

TCA / IAP Service Provider Certification Agreement

Transport Certification Australia Limited

and

[IAP Service Provider Name]

Table of Contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	7
2.	Certification	8
2.1	Certification as an IAP Service Provider	8
2.2	Term	8
2.3	Ongoing audit and review program	8
2.4	Nature of certification	8
2.5	Sub-contracting	8
2.6	Commercial Services	9
2.7	IAP Type Services	10
3.	General Obligations	10
3.1	Standard and provision of IAP services	10
3.2	Skills and experience	10
3.3	Compliance with reasonable requests for information	11
3.4	Retention of records	11
3.5	Company information	11
3.6	Agreements with Transport Operator	11
3.7	Costs of compliance	12
3.8	Re-certification/Changes to IAP Service Provider's Total System	12
4.	Functional and Technical Obligations	13
4.1	Audit Program	13
4.2	IAP audits	13
4.3	Receiving and maintaining IACs	14
4.4	Installing, using and maintaining the IAM	14
4.5	System Recovery Procedures	14
5.	Reporting Obligations	15
5.1	Provision of information to TCA and Jurisdictions	15
5.2	Disruption to IAP Services	15
5.3	Tamper Reporting and Malfunction Reporting	15
6.	Fees payable by the IAP Service Provider	15
6.1	Operational Fee and Participants Report	15
6.2	Other Fees	15
6.3	Invoicing and payment terms	17
7.	Obligations of TCA	17
7.1	Functions of TCA	17
7.2	Notice of Cancellation of Certification	18
7.3	Amendment of Functional and Technical Specification	18
8.	GST	18
8.1	GST to be added to amounts payable	18
8.2	Tax Invoice and Adjustment Note	18

8.3	Liability net of GST	19
8.4	Revenue exclusive of GST	19
9.	Conflicts of Interest	19
9.1	Conflicts of interest	19
9.2	Dealing with conflicts	19
10.	Privacy and Confidential Information	20
10.1	Sale or provision of information	20
10.2	Privacy	20
10.3	Restricted use and disclosure of information related to NCRs	20
10.4	Confidentiality	21
10.5	Intellectual Property	21
11.	Liability, Indemnity and Insurances	22
11.1	Exclusions and limitations on TCA's liability	22
11.2	Indemnity by the IAP Service Provider	22
11.3	Apportionment of liability	23
11.4	Limitation of IAP Service Provider's liability	23
11.5	Insurances	23
11.6	Evidence of insurance policies	23
11.7	Professional indemnity of sub-contractors	24
11.8	Alternative regimes	24
11.9	Appearance as an expert witness	24
11.10	IAP Service Provider warranty/agreement	25
11.11	Change of Control	25
12.	Disputes	25
12.1	Negotiation	25
12.2	Mediation	25
12.3	Court proceedings and other relief	26
12.4	Continuation of rights and obligations	26
13.	IAP Service Provider Non-compliance and Rectification	26
14.	Termination	26
14.1	Termination by TCA with ten (10) Business Days notice	26
14.2	Termination by TCA immediately upon delivery of notice	27
14.3	Termination subject to notice period	27
14.4	Effect of termination	27
14.5	Provision of IAP Services during period of notice of termination	28
14.6	Termination Audits	28
14.7	Surviving clauses	28
15.	Force Majeure Events	28
15.1	IAP Service Provider's obligations affected	28
15.2	IAP Service Provider to resume IAP Services	28
15.3	Effect of a Force Majeure event	29
16.	Publicity	29
16.1	Publicity	29
16.2	Reputation of the IAP	30

16.3	Public announcements by TCA	30
17.	Miscellaneous	30
17.1	Good faith	30
17.2	Further assurances	30
17.3	No restriction on rights	30
17.4	Severability of provisions	30
17.5	Taxes and duties	30
17.6	Entire Agreement	31
17.7	Amendment, waiver and assignment.	31
17.8	Governing Law	31
17.9	Counterparts	31
17.10	Inconsistency	31
17.11	Notices	31
	Schedule A	33
	Jurisdictions	33
	Schedule B	34
	Insurance Requirements	34
	Schedule C	43
	Representatives	43
	Schedule D	44
	Expert witness costs	44
	Schedule E	45
	Licensed Intellectual Property	45
	Schedule F	48
	Special Conditions	48
	Annexure 1 – IAP Functional and Technical Specification	1
	Annexure 2 – Fees (Operational Fee)	2
	Annexure 3 – Guidelines for using the IAP Certified Trademark	3
	Annexure 4 – TCA/IAM Sub-Licence Agreement for IAP-SP	4
	Annexure 5 – TCA/IBIRS Licence Agreement for IAP-SP	5
	Annexure 6 – IAP-SP/Transport Operator Agreement	6

Date	The [] day of [] 2011.
Parties	
1.	Transport Certification Australia Limited (ABN 83 113 379 936) of Level 12, 535 Bourke Street, Melbourne, Victoria, 3000 Australia (" TCA ").
2.	[IAP Service Provider Name] (ABN [ABN]) of [Address] (the " IAP Service Provider ").
Recitals	
A	TCA administers the IAP and, within the IAP, has the responsibility to oversee and administer the certification and audit of IAP service providers.
B	The IAP Service Provider has applied for certification by TCA as an IAP service provider and wishes to provide IAP Services to Transport Operators, subject to the terms and conditions of this Agreement.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this Agreement.

- (1) "**ACDC**" means the Australian Commercial Disputes Centre Limited.
- (2) "**Adjustment Event**", "**Adjustment Note**", "**Consideration**", "**GST**", "**GST Group**", "**Input Tax Credit**", "**Invoice**", "**Tax Invoice**" and "**Taxable Supply**" have the meanings given by the GST Law.
- (3) "**Agreement**" means the terms and conditions of this agreement.
- (4) "**Application Form**" means the application form completed by the IAP Service Provider to apply for Certification.
- (5) "**Business Day**" means, for the purposes of this Agreement but not of the Functional and Technical Specification, for which the definition appearing therein shall apply instead, a weekday on which banks are open in Melbourne, Victoria.
- (6) "**Certification**" means the conferring of the status of a person as certified by TCA as an IAP service provider and entitled to provide IAP Services.
- (7) "**Change of Control Event**" means, in relation to an entity, the occurrence of an event which has the effect that:

- a. if a person Controlled the entity prior to the time the event occurred, the person ceased to Control the entity or another person obtained Control of the entity;
 - b. if no person Controlled the entity prior to the time the event occurred, a person obtained Control of the entity; or
 - c. if the entity is owned or Controlled by a group or a consortium of persons, or if the group or consortium could Control the entity were they to act collectively, there is any material change in the composition of the group or consortium.
- (8) **“Claim”** means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.
- (9) **“Commencement Date”** means the date of this Agreement.
- (10) **“Commercial Services”** means any telematics services or location based monitoring services, including associated communications services, that are provided to a Customer by the IAP Service Provider that are not IAP Services or IAP Type Services.
- (11) **“Confidential Information”** means all information or knowledge relating to the business, affairs or any other technical information of TCA, or information relating to the business, affairs or any other technical information of any Jurisdiction or Transport Operator, which:
- a. is disclosed to the IAP Service Provider by or on behalf of TCA, any Jurisdiction or a Transport Operator;
 - b. is otherwise acquired by the IAP Service Provider directly or indirectly from TCA, any Jurisdiction or a Transport Operator;
 - c. otherwise comes to the knowledge of the Recipient; or
 - d. arises as a result of the performance by the IAP Service Provider of the IAP Services under this Agreement,
- whether the information is in oral, visual or written form or is recorded or embodied in any other medium.
- (12) **“Continual Monitoring and Audit Activities”** means continual monitoring and audit activities, undertaken by TCA or a person authorised by TCA (including an IAP auditor), of the IAP Service Provider’s IVUs, TIDs and SDIDs, and any other continual monitoring and audit activities contemplated by the Functional and Technical Specification including, but not limited to, continual monitoring and auditing of:
- a. IAP Service provision of IVU, TID and SDID in a TCA mobile testing system;
 - b. IAP Service provision of IVU, TID and SDID in a TCA quality monitoring station; and
 - c. provision by the IAP Service Provider of information and data.

- (13) "**Control**" has the meaning given to that term in section 50AA of the Corporations Act and "**Controlled**" has the corresponding meaning.
- (14) "**Corporations Act**" means the *Corporations Act 2001* (Cth).
- (15) "**Customer**" means any person, including a Transport Operator, who receives Commercial Services from the IAP Service Provider.
- (16) "**Force Majeure**" means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
- a. act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide or other adverse weather conditions;
 - b. strike, lockout or other labour difficulty;
 - c. act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
 - d. embargo, power or water shortage or lack of transportation;
 - e. but it excludes the effect of any law applying to TCA, a Jurisdiction, the IAP Service Provider or the IAP.
- (17) "**Functional and Technical Specification**" means the IAP Functional and Technical Specification as amended by TCA in accordance with clause 7.3, a current copy of which is set out in Annexure 1.
- (18) "**Governmental Agency**" means a government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.
- (19) "**GST Amount**" means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
- (20) "**GST Law**" has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (21) "**IAP audit**" means, collectively:
- a. Continual Monitoring and Audit Activities;
 - b. Periodic Audit Activities;
 - c. Re-certification Audits;
 - d. Non-compliance Audits; and
 - e. Termination Audits.
- (22) "**IAP auditor**" means a person approved as an IAP auditor by TCA to carry out IAP audits.
- (23) "**IAP Information**" means information that has been generated or collected for any purpose relating to the IAP.

- (24) **“IAP Law”** means any:
- a. Commonwealth, State, Territory or local government legislation or law including regulations, by-laws and other subordinate legislation; and
 - b. guidelines of the Commonwealth, State, Territory, or local government, or Government Agencies,
- directly applicable to the IAP with which TCA and/or the IAP Service Provider is required to comply.
- (25) **“IAP Services”** means all of the services the IAP Service Provider must provide, and all the obligations the IAP Service Provider must observe, as set out in the Functional and Technical Specification and this Agreement.
- (26) **“IAP Service Provider’s Total System”** means the totality of the IAP Service Provider’s type-approved IVUs and TIDs; its SDIDs; its IAP-SP System; its Quality Monitoring Station, and its Quality System (all as defined in the Functional and Technical Specification), together with all incidental equipment and systems used by it in connection therewith.
- (27) **“IAP Service Provider/Transport Operator Agreement”** is an agreement (in the form, or in a form similar to that, set out in Annexure 6) entered into by the IAP Service Provider, a Transport Operator and TCA with respect to the provision of IAP Services.
- (28) **“IAP Type Services”** means any compliance, enforcement, regulatory pricing and/or charging or contract management services (other than IAP Services or Commercial Services) which are similar to, or the same as, the IAP Services, except that any information or data generated in connection with the provision of such services:
- a. is not verified, audited or certified in accordance with the IAP by TCA; and
 - b. does not constitute evidence for the purposes of the IAP Law.
- (29) **“In-Vehicle Unit (IVU)”** has the meaning given to that term in the Functional and Technical Specification.
- (30) **“Insolvency Event”** means any one of the following events that may occur in respect of the IAP Service Provider:
- a. the IAP Service Provider stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - b. the IAP Service Provider is insolvent within the meaning of section 95A of the Corporations Act;
 - c. a court is required by reason of section 459C(2) of the Corporations Act to presume that the IAP Service Provider is insolvent;
 - d. the IAP Service Provider fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
 - e. the IAP Service Provider has an administrator appointed or any step preliminary to the appointment of an administrator is taken;

- f. the IAP Service Provider has a controller (within the meaning of section 9 of the Corporations Act) or similar officer is appointed to all or any of its assets or undertaking; or
 - g. the IAP Service Provider has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps are taken against or in respect of it for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.
- (31) **“Intellectual Property”** means all industrial and intellectual property whether protectable by statute, at common law or in equity, including, but not limited to, copyright, design rights, inventions, patents, technology, trade secrets, know-how and all other rights and interests of a like nature.
- (32) **“Intelligent Access Condition” (IAC)** has the meaning given to that term in the Functional and Technical Specification.
- (33) **“Intelligent Access Map” (IAM)** has the meaning given to that term in the Functional and Technical Specification.
- (34) **“Intelligent Access Program” (IAP)** has the meaning given to that term in the Functional and Technical Specification.
- (35) **“Jurisdiction”** means an agency or agencies empowered to issue Intelligent Access Conditions (IACs) as set out in Schedule A.
- (36) **“Loss”** includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.
- (37) **“Malfunction Report”** means a report given by the IAP Service Provider to TCA and/or the Jurisdiction(s) notifying of a malfunction of the IAP Service Provider’s Total System. A system malfunctions if:
- a. it ceases to work at all, or works only intermittently;
 - b. it does not perform one or more functions required under the IAP, or performs any such function only intermittently; or
 - c. it performs such a function in such a way that the results of its doing so are inaccurate or unreliable (including intermittently inaccurate or unreliable).
- (38) **“Non-compliance Audit”** means an audit undertaken by TCA or a person authorised by TCA (including an IAP auditor) when an IAP Service Provider is, or TCA believes is, in breach of this Agreement and/or in non-compliance with the Functional and Technical Specification and/or the IAP Law.
- (39) **“Non-Compliance Report” (NCR)** has the meaning given to that term in the Functional and Technical Specification.
- (40) **“Participants Report”** has the meaning given to that term in the Functional and Technical Specification.
- (41) **“Periodic Audit Activities”** means periodic monitoring and audit, undertaken by TCA or a person authorised by TCA (including an IAP auditor), to assess the IAP

Service Provider's capacity to comply and/or its compliance with, the terms and conditions of this Agreement and/or the Functional and Technical Specification and/or the IAP Law.

- (42) "**Personal Information**" has the same meaning given to it by the IAP Law.
- (43) "**Personnel**" means that party's employees, officers, directors and agents.
- (44) "**Privacy Laws**" means the *Privacy Act 1988* (Cth) and any applicable Commonwealth, State or Territory privacy law.
- (45) "**PSMA**" means PSMA Australia Limited ABN 23 089 912 710.
- (46) "**PSMA Data**" has the meaning given to that term in Annexure 4.
- (47) "**PSMA Licence Agreement**" means the licence agreement between PSMA and TCA for the use of the PSMA Data as the Intelligent Access Map.
- (48) "**Re-certification**" means an assessment process (which may include a Re-certification Audit) to determine whether the IAP Service Provider retains the capacity and capability to be a provider of IAP Services and "**Re-certify**" has the corresponding meaning.
- (49) "**Re-certification Audit**" means any audit undertaken by TCA or a person authorised by TCA (including an IAP auditor), in connection with the Re-certification of the IAP Service Provider, to determine whether the IAP Service Provider retains the capacity and capability to be a provider of IAP Services and to comply with the terms and conditions of this Agreement and/or the Functional and Technical Specification and/or the IAP Law.
- (50) "**Recovery Services**" means temporary services that must be delivered after a Force Majeure event as soon as is practicable to reinstate the IAP Services.
- (51) "**Self-Declaration Input Device (SDID)**" has the meaning given to that term in the Functional and Technical Specification.
- (52) "**Sub-Licence Agreement**" means the Sub-Licence Agreement between TCA and the IAP Service Provider to make the PSMA data available for use as the IAM.
- (53) "**System Recovery Procedures**" means a set of procedures that facilitate the recovery of the IAP Services provided by the IAP Service Provider. The procedures must meet the requirements contained in the Functional and Technical Specification.
- (54) "**Tamper, Tampering**" has the same meaning given to that term in the IAP Law.
- (55) "**Term**" means the period specified in clause 2.2.
- (56) "**Termination Audit**" means an audit undertaken by TCA or a person authorised by TCA (including an IAP auditor), where the term of this Agreement expires or the IAP Service Provider ceases to be an IAP service provider in accordance with clause 14, to determine the IAP Service Provider's compliance, up to the expiration/termination date (as applicable), with the terms and conditions of this Agreement and/or the requirements of the Functional and Technical Specification and/or the IAP Law.
- (57) "**Trailer Identification Device (TID)**" has the meaning given to that term in the Functional and Technical Specification.

- (58) **“Transport Operator”** has the meaning given to that term in the Functional and Technical Specification.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes any amendment, or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to dollars and \$ is to Australian currency.
- (m) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).

2. Certification

2.1 Certification as an IAP Service Provider

TCA hereby confirms the certification of the IAP Service Provider as an IAP service provider subject to the terms and conditions of this Agreement and the Special Conditions set out in Schedule F. The certification granted under this Agreement is not transferable.

2.2 Term

- (a) Subject to clause 2.2(b), the Certification of the IAP Service Provider will be for an initial term of three (3) years from the Commencement Date unless this Agreement is terminated by either party in accordance with this Agreement.
- (b) Not earlier than six (6) months, and not later than three (3) months, prior to the expiry of the initial term, or any subsequent term, the parties may, by mutual agreement, further extend the Term for up to three (3) years. TCA's agreement to any extension may be subject to the IAP Service Provider satisfying any Re-certification requirements determined by TCA. Such extension must be evidenced in writing.

2.3 Ongoing audit and review program

The IAP Service Provider shall be subject to Continual Monitoring and Audit Activities and Periodic Audit Activities. The IAP Service Provider may also be subject to Non-compliance Audits, Re-certification Audits and Termination Audits from time to time.

2.4 Nature of certification

- (a) The IAP Service Provider is certified under this Agreement by TCA as an independent contractor.
- (b) This Agreement does not create a relationship between the parties of employer and employee, principal and agent, partnership or joint venturers.
- (c) Neither party is liable for any act or omission of the other party.
- (d) A party must not incur any liability on behalf of the other party nor in any way pledge or make any contract binding upon the other party without that other party's prior written approval.

2.5 Sub-contracting

- (a) The IAP Service Provider must not engage any sub-contractor in relation to any aspect of the provision of the IAP Services or any other of its obligations under this Agreement unless the prior written approval of TCA has been obtained.
- (b) When requesting such approval, the IAP Service Provider must inform TCA of:
 - (i) the scope of the proposed work to be sub-contracted;
 - (ii) the proposed sub-contractor;
 - (iii) commercial details of the proposed sub-contractor as reasonably requested by TCA; and

- (iv) the material terms, conditions and details of the proposed sub-contract, excluding all terms and conditions and details relating to the sub-contractor's fees.

2.6 Commercial Services

- (a) Subject to clause 2.6(e), the IAP Service Provider may provide Commercial Services to a Customer in addition to the IAP Services.
- (b) Any Commercial Services provided under clause 2.6(a) are to be provided on terms to be agreed between the IAP Service Provider and a Customer.
- (c) If the IAP Service Provider offers any Commercial Services to a Customer in accordance with clause 2.6(a), the IAP Service Provider must inform the Customer in writing that the Commercial Services are not:
 - (i) IAP Services or provided in connection with the IAP;
 - (ii) provided in accordance with the terms of this Agreement;
 - (iii) provided in accordance with the applicable IAP Law and accordingly, any information or data generated in connection with the provision of Commercial Services by the IAP Service Provider does not constitute evidence for the purposes of the IAP Law; and
 - (iv) protected under IAP Law in terms of the manner in which the IAP Service Provider collects, uses, stores and discloses any information obtained in the performance of the Commercial Services.
- (d) Subject to clauses 10.4, 10.5 and 16, but without limiting clause 2.6(e), TCA and the IAP Service Provider acknowledge that the IAP Service Provider may use its Certification, as an IAP Service Provider, to promote, market or advertise the provision by it of IAP Services and Commercial Services.
- (e) Subject to clauses 2.6(f) and 2.6(g), the IAP Service Provider must not provide any Commercial Services to a Customer where those Commercial Services will adversely affect, in any way, the functionality of the IAP.
- (f) If TCA, acting reasonably, considers that any Commercial Services will adversely affect, in any way, the functionality of the IAP, TCA may notify the IAP Service Provider and request that the IAP Service Provider provide reasons as to why the IAP Service Provider does not consider that the Commercial Services will adversely affect, in any way, the functionality of the IAP. The IAP Service Provider must comply with any request made by TCA pursuant to this clause 2.6(f).
- (g) If the IAP Service Provider provides TCA with reasons, in accordance with clause 2.6(f), and TCA, acting reasonably and after giving due consideration to the reasons provided by the IAP Service Provider, still considers that the Commercial Services will adversely affect, in any way, the functionality of the IAP, TCA may request that the IAP Service Provider refrain from providing, or alter or modify the provision of, such Commercial Services. The IAP Service Provider must abide with any such request.

2.7 IAP Type Services

- (a) Without limiting clauses 2.7(b) and 2.7(c), the IAP Service Provider must not use its Certification, as an IAP Service Provider, to promote, market or advertise the provision by it of IAP Type Services.
- (b) Without limiting clause 2.7(c), the IAP Service Provider must notify TCA if it wishes to provide IAP Type Services.
- (c) The IAP Service Provider must not provide IAP Type Services without the prior written consent of TCA.

3. General Obligations

3.1 Standard and provision of IAP services

- (a) The IAP Service Provider must provide IAP Services:
 - (i) in accordance with the terms of this Agreement and in accordance with the Functional and Technical Specification;
 - (ii) in accordance with all Privacy Laws and the IAP Law; and
 - (iii) in a careful, proper and efficient manner so that the IAP Services are fit for their intended purpose.
- (b) The IAP Service Provider must ensure that the IAP Service Provider's Total System:
 - (i) meets, and continues to meet, all of the requirements of the Functional and Technical Specification; and
 - (ii) operates in such a way as to comply with the terms of this Agreement.
- (c) The IAP Service Provider will comply with such fair and reasonable protocols and procedures, as are prescribed from time to time by TCA, as necessary to give efficacy to the IAP.

3.2 Skills and experience

The IAP Service Provider must:

- (a) ensure that the Personnel and the sub-contractors it assigns to perform the IAP Services:
 - (i) are properly trained;
 - (ii) are appropriately qualified; and
 - (iii) have the necessary skills and knowledge to undertake the IAP Services they are to perform;
- (b) ensure that criminal record checks are undertaken on Personnel and sub-contractors and where such checks indicate a current criminal record, that person will not be assigned to perform the IAP Services; and

- (c) provide a list of all Personnel and sub-contractors assigned to perform the IAP Services to TCA if requested.

3.3 Compliance with reasonable requests for information

The IAP Service Provider must at all times comply with:

- (a) requests for information, and directions, from TCA (acting reasonably); and
- (b) reasonable requests for information from the Jurisdictions or the IAP auditors, in accordance with this Agreement and/or the Functional and Technical Specification and/or the IAP Law.

3.4 Retention of records

All IAP-related records, data and information must be stored by the IAP Service Provider in accordance with the Functional and Technical Specification and the IAP Law.

3.5 Company information

The IAP Service Provider must:

- (a) identify its staff authorised to sign IAP-related documentation on its behalf.
- (b) advise TCA in writing within five (5) Business Days if the details in Schedule C change.
- (c) on an annual basis, promptly, provide TCA with a copy of its audited financial statements which have been prepared in accordance with relevant Australian Accounting Standards, as at:
 - (i) 30 June each year; or
 - (ii) at the company's financial year end if not 30 June each year.

3.6 Agreements with Transport Operator

- (a) Prior to providing a Transport Operator with any IAP Services, the IAP Service Provider must enter into an "IAP Service Provider/Transport Operator Agreement" (Annexure 6) with a Transport Operator and TCA in the form prescribed by TCA from time to time. However, where TCA intends to substantially alter the form of the IAP Service Provider/Transport Operator Agreement in a way which will:
 - (i) materially affect the liability and indemnity regime that the IAP Service Provider assumes under the IAP Service Provider/Transport Operator Agreement; or
 - (ii) materially adversely affect the commercial arrangements between the IAP Service Provider and the Transport Operator,

the IAP Service Provider will not be obliged to enter into the altered form of the IAP Service Provider/Transport Operator Agreement (with a Transport Operator and TCA) until such time as TCA has consulted the IAP Service Provider about TCA's proposed alterations.

- (b) Prior to entering into an IAP Service Provider/Transport Operator Agreement with a Transport Operator and TCA, the IAP Service Provider must ensure that relevant IAC(s) have been established by that Transport Operator with the relevant Jurisdiction(s) in the manner identified in the IAC form contained in the Functional and Technical Specification.
- (c) The IAP Service Provider must ensure that the identity of a Transport Operator as shown in an IAC corresponds exactly with its identity as shown in the IAP Service Provider/Transport Operator Agreement.
- (d) Upon receiving a request from TCA, the IAP Service Provider must promptly provide TCA and the relevant IAC-issuing Jurisdiction(s) with a copy of all IAP Service Provider/ Transport Operator Agreements which it enters into.
- (e) The IAP Service Provider must not, without the prior written consent of TCA, enter into any agreement, arrangement or understanding with any Transport Operator, or any other person, that has the purpose or effect of excluding, restricting, modifying, amending or derogating from any provision of this Agreement or any IAP Service Provider/Transport Operator Agreement as prescribed by TCA.

3.7 Costs of compliance

Subject to the terms and conditions of this Agreement, the IAP Service Provider is responsible for and must bear all its own costs of complying with its obligations under this Agreement.

3.8 Re-certification/Changes to IAP Service Provider's Total System

- (a) The IAP Service Provider agrees that it may, at TCA's sole and absolute discretion, be subject to Re-certification where:
 - (i) the IAP Service Provider proposes a change to the IAP Service Provider's Total System, but such Re-certification shall only occur in respect of the relevant change to the IAP Service Provider's Total System or part thereof (to be determined by TCA in its absolute and sole discretion);
 - (ii) TCA amends the Functional and Technical Specification, in accordance with clause 7.3 but not in the circumstances contemplated by clause 7.3(b)(i);
 - (iii) TCA proposes the inclusion of new parameter(s) in the IAP Services in accordance with clause 7.3, but only in respect of the IAP Service Provider's ability to implement the new parameter(s) in the IAP Services;
 - (iv) the Term of this Agreement is due to expire and the parties agree to extend the term pursuant to clause 2.2(b); or
 - (v) TCA considers, acting reasonably, that a Change of Control Event will materially adversely affect the IAP Service Provider's ability to provide IAP Services and/or comply with the terms of this Agreement and/or the Functional and Technical Specification in accordance with clause 11.11(b).

- (b) Without limiting clause 3.8(a)(i), the IAP Service Provider must notify TCA in writing of any proposed change(s) to the IAP Service Provider's Total System and may not implement any such change(s) in the IAP Service Provider's Total System without the prior written approval of TCA (such approval may not be unreasonably withheld).
- (c) Whenever Re-certification is deemed necessary by TCA in accordance with clause 3.8(a), it may arrange a Re-certification Audit of the IAP Service Provider's Total System, or part thereof, for the purposes of Re-certification.

4. Functional and Technical Obligations

4.1 Audit Program

The IAP Service Provider must participate in and comply with TCA's IAP audit program as conducted by TCA in accordance with clause 4.2 and the terms and conditions of this Agreement.

4.2 IAP audits

- (a) IAP audits may be conducted by:
 - (i) TCA, or a person authorised by TCA; and/or
 - (ii) an IAP auditor as engaged by TCA.
- (b) TCA may determine the scope of an IAP audit at TCA's sole and absolute discretion, within the bounds of the duties and obligations of the IAP Service Provider set out in this Agreement and/or the Functional and Technical Specification and/or the IAP Law.
- (c) The timing of IAP audits will be as follows:
 - (i) **(Continual Monitoring and Audit Activities)** Continual Monitoring and Audit Activities will be undertaken on a continual ongoing basis with the timing of such Continual Monitoring and Audit Activities as contemplated by the Functional and Technical Specification;
 - (ii) The timing of:
 - (A) **(Periodic Audit Activities)** Periodic Audit Activities;
 - (B) **(Re-certification Audits)** Re-certification Audits (subject to Re-certification taking place); and
 - (C) **(Termination Audits)** Termination Audits (subject to expiration or termination of this Agreement taking place),

shall be as determined by TCA from time to time and may be undertaken at TCA's sole and absolute discretion and where access is required by TCA, or a person authorised by TCA, or an IAP auditor to the IAP Service Provider's premises or Personnel or sub-contractors, with reasonable prior notice being provided to the IAP Service Provider; and

(D) **(Non-compliance Audits)** Non-compliance Audits, subject to TCA reasonably believing that:

- (1) there is a breach or non-compliance by the IAP Service Provider with the terms and conditions of this Agreement and/or the requirements of the Functional and Technical Specification and/or the IAP Law; or
- (2) rectification is necessary in order to remedy such a breach or non-compliance and/or whether satisfactory rectification has been achieved,

shall be as determined by TCA from time to time, at TCA's sole and absolute discretion, and may be undertaken without prior notice to the IAP Service Provider.

- (d) The IAP Service Provider must provide to TCA, or a person authorised by TCA, or any IAP auditor all access to the IAP Service Provider's Total System, and all co-operation reasonably required by TCA, or a person authorised by TCA or the IAP auditor to enable them to carry out IAP audits.
- (e) Except as otherwise required by the IAP Law, TCA must provide IAP audit results to the IAP Service Provider if the results are adverse (as determined by TCA acting reasonably) to the IAP Service Provider.
- (f) The parties acknowledge and accept that TCA may undertake audits other than IAP audits of such scope, on the giving of such notice and on such cost basis as agreed by the parties.

4.3 Receiving and maintaining IACs

- (a) From the Commencement Date, the IAP Service Provider will receive IACs from the Jurisdictions and from Transport Operators, in the form described in the Functional and Technical Specification.
- (b) The IAP Service Provider must deal with all IACs so received by it in accordance with the requirements of the Functional and Technical Specification.

4.4 Installing, using and maintaining the IAM

- (a) The IAP Service Provider must install, use and maintain the IAM in accordance with the provisions of the Functional and Technical Specification and the Sub-Licence Agreement.
- (b) The IAP Service Provider acknowledges that it has entered into a Sub-Licence Agreement with TCA for access to the Intelligent Access Map. A copy of the Sub-Licence Agreement is set out in Annexure 4.

4.5 System Recovery Procedures

The IAP Service Provider must prepare and maintain System Recovery Procedures that meet the requirements of the Functional and Technical Specification.

5. Reporting Obligations

5.1 Provision of information to TCA and Jurisdictions

The IAP Service Provider must provide to TCA and the Jurisdictions all of the information required by the Functional and Technical Specification including, without limitation, NCRs, Tamper reports, Malfunction Reports and Participants Reports.

5.2 Disruption to IAP Services

The IAP Service Provider must give notice of (and must resolve) any disruption to its provision of the IAP Services strictly in accordance with the requirements of the Functional and Technical Specification.

5.3 Tamper Reporting and Malfunction Reporting

- (a) The IAP Service Provider must, in accordance with the requirements of the Functional and Technical Specification and the IAP Law, report to TCA and the relevant Jurisdiction(s) all incidents of Tampering, or suspected or attempted Tampering, and all incidents of malfunctions, with the IAP Service Provider's Total System, or part thereof.
- (b) The IAP Service Provider must not advise the Transport Operator of the detection of Tampering or of suspected or attempted Tampering.

6. Fees payable by the IAP Service Provider

6.1 Operational Fee and Participants Report

- (a) The IAP Service Provider must pay to TCA the Operational Fee set out in the Annexure 2, as amended by TCA from time to time in accordance with clause 6.1(e).
- (b) The calculation of the Operational Fee shall be based on the fee as set out in Annexure 2 multiplied by the number of vehicles monitored for each calendar month, or part thereof, as specified in the Participants Report issued to the Jurisdiction(s) in accordance with the Functional and Technical Specification.
- (c) The IAP Service Provider consents to TCA obtaining from each Jurisdiction a copy of any Participants Report sent to the Jurisdiction(s).
- (d) The Operational Fee shall not be payable when the IAP Service Provider is by virtue of Force Majeure unable to provide IAP Services.
- (e) TCA reserves the right to alter the fees set out in Annexure 2 in its absolute discretion after giving the IAP Service Provider no less than forty (40) Business Days notice in writing of such alterations.

6.2 Other Fees

- (a) The IAP Service Provider may be required by TCA to pay the reasonable cost to TCA (or the cost of an IAP auditor) of:

- (i) any Re-certification under clause 3.8 as deemed necessary by TCA (in its absolute discretion) from time to time (including, for the avoidance of doubt, any Re-certification Audit); and
 - (ii) subject to clause 6.2(c), any Non-compliance Audit; and
 - (iii) subject to clause 6.2(d), any Termination Audit.
- (b) For the avoidance of doubt, the IAP Service Provider will not bear the cost of any Continual Monitoring and Audit Activities or Periodic Audit Activities.
- (c) TCA and the IAP Service Provider acknowledge and agree that the cost of all Non-compliance Audits, shall be paid for in accordance with the following:
- (i) If TCA nominates that it will undertake a Non-compliance Audit, and TCA finds that:
 - (A) the IAP Service Provider is in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, the IAP Service Provider shall be liable to pay all of TCA's reasonable costs; or
 - (B) the IAP Service Provider is not in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, TCA shall absorb all costs associated with the Non-compliance Audit.
 - (ii) If TCA nominates that an IAP auditor is to undertake the relevant Non-compliance Audit:
 - (A) TCA will nominate and obtain quotes from two or more IAP auditors;
 - (B) after obtaining the quotes referred to in clause 6.2(c)(ii)(A), TCA will engage the IAP auditor which provided the lowest quote;
 - (C) if the IAP auditor engaged to carry out the Non-compliance Audit finds that the IAP Service Provider is in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, the IAP Service Provider shall be liable to pay all of the IAP auditor's fees;
 - (D) if the IAP auditor engaged to carry out the Non-compliance Audit finds that the IAP Service Provider is not in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, TCA shall be liable to pay all of the IAP auditor's fees.
- (d) TCA and the IAP Service Provider acknowledge and agree that the cost of all Termination Audits, shall be paid for in accordance with the following:
- (i) If TCA nominates that it will undertake the relevant Termination Audit, and TCA finds that:

- (A) the IAP Service Provider was in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, the IAP Service Provider shall be liable to pay all TCA's reasonable costs; or
 - (B) the IAP Service Provider was not in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, TCA shall absorb all costs associated with the Termination Audit.
- (ii) If TCA nominates that an IAP auditor is to undertake the relevant Termination Audit:
- (A) TCA will nominate and obtain quotes from two or more IAP auditors;
 - (B) after obtaining the quotes referred to in clause 6.2(d)(ii)(A), TCA will engage the IAP auditor which provided the lowest quote;
 - (C) if the IAP auditor engaged to carry out the Termination Audit finds that the IAP Service Provider was in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, the IAP Service Provider shall be liable to pay all of the IAP auditor's fees;
 - (D) if the IAP auditor selected to carry out the Termination Audit finds that the IAP Service Provider was not in breach of this Agreement and/or the Functional and Technical Specification and/or the IAP Law, TCA shall be liable to pay all of the IAP auditor's fees.

6.3 Invoicing and payment terms

- (a) TCA will issue the IAP Service Provider with an invoice for the Operational Fee once each calendar month.
- (b) TCA will issue the IAP Service Provider with an invoice for such additional fees as may arise from time to time under clause 6.2, promptly on completion.
- (c) The IAP Service Provider must pay the amounts invoiced in full within thirty (30) days from the date of the invoice.

7. Obligations of TCA

7.1 Functions of TCA

TCA must:

- (a) advise Jurisdictions in writing of the Certification status of the IAP Service Provider;
- (b) arrange IAP audits and assessments in accordance with this Agreement;
- (c) undertake IAP audits as necessary under this Agreement, and may do so itself or through a person authorised by TCA (including an IAP auditor);

- (d) advise the relevant Jurisdiction(s) if TCA or an IAP auditor identifies any non-compliance with an IAC and/or any Tampering or suspected or attempted Tampering by a Transport Operator, or any malfunction, that has not already been reported in accordance with the Functional and Technical Specification to the Jurisdiction(s);
- (e) provide the IAP Service Provider with an IAM for the purposes of this Agreement; and
- (f) generally, manage the certification and audit regime for the IAP including, but not limited to, determining whether to certify or re-certify an IAP service provider or to cancel Certification.

7.2 Notice of Cancellation of Certification

If notice is given by either TCA or the IAP Service Provider to the other of the termination of this Agreement, then TCA may give notice to all Jurisdictions of the termination and forthcoming cancellation of the IAP Service Provider's Certification.

7.3 Amendment of Functional and Technical Specification

- (a) Subject to clause 7.3(b), during the initial term or during any subsequent term, TCA must not amend the Functional and Technical Specification (including, changing or including new parameters in the IAP Services), where such amendment(s) will result in the IAP Service Provider incurring material additional costs.
- (b) TCA may amend the Functional and Technical Specification:
 - (i) where any such amendment(s) are of a minor and/or immaterial nature;
 - (ii) where, after engaging in a consultative process with all IAP service providers in relation to proposed amendments, the IAP Service Provider agrees to the proposed amendments, and requests that TCA amend the Functional and Technical Specification (and for the avoidance of doubt, the amendments to the Functional and Technical Specification will only apply to the IAP service providers that agree with the amendments); or
 - (iii) at, or after, the end of the initial term or any subsequent term, but prior to the commencement of any new term.

8. GST

8.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

8.2 Tax Invoice and Adjustment Note

No payment of any amount pursuant to clause 6, and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is

required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

8.3 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

8.4 Revenue exclusive of GST

Any reference in this Agreement (other than in calculation of Consideration) to price, value, revenue or similar amount ("**Revenue**"), is a reference to that Revenue exclusive of GST.

9. Conflicts of Interest

9.1 Conflicts of interest

The IAP Service Provider must not:

- (a) have any managerial, financial, commercial, personal or other relevant interest in any Transport Operator using the IAP Services, any Transport Operator using the IAP services of another IAP service provider, or another IAP service provider;
- (b) provide the IAP Services to a Transport Operator that has any managerial, financial, commercial, personal or other relevant interest in the IAP Service Provider, or any other IAP service provider; or
- (c) have any actual conflict between its obligations as an IAP service provider and its other businesses, interests and activities.

9.2 Dealing with conflicts

If a conflict or risk of conflict does arise (including, any actual, potential or perceived conflict between the IAP Service Provider's Certification as an IAP service provider and the IAP Service Provider's other businesses, interests and activities) the IAP Service Provider must:

- (a) In the case of an actual conflict of interest:
 - (i) immediately notify TCA in writing;
 - (ii) take any measures as are necessary to cease its involvement in the matter giving rise to the conflict of interest, within ten (10) Business Days of written notice from TCA requiring the IAP Service Provider to take such measures; and
 - (iii) promptly advise TCA in writing of the measures undertaken under clause 9.2(a)(ii).
- (b) In the case of a potential or perceived conflict:

- (i) immediately notify TCA in writing;
- (ii) if after receiving notification of the potential or perceived conflict of interest, in accordance with clause 9.2(b)(i), TCA reasonably believes that a potential or perceived conflict has the potential to cause an actual conflict of interest, take any measures as are necessary to cease its involvement in the matter giving rise to the potential for a conflict of interest, within ten (10) Business Days of written notice from TCA requiring the IAP Service Provider to take such measures; and
- (iii) promptly advise TCA in writing of the measures undertaken under clause 9.2(b)(ii).

10. Privacy and Confidential Information

10.1 Sale or provision of information

- (a) The IAP Service Provider must not sell, provide, transfer or copy any information, including aggregated data and reports, collected under the IAP, to any person, or allow any person to view any information, unless it obtains the express written permission of the relevant Transport Operator under an agreement separate to IAP-related arrangements.
- (b) For the avoidance of doubt, this clause does not apply to the reporting and information provision requirements specified in this Agreement.

10.2 Privacy

The IAP Service Provider must comply with all applicable Privacy Laws and with the privacy requirements of the IAP Law.

10.3 Restricted use and disclosure of information related to NCRs

- (a) The IAP Service Provider agrees that it:
 - (i) will only use information establishing or tending to establish non-compliance by a Transport Operator with an IAC for the purposes of the performance of its monitoring and reporting obligations under this Agreement;
 - (ii) will not use the information collected by it for any other purposes; and
 - (iii) will comply with the IAP Law relating to the disclosure and non-disclosure of NCRs and the information contained therein.
- (b) Without limiting this clause 10.3 of this Agreement, the IAP Service Provider must not:
 - (i) supply any information collected by it in the performance of its monitoring and reporting obligations under this Agreement, or any NCR, any modified version of any NCR, or any information contained in or derived from any NCR, to any person, other than to Jurisdictions and TCA when in accordance with this Agreement; or

- (ii) modify any NCR outside the form and standard specified in the Functional and Technical Specification.
- (c) Notwithstanding any other provision of this Agreement, the IAP Service Provider must make available to the relevant Jurisdiction, on request, access to the information collected by the IAP Service Provider under this Agreement to the extent required under the IAP Law.
- (d) Notwithstanding the provisions of clauses 10.3(a) and 10.3(b), the IAP Service Provider may, at the request of a Transport Operator, make available to it any IAP Information (including Personal Information) in accordance with the IAP Law. For the avoidance of doubt, this does not include reports of Tampering or suspected or attempted Tampering.
- (e) Nothing in this Agreement overrides the IAP Service Provider's obligations under the IAP Law relating to the:
 - (i) collection, storage, use and disclosure of IAP information, including personal information; and
 - (ii) the disclosure and non-disclosure of NCRs and Tampering reports.

10.4 Confidentiality

- (a) The IAP Service Provider must not, and must ensure its Personnel and sub-contractors do not, either during the Term of this Agreement or at any time afterwards, disclose to any person any Confidential Information.
- (b) The IAP Service Provider must not use such Confidential Information for purposes other than in order to perform its obligations pursuant to this Agreement.
- (c) The IAP Service Provider may use or disclose any part of the Confidential Information that has been published or is otherwise in the public domain other than by reason of any breach by the IAP Service Provider, its Personnel or sub-contractors of its obligation of confidentiality or any other obligation under this Agreement.

10.5 Intellectual Property

- (a) Subject to clause 10.5(b), the IAP Service Provider must not, and must use its reasonable endeavours to ensure its Personnel and sub-contractors do not, either during the Term or at any time afterwards, use the information or data gathered in the course of the provision of the IAP Services for commercialisation without the consent of TCA (where such consent cannot be unreasonably withheld), or in breach/non-compliance with IAP Law.
- (b) In performing its obligations under this Agreement, the IAP Service Provider does not acquire any right to any Intellectual Property of TCA or any of the Jurisdictions.
- (c) TCA shall not acquire any right to the Intellectual Property rights of the IAP Service Provider existing at the Commencement Date.
- (d) TCA shall not acquire any right to the Intellectual Property rights of the IAP Service Provider created by the IAP Service Provider after the Commencement Date.

- (e) TCA grants the IAP Service Provider a non-transferable and non-exclusive limited licence to use the Intellectual Property specified in Schedule E in accordance with the guidelines specified in Annexure 3 for the duration of this Agreement.
- (f) For the avoidance of doubt, nothing in clause 10.5 permits the IAP Service Provider to use any Intellectual Property of any Jurisdiction without the consent of the relevant Jurisdiction.

11. Liability, Indemnity and Insurances

11.1 Exclusions and limitations on TCA's liability

- (a) TCA excludes all conditions, warranties and terms implied by statute, general law or custom, except any non-excludable condition that exists under the *Trade Practices Act 1974* (Cth) or other legislation.
- (b) TCA gives no warranty to the IAP Service Provider in respect of the number of vehicles that will participate in the IAP from time to time.
- (c) Subject to clause 11.1(d):
 - (i) TCA hereby excludes any liability for any Claim that may arise out of contract, tort, statutory provision or otherwise that would otherwise accrue to the IAP Service Provider for any matter in relation to this Agreement; and
 - (ii) without limiting subclause 11.1(c)(i), TCA hereby excludes all liability in relation to, or in connection with:
 - (A) any cancellation of the IAP Service Provider's Certification to provide IAP Services; and
 - (B) any law, or Government Agency decision, including any decision of any road authority, to cancel or abandon the IAP, or to adopt in addition to or in substitution for the IAP, any other vehicle monitoring program.
- (d) TCA's liability to the IAP Service Provider for breach of any non-excludable condition, warranty or term (other than one implied by the *Trade Practices Act*) is limited to the cost of the application fee for Certification.

11.2 Indemnity by the IAP Service Provider

Subject to clause 11.3 and clause 11.4, the IAP Service Provider must indemnify and keep indemnified TCA and each of its officers, agents and employees against any Loss which any such person may incur or be subjected to, arising from or in connection with:

- (a) any breach of or default under this Agreement by the IAP Service Provider;
- (b) any negligence or wilful misconduct of the IAP Service Provider, or any misrepresentation or breach of warranty by the IAP Service Provider;
- (c) any loss, loss of use, or damage to, any property of TCA or any Jurisdiction;

- (d) any Claim the IAP Service Provider may bring against any third party (including but not limited to any Jurisdiction or PSMA);
- (e) any Claim brought by any person against TCA that arises in connection with the provision of IAP Services by the IAP Service Provider, including but not limited to:
 - (i) personal injury, death, disease or illness (including mental illness);
 - (ii) economic loss;
 - (iii) loss, or damage to, or loss of use of, property; and
 - (iv) breach by the IAP Service Provider of any Privacy Laws or the IAP Law.

11.3 Apportionment of liability

The IAP Service Provider's liability in clause 11.2 shall be reduced proportionally to the extent that any act or omission of TCA and its employees and agents or the Jurisdictions and their respective employees and agents, has contributed to the loss, damage, cost or expense.

11.4 Limitation of IAP Service Provider's liability

- (a) Subject to clause 11.4(b), the IAP Service Provider's liability to indemnify TCA under clause 11.2 is limited to \$20,000,000.
- (b) Clause 11.4(a) does not in any way limit the IAP Service Provider's liability to indemnify TCA under clause 11.2 for:
 - (i) any breach of, and/or non-compliance with, this Agreement by the IAP Service Provider, where such breach or non-compliance gives TCA the right to terminate the Agreement in accordance with clauses 14.1(a), 14.2(a) or 14.2(c);
 - (ii) death or personal injury arising in connection with the provision of IAP Services by the IAP Service Provider; or
 - (iii) without limiting clause 11.4(b)(i), willful default or dishonest conduct by the IAP Service Provider (including the provision of false or misleading information).

11.5 Insurances

Prior to the Commencement Date, the IAP Service Provider must procure and maintain insurance policies in accordance with Schedule B on terms approved by TCA and must maintain the policies of insurance for the risks identified and for the period of cover specified in Schedule B.

11.6 Evidence of insurance policies

- (a) The IAP Service Provider must, promptly following a reasonable request by TCA, provide proof that the policies of insurance required in Schedule B (including insurance for any sub-contractors) have been effected and are current at all times during the period of insurance.

- (b) As proof of compliance, the IAP Service Provider must provide certificates of currency to TCA in the form specified in Schedule B.
- (c) The IAP Service Provider must notify TCA within two (2) Business Days of:
 - (i) the cancellation of any of the policies of insurance required under this Agreement; or
 - (ii) the variation or reduction in the limits or coverage of such insurance policies.

11.7 Professional indemnity of sub-contractors

The IAP Service Provider remains responsible to TCA for all acts and omissions of its permitted sub-contractors.

11.8 Alternative regimes

Both parties acknowledge that the States, Territories and Commonwealth each have the power to impose alternative regimes to the IAP for the monitoring of heavy vehicles and that neither TCA nor the Jurisdictions nor the IAP Service Provider are liable to any other party for any losses arising from the adoption of any alternative regime.

11.9 Appearance as an expert witness

- (a) If legal proceedings arise in connection with the operations of the IAP and TCA, the IAP Service Provider may be required to appear as an expert witness and/or prepare expert witness reports in connection with the legal proceedings where reasonably required by TCA or a Jurisdiction.
- (b) The IAP Service Provider may not, and must use reasonable endeavours to ensure that its Personnel do not, appear as an expert witness on behalf of a Transport Operator in the event of legal proceedings related to non-compliance with an IAC.
- (c) The costs of making any such appearances or drafting any such reports will be met by the relevant Jurisdiction involved in the legal proceedings or actions, in accordance with Schedule D.
- (d) For the avoidance of doubt, this Clause 11.9:
 - (i) is intended to make the IAP Service Provider available as an expert witness when required by TCA or a Jurisdiction for legal proceedings related to non-compliance with an IAC. In such proceedings, the IAP Service Provider may not appear as an expert witness on behalf of a Transport Operator, but will of course be available for cross-examination by the Transport Operator; and
 - (ii) does not preclude the Transport Operator calling the IAP Service Provider as a witness in court proceedings which are not legal proceedings related to non-compliance with an IAC.

11.10 IAP Service Provider warranty/agreement

- (a) The IAP Service Provider warrants that to the best of its knowledge (after making all reasonable inquiries) all information submitted to TCA by the IAP Service Provider in connection with its application for Certification, including, but not limited to, information relating to the financial capacity, probity, and functional and technical capability, of the IAP Service Provider, is true and correct at the time the information was submitted, and is still true and correct as at the date of this Agreement.
- (b) Without limiting clauses 3.8 and 11.10(a), the IAP Service Provider agrees to notify TCA, as soon as reasonably practicable, of any material change in any information, which was submitted to TCA in connection with the IAP Service Provider's application for Certification, during the Term (including any extension agreed in accordance with clause 2.2(b)) where such change will have a material adverse effect on the IAP or the IAP Service Provider's ability to provide the IAP Services.

11.11 Change of Control

- (a) The IAP Service Provider agrees to:
 - (i) provide TCA with twenty (20) Business Days' notice of the potential of any Change of Control Event; and
 - (ii) upon receipt of such notice, TCA will consider the potential Change of Control Event and may request the provision of additional information relating to the potential new controller of the IAP Service Provider.
- (b) If TCA considers, acting reasonably, that the Change of Control Event will materially adversely affect the IAP Service Provider's ability to provide IAP Services and/or comply with the terms of this Agreement and/or the Functional and Technical Specification, then TCA may Re-certify the IAP Service Provider in accordance with clause 3.8(a)(v) or terminate this Agreement in accordance with clause 14.2(d), by issuing a written notice to that effect.

12. Disputes

12.1 Negotiation

If there is a dispute or difference ("**Dispute**") between the parties arising out of or in connection with this Agreement, then within seven (7) Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours, acting in good faith, to resolve the Dispute by joint discussions.

12.2 Mediation

- (a) If the Dispute is not settled within five (5) Business Days of the meeting stipulated in clause 12.1, the parties will submit the Dispute to mediation administered by the ACDC.

- (b) The mediator will be an independent person agreed between the parties from a panel suggested by the President of the ACDC or, failing agreement, a mediator will be appointed by the President of the ACDC.
- (c) Any mediation meetings and proceedings under this clause must be held in Melbourne.

12.3 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

12.4 Continuation of rights and obligations

Despite the existence of a dispute or difference each party must continue to perform this Agreement.

13. IAP Service Provider Non-compliance and Rectification

- (a) The IAP Service Provider must rectify any breach or non-compliance by it with the terms of this Agreement and/or the requirements of the Functional and Technical Specification and/or the IAP Law within a reasonable period of time specified by TCA in a written notice.
- (b) The IAP Service Provider must, in writing, provide TCA with a report on the non-compliance of this Agreement and the steps taken to rectify it, within five (5) Business Days of the expiration of the time period as specified in a notice issued by TCA in accordance with clause 13(a).
- (c) At the discretion of TCA, a Non-compliance Audit may be undertaken to determine:
 - (i) what rectification is necessary; and/or
 - (ii) whether satisfactory rectification has been achieved.

14. Termination

14.1 Termination by TCA with ten (10) Business Days notice

TCA may terminate this Agreement by giving the IAP Service Provider ten (10) Business Days' notice in writing if any one of the following events occur after the Commencement Date:

- (a) the IAP Service Provider fails to rectify any breach of this Agreement and/or non-compliance with the Functional and Technical Specification and/or the IAP Law which has been the subject of notice given by TCA to the IAP Service Provider under clause 13(a) within the period of time specified by TCA;
- (b) any decision is taken to wind-up TCA or to alter or discontinue TCA's role in the IAP in order to comply with, or accommodate, any law, statutory licensing, government or Governmental Agency policy or decision, or otherwise; or

- (c) the PSMA Licence Agreement is terminated, and TCA using its best endeavours cannot procure an alternative, within twenty (20) Business Days.

14.2 Termination by TCA immediately upon delivery of notice

Notwithstanding the provisions in clauses 13 and 14.1, TCA shall have the right to terminate this Agreement, immediately upon delivery of written notice to that effect to the IAP Service Provider, in the event that:

- (a) the
 - (i) IAP Service Provider commits a breach of this Agreement; and/or
 - (ii) IAP Service Provider does not comply with:
 - (A) the Functional and Technical Specification;
 - (B) the IAP Law,and such breach or non-compliance is of such a serious nature (as determined by TCA acting reasonably) that the IAP Service Provider should not be permitted to continue to participate as an IAP service provider in a statutory compliance program;
- (b) the IAP Service Provider becomes subject to an Insolvency Event;
- (c) the IAP Service Provider knowingly provides false and/or misleading information to TCA, an IAP auditor or to Jurisdiction/s;
- (d) after following the procedures set out in clause 11.11(a), TCA issues a written notice as contemplated by clause 11.11(b); or
- (e) if the IAP Service Provider is unable to comply with an obligation of this Agreement by virtue only of a Force Majeure event, and a written notice is issued by TCA as contemplated by clause 15.3(b).

14.3 Termination subject to notice period

- (a) TCA may terminate this Agreement by giving sixty (60) Business Days notice in writing to the IAP Service Provider in the event that TCA has to terminate all current certification agreements it has with IAP service providers similar to this Agreement.
- (b) The IAP Service Provider may terminate this Agreement by giving sixty (60) Business Days notice in writing to TCA.

14.4 Effect of termination

- (a) Immediately upon termination of this Agreement, the IAP Service Provider's Certification is cancelled and the IAP Service Provider must immediately cease to offer and provide IAP Services.
- (b) The IAP Service Provider must, as soon as reasonably possible, return to TCA:
 - (i) any certificate issued by TCA to the IAP Service Provider recording Certification;

- (ii) any materials given to it by TCA, for use in any promotion, marketing or advertising, or any materials relating to Publicity (as that term is defined in clause 16.1(b)); and
 - (iii) any other materials as may be issued by TCA from time to time.
- (c) Termination of this Agreement is without prejudice to any accrued rights or remedies of the parties.

14.5 Provision of IAP Services during period of notice of termination

Where a notice of termination is given by either party in accordance with clauses 14.1, 14.2 or 14.3, the IAP Service Provider must continue to provide IAP Services to all Transport Operators with whom it has contracted for the supply of IAP Services, until the notice period, as referred to in clause 14.1, clause 14.2 or clause 14.3 (as applicable), has elapsed.

14.6 Termination Audits

- (a) Subject to clause 14.6(b), if the term of this Agreement expires or the IAP Service Provider ceases to be an IAP service provider in accordance with clause 14, a Termination Audit may be undertaken by TCA of the IAP Service Provider's compliance up to the termination date, and the IAP Service Provider must cooperate in respect of that audit.
- (b) The Termination Audit undertaken pursuant to clause 14.6(a) must be completed within forty five (45) Business Days of the termination date.

14.7 Surviving clauses

Clauses 1, 3.4, 4.2(c), 6.2(d), 8, 10, 11, 12, 14.4, 14.6, 14.7, 16.1(e), 16.2, 16.3 and 17.8 survive and continue beyond the termination of this Agreement.

15. Force Majeure Events

15.1 IAP Service Provider's obligations affected

If the IAP Service Provider's performance of its obligations under this Agreement is affected by a Force Majeure event, it must immediately:

- (a) notify TCA; and
- (b) describe in a reasonable level of detail the nature of the Force Majeure event and its likely effect on its obligations under this Agreement.

15.2 IAP Service Provider to resume IAP Services

On the occurrence of a Force Majeure event, the IAP Service Provider must use its best endeavours to continue or resume performance without delay, including by way of Recovery Services, alternate sources, work arounds or other means.

15.3 Effect of a Force Majeure event

- (a) Subject to clause 15.3(b), where the IAP Service Provider is unable to comply with an obligation of this Agreement by virtue only of a Force Majeure event, then it shall not be in breach of that obligation.
- (b) If the IAP Service Provider is, after sixty (60) Business Days from the day on which the Service Provider notifies TCA in accordance with clause 15.1, still unable to comply with an obligation of this Agreement by virtue only of a Force Majeure event, then either party may terminate this Agreement by issuing a written notice to that effect to the other party.

16. Publicity

16.1 Publicity

- (a) Nothing in this clause 16.1 limits clauses 10.4 and 10.5 of this Agreement and the rights granted pursuant to this clause 16.1 must be read as being subject to those clauses.
- (b) Subject to clauses 16.1(c) and 16.1(d), the IAP Service Provider may promote, market, advertise, publish or otherwise disclose the fact that it is an IAP service provider and can provide IAP Services in any media, including but not limited to, audio, visual and combined audio/visual form, printed, published, or electronic form ("**Publicity**").
- (c) The content of any Publicity must be provided by the IAP Service Provider to TCA for approval. Once the content of such Publicity has been approved, the IAP Service Provider may use such Publicity without further approval by TCA.
- (d) When engaging in any Publicity, the IAP Service Provider must:
 - (i) comply with all laws, including but not limited to laws prohibiting the engaging of misleading and deceptive conduct;
 - (ii) comply with any direction given by TCA from time to time (acting reasonably) as regards the presentation or content of any Publicity;
 - (iii) comply with the guidelines set out in Annexure 3 to this Agreement or any other guidelines given to the IAP Service Provider by TCA from time to time in connection with the use of IAP related trade marks and other Intellectual Property; and
 - (iv) not do anything to damage the brand or reputation of TCA, the Jurisdictions or the IAP.
- (e) TCA may request at any time that the IAP Service Provider cease to engage in any Publicity where in the reasonable opinion of TCA, the IAP Service Provider is:
 - (i) engaging in conduct that is misleading and deceptive;
 - (ii) incorrectly expressing information in any Publicity as regards the IAP, the IAP Services, TCA or the Jurisdictions and such expression of information is likely to have an adverse effect on the IAP; or

(iii) is in breach of clause 16.2.

16.2 Reputation of the IAP

Both parties agree not to do anything to bring the other party, the Jurisdictions or the IAP into disrepute and each party must do everything in its power to protect the reputation and good name of the other party, the Jurisdictions and the IAP.

16.3 Public announcements by TCA

The IAP Service Provider agrees that TCA may publicly announce or otherwise disclose information regarding the status of the Certification of the IAP Service Provider, or the cancellation of Certification of the IAP Service Provider and the reason(s) (if any) for the cancellation.

17. Miscellaneous

17.1 Good faith

- (a) The parties agree that whenever an issue arises which is not provided for expressly in this Agreement, they will work together in good faith to attempt to resolve that issue consistently within the spirit of this Agreement and the Functional and Technical Specification.
- (b) Nothing in this clause is intended to derogate from any right expressly provided to any party under this Agreement.

17.2 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.

17.3 No restriction on rights

Nothing in this Agreement is deemed in any way to restrict or limit the powers of TCA or the Jurisdictions or the exercise of their statutory functions. In the event such exercise of statutory functions is undertaken in accordance with the IAP Law, such exercise cannot and does not constitute a breach of this Agreement by TCA.

17.4 Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

17.5 Taxes and duties

The IAP Service Provider and any subcontractor and agents of the IAP Service Provider must pay such taxes, fees, duties and other impositions as may be levied under applicable laws.

17.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties on this matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

17.7 Amendment, waiver and assignment.

- (a) No amendment or variation of, or waiver of a right created under, this Agreement is valid or binding on a party unless made in writing executed by the party or parties to be bound. For the avoidance of doubt, the parties confirm that TCA may amend or vary the Functional and Technical Specification in accordance with clause 7.3.
- (b) The IAP Service Provider shall not assign its rights or obligations under this Agreement without the written consent of TCA where such consent cannot be unreasonably withheld.

17.8 Governing Law

This Agreement is governed by the laws of Victoria. The parties irrevocably submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this Agreement.

17.9 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together shall be deemed to be constituted as one instrument.

17.10 Inconsistency

The annexures and schedules to this Agreement (other than Annexures 4, 5 and 6) form part of this Agreement. To the extent that there is any conflict or inconsistency between the terms and conditions of this Agreement, the Functional and Technical Specification, the IAP Service Provider/Transport Operator Agreement, and the schedules and annexures to this Agreement, the documents will rank in the order in which they are listed below:

- (a) the terms and conditions of this Agreement;
- (b) the Functional and Technical Specification (except where such conflict or inconsistency relates to functional or technical aspects of the IAP or the audits specifically referred to in the Functional and Technical Specification, where in such circumstances the Functional and Technical Specification will rank ahead of the terms and conditions of this Agreement);
- (c) the IAP Service Provider/Transport Operator Agreement;
- (d) subject to clauses 17.10(b) and 17.10(c), the other annexures and schedules to this Agreement.

17.11 Notices

Any notice, demand, consent or other communication ("**Notice**") given or made under this Agreement:

- (a) must be in writing;

- (b) must be signed by a person duly authorised by the sender;
- (c) must be delivered either by hand, sent by registered mail or facsimile;
- (d) will be taken to be duly given or made:
 - (i) if delivered by hand, on the day of delivery if delivered before 5:00 pm on a Business Day, otherwise on the next Business Day;
 - (ii) if sent by registered post, on the day of actual delivery if delivered before 5:00 pm on a Business Day, otherwise on the next Business Day; and
 - (iii) if sent by facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error before 5:00pm on a Business Day, otherwise on the next Business Day; and
- (e) for the purpose of this clause, a person (“the sender”) may take the address and fax number of another person (“the recipient”) to be:
 - (i) the address and numbers set out in this Agreement;
 - (A) To TCA:
 - Attention: The Chief Executive Officer
 - Level 12, 535 Bourke Street
 - MELBOURNE VICTORIA 3000
 - Facsimile Number: 03 8601 4611
 - (B) To the IAP Service Provider: Attention: [Name of Contact Person]
 - [Address]
 - [CITY] [STATE] [POSTCODE]
 - Facsimile Number: [Facsimile number]
 - (ii) the last address or fax numbers notified by the recipient to the sender.

Schedule A

Jurisdictions

The following agencies are empowered to issue Intelligent Access Conditions:

- ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES, 101 Miller Street, North Sydney, New South Wales 2060;
- DEPARTMENT OF TRANSPORT AND MAIN ROADS QUEENSLAND, 477 Boundary Street, Spring Hill, Queensland 4000;
- VICROADS, 60 Denmark Street, Kew, Victoria 3101
- DEPARTMENT FOR TRANSPORT, ENERGY AND INFRASTRUCTURE, 136 North Terrace, Adelaide, South Australia 5000; and
- Any other agencies as advised by TCA from time to time.

Schedule B

Insurance Requirements

Type of insurance	Minimum sum insured	Period of insurance	Named insureds, policy terms and renewal
<p>Broad form Public and Products Liability* insurance effected with an approved insurer as defined in Definitions and Notes paragraph below.</p> <p>*If products are not involved in performance of the Services, it will be acceptable not to obtain Products Liability insurance.</p>	<p>a) Public Liability: Not less than \$20 million for any one occurrence. The insurer's liability is to be unlimited in the aggregate, and there is to be no limit on the number of occurrences to which the policy will respond.</p> <p>b) Products Liability: The insurer's total aggregate liability during any one period of insurance for all claims arising out of the IAP Service Providers Products shall be not less than \$20 million.</p>	<p>During the Term of this Agreement (including any subsequent Term under clause 2.2(b) of this Agreement).</p>	<p>(a) The IAP Service Provider, its officers, agents and employees, shall be named insureds.</p> <p>(b) Where the IAP Service Provider engages a subcontractor in accordance with clause 2.5 of this Agreement, unless the IAP Service Provider shall have ensured that such subcontractor itself carries insurance meeting the requirements of this schedule, the IAP Service Provider must procure that such subcontractor, its officers, agents and employees, are additional named insureds for their respective rights, interests and liabilities under a policy effected by the IAP Service Provider for its own benefit in accordance with this schedule.</p> <p>(c) TCA shall be an additional named insured as defined in Definitions and Notes paragraph below.</p> <p>(d) The policy can be taken out annually. However the IAP Service Provider must make reasonable efforts to ensure that cover in any subsequent year is to be on terms no less favourable than the previous year, and in any event the cover must comply with the requirements of this schedule.</p>

Type of insurance	Minimum sum insured	Period of insurance	Named insureds, policy terms and renewal
			<p>(e) The policy shall include a cross liability and waiver of subrogation clause as defined in Definitions and Notes paragraph below.</p> <p>(f) Named insureds are to be covered for all Liability arising out of the use of all plant and equipment, including the use of hoists, cranes, unregistered vehicles, boilers and pressure vessels.</p> <p>(g) The policy is to be governed by Australian law and subject to Australian jurisdiction as defined in Definitions and Notes paragraph below.</p>

Type of insurance	Minimum sum insured	Period of insurance	Named insureds, policy terms and renewal
<p>Motor Vehicle Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes paragraph below.</p>	<p>Not less than \$20 million for any one occurrence.</p> <p>The insurer's liability is to be unlimited in the aggregate, and there is to be no limit on the number of occurrences to which the policy will respond.</p>	<p>During the Term of this Agreement (including any subsequent Term under clause 2.2(b) of this Agreement).</p>	<p>(a) The IAP Service Provider, its officers, agents and employees shall be named insureds.</p> <p>(b) Where the IAP Service Provider engages a subcontractor in accordance with clause 2.5 of this agreement, unless the IAP Service Provider shall have ensured that such subcontractor itself carries insurance meeting the requirements of this schedule, the IAP Service Provider must procure that such subcontractor, its officers, agents and employees, are additional named insureds for their respective rights, interests and liabilities under a policy effected by the IAP Service Provider for its own benefit in accordance with this schedule.</p> <p>(c) TCA shall be an additional named insured as defined in Definitions and Notes paragraph below.</p> <p>(d) The policy is to cover liability arising from the use of motor vehicles owned or used by the IAP Service Provider or subcontractors, directly or indirectly engaged in performance of Commercial Services or IAP Services.</p>

			<p>(e) The policy can be taken out annually. However the IAP Service Provider must make reasonable efforts to ensure that cover in any subsequent year is to be on terms no less favourable than the previous year, and in any event the cover must comply with the requirements of this schedule.</p> <p>(f) The policy shall include a cross liability and waiver of subrogation clause as defined in Definitions and Notes paragraph below.</p> <p>(g) The policy is to be governed by Australian law and subject to Australian jurisdiction as defined in Definitions and Notes paragraph below.</p>
--	--	--	--

Type of insurance	Minimum sum insured	Period of insurance	Named insureds, policy terms and renewal
Motor Vehicle Compulsory Third Party effected with an approved insurer as defined in Definitions and Notes paragraph below.	According to the law of each relevant State or Territory.	During the Term of this Agreement (including any subsequent Term under clause 2.2(b) of this Agreement).	According to the law of each relevant State or Territory.

Type of insurance	Minimum sum insured	Period of insurance	Named insureds, policy terms and renewal
Workers' Compensation effected with an approved insurer as defined in Definitions and Notes paragraph below.	According to the law of each relevant State or Territory.	During the Term of this Agreement (including any subsequent Term under clause 2.2(b) of this Agreement).	According to the law of each relevant State or Territory.

Type of insurance	Minimum sum insured	Period of insurance	Named insureds, policy terms and renewal
Professional Indemnity insurance effected with an approved insurer as defined in Definitions and Notes paragraph below.	<p>Not less than \$5 million per Claim.</p> <p>There is to be no limit to the number of Claims to which the policy will respond.</p> <p>The insurer's aggregate limit of liability must be not less than \$5 million.</p>	<p>a) During the Term of this Agreement (including any subsequent Term under clause 2.2(b) of this Agreement); and</p> <p>b) for a further period of 7 years following the expiry of the Term of this Agreement.</p>	<p>(a) The IAP Service Provider, its officers, agents and employees shall be named insureds.</p> <p>(b) Where the IAP Service Provider engages a subcontractor in accordance with clause 2.5 of this agreement, unless the IAP Service Provider shall have ensured that such subcontractor itself carries insurance meeting the requirements of this schedule, the IAP Service Provider must procure that such subcontractor is an additional named insured for its respective rights, interests and liabilities under a policy effected by the IAP Service Provider for its own benefit in accordance with this schedule.</p> <p>(c) The policy is to include a definition of the professional services covered, which includes the provision of Commercial Services, IAP Services and IAP Type Services (if applicable) under the terms of this Agreement.</p>

			<p>(d) The policy shall not include any exclusion or other policy term which precludes or limits the right of a named insured to indemnity in relation to:</p> <ul style="list-style-type: none"> • a liability assumed under contract, other than a liability for a trading debt or a guarantee provided by the insured in relation to such a debt; or • a liability for death, bodily injury or property damage. <p>(e) The policy can be taken out annually. However the IAP Service Provider must make reasonable efforts to ensure that cover in any subsequent year is to be on terms no less favourable than the previous year, and in any event the cover must comply with the requirements of this schedule.</p> <p>(f) Where the cover is subject to a retroactive date, that date must be no later than the date being the Commencement Date of this Agreement.</p> <p>(g) The policy shall include a waiver of subrogation clause as defined in Definitions and Notes paragraph below.</p> <p>(h) The policy is to be governed by Australian law and subject to Australian jurisdiction as defined in Definitions and Notes paragraph below.</p>
--	--	--	--

Definitions and Notes:

"Approved insurer" means:

- (a) a general insurer that is authorised by the Australian Prudential Regulatory Authority (APRA) under s 12 of the *Insurance Act 1973* (Cth) to carry on insurance business in Australia; or
- (b) Lloyd's Underwriters.

However, in relation to Motor Vehicle Compulsory Third Party insurance and Workers' Compensation insurance, "approved insurer" means an insurer licensed, authorised or otherwise permitted (as the case may be) to carry on such business in the relevant State or Territory under the law of the relevant State or Territory.

"TCA shall be an additional named insured" means that TCA, its officers, agents and employees shall be covered for any liability they may incur arising out of the IAP Service Provider's activities. Without limitation, this extension shall include any liability:

- (a) for injury to any TCA employee; and
- (b) arising from work undertaken away from the IAP Service Provider's premises.

However, notwithstanding any exclusion or policy term to the contrary, TCA's rights and those of its officers, agents and employees as named insureds shall in no way affect their rights to bring or maintain any claim against any other named insured, whether under or in relation to a breach of this Agreement or otherwise, and any exclusion or other policy term which would otherwise affect such other named insured's entitlement to indemnity in relation to such a claim on the basis that TCA, its officers, agents and employees are also named insureds under the policy shall be of no effect.

"Cross liability and waiver of subrogation clause", in respect of all insurances other than Professional Indemnity as described in this Schedule B, means a policy term under which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons insured under the policy and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons so insured as if a separate policy of insurance has been issued to each of them (subject always to the overall sum insured), such that any error or omission by one person so insured shall not affect the cover available under the policy to the others.

"Waiver of subrogation clause", in respect of Professional Indemnity insurance as described in this Schedule B, means a policy term under which the insurer agrees to waive all rights of action that it may have or acquire under the policy against TCA, its officers, agents and employees.

"The policy is to be governed by Australian law and subject to Australian jurisdiction" means that the insurance policy shall include terms that provide that it is to be governed by the law of an Australian State or Territory, and that the parties submit to the jurisdiction of an Australian court.

Schedule C

Representatives

IAP Service Provider Authorised Representatives

The Authorised Representatives of the IAP Service Provider as identified in this Schedule may perform any function of the IAP Service Provider under this Agreement. The IAP Service Provider may change the Authorised Representative by providing written notice to TCA.

Name	Position	Email
[Name]	[Position]	[Email address]

TCA Authorised Representatives

The Authorised Representatives of TCA as identified in this Schedule may perform any function of TCA under this Agreement. TCA may change the Authorised Representative by providing notice to the IAP Service Provider.

Name	Position	Email
Chris Koniditsiotis	Chief Executive Officer	chrisk@tca.gov.au

Schedule D

Expert witness costs

Airfares

Return economy air fare at cost.

Accommodation

The accommodation rates shown for domestic travel apply only for stays in commercial establishments like hotels, motels and serviced apartments.

Place	Rate per day*
Adelaide	\$185
Brisbane	\$233
Canberra	\$208
Darwin	\$229
Hobart	\$167
Melbourne	\$216
Perth	\$226
Sydney	\$225
Non-capital City	\$144

* based on Table 2 of Taxation Determination TD 2011/17, which is updated annually by the Australian Taxation Office and is subject to change.

Expert Witness Fees

Expert witness fees at a reasonable rate to be agreed between the IAP Service Provider and the relevant Jurisdiction.

Schedule E

Licensed Intellectual Property

Trademarks:







Schedule F

Special Conditions

Communications Coverage Area:

Network:

Number of Vehicles:

IAP-SP Certification Type:

IVU:

Model Number:

Operating System Version:

Firmware Version:

IAP Service Provider (Back office):

IAP Application Software Version:

Hardware Type:

Operating System Version and Service Pack:

IAP Data Base and Service Pack:

IAP-SP System Dated:

SDID or back office alternative:

Hardware Make:

Operating System Version:

Software Release Version:

Requirements to be completed post-Certification:

1. Completion After Certification But Before Commencement of IAP Services

2. After Certification Generally - Ongoing

Executed as an Agreement

Executed for and on behalf of
Transport Certification Australia Limited
(ABN 83 113 379 936) by:

Chief Executive Officer

Signature of Witness

Full Name (BLOCK LETTERS)

Full Name of Witness (BLOCK LETTERS)

Capacity of Authorised Representative

Date

Date

Executed for and on behalf of the
[IAP SERVICE PROVIDER] (ABN [ABN])
by:

Authorised Representative

Signature of Witness

Full Name (BLOCK LETTERS)

Full Name of Witness (BLOCK LETTERS)

Capacity of Authorised Representative

Date

Date

Annexure 1 – IAP Functional and Technical Specification

Annexure 2 – Fees (Operational Fee)

Year	Actual Cost \$ per vehicle per month
2011	\$33.00 (plus \$3.30 GST)

Note:

This Annexure 2 may be amended by TCA from time to time in its absolute discretion in accordance with clause 6.1(a) of the TCA / IAP Service Provider Certification Agreement.

Annexure 3 – Guidelines for using the IAP Certified Trademark

Annexure 4 – TCA/IAM Sub-Licence Agreement for IAP-SP

Annexure 5 – TCA/IBIRS Licence Agreement for IAP-SP

Annexure 6 – IAP-SP/Transport Operator Agreement