the *Passenger Transportation Act* means a commercial passenger vehicle if that vehicle

(a) can accommodate a driver and not more than the number of passengers prescribed by the regulations, and

(b) is operated to and from locations determined by the passenger or group of passengers or by a person acting on behalf of the passenger or group of passengers,

and includes or excludes any commercial passenger vehicle or type of commercial passenger vehicle prescribed by regulation; and

(k) “passenger transportation licence” means a licence issued by British Columbia (under section 23 of the *Passenger Transportation Act*) to permit the operation of a motor vehicle as a commercial passenger vehicle (consistent with the laws of British Columbia), and for the purposes of this MOU may be issued by British Columbia to an eligible Alberta bus operator from Alberta pursuant to Schedule B.

PURPOSE

3. In this MOU,

(a) Alberta, consistent with the MVTA and pursuant to the provisions of the *Traffic Safety Act* and the *Commercial Vehicle Certificate and Insurance Regulation* establishes the practice of allowing eligible bus operators from British Columbia to operate charter extra-provincial bus undertakings in Alberta on the like terms and conditions and in the like manner as if such extra-provincial bus undertaking (British Columbia) were a local bus undertaking (Alberta) operating pursuant to an operating authority certificate issued by Alberta; and

(b) British Columbia, consistent with the MVTA and pursuant to the provisions of the *Passenger Transportation Act* and the *Passenger Transportation Regulation* (B.C. Reg. 266/2004), establishes the practice of allowing eligible bus operators from Alberta to operate general passenger vehicles as extra-provincial bus undertakings in British Columbia on the like terms and conditions and in the like manner as if such extra-provincial bus undertaking (Alberta) were a local bus undertaking (British Columbia) operating pursuant to a passenger transportation licence issued by British Columbia.

COVENANTS

4. Where a British Columbia eligible bus operator is able to satisfy the relevant Alberta safety, legal, and policy requirements associated with the issuance of an Alberta OAC, Alberta agrees to fulfill the terms of the Alberta Eligible Bus Operator Covenants as described in Schedule A to this MOU.
5. Where an Alberta eligible bus operator is able to satisfy the relevant British Columbia safety, legal, and policy requirements associated with the issuance of a British Columbia passenger transportation licence, British Columbia agrees to fulfill the terms of the British Columbia Eligible Bus Operator Covenants as described in Schedule B to this MOU.

OTHER

6. Any notice, document, statement, report, demand, or payment desired or required to be given or made under this MOU must be in writing and may be given or made by personal delivery to the party or person to whom it is to be given or made, or by mail in Canada with postage prepaid addressed if to the Province of British Columbia to:

Tom Greene
Registrar and Director
Passenger Transportation Branch
Ministry of Transportation
PO Box 9850 Stn Prov Govt
Victoria, BC V8W 9T5

and if to the Province of Alberta to:

Roger Clarke
Executive Director
Vehicle Safety and Carrier Services
Ministry of Infrastructure and Transportation
4th Floor Provincial Building
4920 - 51 Street
Red Deer, AB T4N 6K8

and any such notice, document, statement, report, demand, or payment so mailed will be deemed given to and received by the addressee on the 7th business day after the mailing of the same, except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand, or payment will be deemed given to and received by the addressee when actually delivered to the address of the addressee set out above.

In addition, any notice, report, document, statement, or demand transmitted by facsimile transmission from either party to the other will be conclusively deemed validly given to and received by the intended recipient when so transmitted to the following numbers:

If to the Province of British Columbia: 250 953-4974

If to the Province of Alberta: 403 340-4811.

7. This MOU shall ensure to the benefit of and be binding upon the parties hereto and their successors and assigns.
8. This MOU comes into force on the 1st day of May, 2006.
9. This MOU can only be amended with the consent of both parties. Such modifications to be effective must be proposed in writing by either party and accepted in writing by both parties and shall come into force on a date agreed upon by both parties.
10. The parties may enter into protocols and letters of understanding, consistent with the terms of this MOU, to further the objectives of this MOU.
11. The term of this MOU is 5 years commencing on the effective date. The parties shall review the MOU within 60 days after the 4th anniversary of the effective date of this MOU. The parties may renew the MOU for a further term of 5 years at any time following such review. The "Prime Contacts", being the parties identified in section 1 of Schedules A and B to this MOU, or their delegates shall participate in this regular review.
12. Either of the Provinces may terminate this MOU upon 6 months written notice to the other Province.
13. Nothing in this MOU is intended to or shall be interpreted as to fetter the discretion or the authority of the respective Ministers, Legislatures, provincial officials, or any administrative tribunal of the Provinces.
14. Each Province will bear its own costs related to the implementation of this MOU, unless there is mutual Understanding for one party to pay the other for specific activities or for an equal sharing of such costs.

Schedule A

Alberta Eligible Bus Operator Covenants

1. For purposes of the MVTA, the Executive Director of Vehicle Safety and Carrier Services, as authorized by the Registrar of Motor Vehicle Services responsible for Transportation Safety Services, is the provincial authority (in Alberta) who has the authority to issue Operating Authority Certificates ("OAC") as contemplated by this MOU.
2. The authority to issue OACs in Alberta is set out in POLICY NUMBER TSS-CS-506: Operating Authority Certificate and Permits – Passenger Transportation and the *Commercial Vehicle Certificate and Insurance Regulation*, pursuant to the powers under the *Traffic Safety Act*.
3. Consistent with the purpose described in 3(a) of this MOU, Alberta will issue OACs to British Columbia general bus operators to operate charter extra-provincial bus undertakings in Alberta on the like terms and conditions and in the like manner as if such general bus operator (British Columbia) were a local bus undertaking (Alberta) operating pursuant to an operating authority certificate issued by Alberta and in so doing Alberta will waive the requirement for such operator to satisfy the test of public need and convenience except in those circumstances where a British Columbia carrier receives funding from any government entity in which case the OAC will not be issued by Alberta for a local or extra-provincial bus undertaking until the public need and convenience test has been met.
4. Alberta will require British Columbia bus operators to supply Alberta with a copy of their British Columbia Passenger Transportation Licence and National Safety Code/Safety Certificate (issued in the name of the registered owner of the eligible bus operator).

In addition, other documentation including an application fee and insurance verification which are required by all applicants, regardless of base jurisdiction, must also be submitted.

Schedule B

British Columbia Eligible Bus Operator Covenants
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1. For purposes of the MVTA, the Registrar of Passenger Transportation is the provincial authority (in British Columbia) and has the authority to issue Passenger Transportation Licences under this MOU.
2. The authority to issue Passenger Transportation Licences in British Columbia is set out in the *Passenger Transportation Act*, and the *Passenger Transportation Regulation*.
3. Consistent with the purpose described in 3(b) of this MOU, British Columbia will issue passenger transportation licences to Alberta charter bus operators who wish to perform a service consistent with the definition of "general passenger vehicle" and safety requirements outlined in the *Passenger Transportation Act* to operate charter extra-provincial bus undertakings in British Columbia on the like terms and conditions and in the like manner as if such bus operator (Alberta) were a local bus undertaking (British Columbia) operating pursuant to a Passenger Transportation Licence issued by British Columbia.
4. British Columbia will require Alberta bus operators to provide British Columbia with a copy of their Alberta Operating Authority Certificate and National Safety Code/Safety Certificate (issued in the name of the registered owner of the eligible bus operator).

In addition, other documentation including an application fee and insurance verification which are required by all applicants, regardless of base jurisdiction, must also be submitted.

DISPUTE RESOLUTION

15. The Provinces will make reasonable efforts to resolve any disputes arising between them using collaborative negotiations.
16. Upon a dispute ("dispute" includes any part or the whole of the dispute or related matter) arising in connection with any matter under this MOU, either of British Columbia or Alberta, written notice of such dispute will be given to the other party and the dispute will be referred to each of the primary contact persons. The Prime Contact is the provincial authority for each Province, as identified in paragraph 1 of each of Schedules A and B to this MOU.
17. The Prime Contacts will review and discuss the dispute with the objective of resolving the dispute.
18. The Prime Contacts, independently or jointly, may seek advice and information in connection with the dispute, officials, servants, agents, advisors, consultants, and contractors of either or both of the Provinces.
19. If the Prime Contacts are unable to resolve the dispute within 30 days of having the matter referred to them, or within such other time period as agreed to between the Provinces, then the dispute will be referred to the respective Assistant Deputy Ministers responsible for overseeing the administration of passenger bus services for the Provinces.
20. If the Assistant Deputy Ministers are unable to resolve the dispute within 60 days after having the matter referred to them, the Prime Contacts or the Assistant Deputy Ministers referenced in the preceding section/clause shall refer dispute to any independent mediator selected and jointly retained by British Columbia and Alberta, to assist the Provinces to resolve the dispute. The mediator shall conduct the mediation at the location that is determined by the mediator and shall adopt such procedures that the mediator considers appropriate.
21. If the parties cannot agree on a mediator then both parties shall appoint one person to an arbitration panel ("Panel") with a third person to be jointly appointed by the first two parties. The Panel will have a maximum of 90 days to make a binding decision. The Panel shall conduct the arbitration at the location that is determined by the Panel and the Panel shall conduct the arbitration in a fair manner and adopt such procedures that the Panel considers appropriate to make a final determination of the dispute between the parties.

IN WITNESS WHEREOF the parties hereto have executed this MOU as of the day, month and year first above written.

SIGNED on behalf of Alberta
Minister of Infrastructure and Transportation:


Honourable Ty Lund

SIGNED on behalf of British Columbia
Minister of Transportation:


Honourable Kevin Falcon