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| Telematics In-Vehicle Unit (IVU)Type-Approval Agreement |
|  |
| **Transport Certification Australia Limited**and**insert full company name of Supplier** |
|  |

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**Annexure B** Guidelines for using the TCA Type-Approved logo with In-Vehicle Unit (IVU) Tick Disc

|  |  |
| --- | --- |
| **Date** |  |
| **Parties** |  |
|  | **Transport Certification Australia Limited** (ABN 83 113 379 936) of Level 12, 535 Bourke Street, Melbourne, Victoria, 3000 Australia (**"TCA"**). |
|  | **insert full company name of Supplier** (ABN insert ABN) of insert address (the **"Supplier"**). |
| **Recitals** |  |
|  | The Supplier submitted an IVU for Type-Approval, to TCA.  |
|  | TCA conducted a Type-Approval of the IVU submitted by the Supplier. |
|  | TCA and the Supplier enter into this Agreement to record the terms on which TCA has Type-Approved the Supplier's IVU. |

**It is agreed** as follows.

Definitions and Interpretation

* 1. Definitions

The following definitions apply in this Agreement:

1. **“ACDC”** means the Australian Commercial Disputes Centre Limited.
2. **“Agreement”** means this agreement.
3. **“Business Day”** means a weekday on which banks are open in Melbourne, Victoria.
4. **“Certificate”** means a certificate containing the information set out in Schedule D that is issued by TCA in respect of a Conforming IVU.
5. **“Change of Control Event”** means, in relation to an entity, the occurrence of an event which has the effect that:
6. 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;
7. if no person Controlled the entity prior to the time the event occurred, a person obtained Control of the entity; or
8. 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.
9. **“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.
10. **“Commencement Date”** means the date of this Agreement.
11. **“Confidential Information”** means all information or knowledge relating to the business, affairs or any other technical information of TCA, which:

a. is disclosed to the Supplier by or on behalf of TCA;

b. is otherwise acquired by the Supplier directly or indirectly from TCA; or

c. otherwise comes to the knowledge of the Supplier,

whether the information is in oral, visual or written form or is recorded or embodied in any other medium.

1. **“Conforming IVU”** means an IVU of the Supplier that conforms with the description of the Type-Approved IVU and which the Supplier has or intends to supply to a Customer.
2. **“Control”** has the meaning given to that term in section 50AA of the Corporations Act and **“Controlled”** has the corresponding meaning.
3. **“Corporations Act”** means the *Corporations Act 2001* (Cth).
4. **“Customer”** means a person to whom the Supplier supplies a Conforming IVU, either directly or through an agent, distributor or retailer.
5. **“Dispute”** has the meaning given in clause 15.1.
6. **“Fees”** means the fees referred to in clause 6.1(a).
7. **“Guidelines”** means the ‘Guidelines for using the TCA Type-Approved logo with In-Vehicle Unit (IVU) Tick Disc’ (as amended by TCA from time to time) in Annexure B of this Agreement.
8. **“IAP Services”** means all of the services an IAP Service Provider must provide, and all the obligations an IAP Service Provider must observe, as set out in a 'TCA / IAP Service Provider Certification Agreement' and in the ‘IAP Functional and Technical Specification’ between TCA and the IAP Service Provider.
9. **“IAP Service Provider”** means a person who has been certified by TCA as an IAP Service Provider and is entitled to provide IAP Services.
10. **“Insolvency Event”** means any one of the following events that may occur in respect of the Supplier:

a. the Supplier stops or suspends or threatens to stop or suspend payment of all or a class of its debts;

b. the Supplier 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 Supplier is insolvent;

d. the Supplier fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);

e. the Supplier has an administrator appointed or any step preliminary to the appointment of an administrator is taken;

f. the Supplier 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 Supplier 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.

1. **“Intellectual Property”** means all industrial and intellectual property whether protectable by statute, at common law or in equity, including, but not limited to, trademarks/logos, copyright, design rights, inventions, patents, technology, trade secrets, know-how and all other rights and interests of a like nature.
2. **“IVU”** has the meaning given to that term in the Telematics In-Vehicle Unit (IVU) Functional and Technical Specification.
3. **“Law”** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.
4. **“Loss”** includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.
5. **“Personnel”** means that party's employees, officers, directors and agents.
6. **“Privacy Laws”** means the *Privacy Act 1988* (Cth) and any other applicable Commonwealth, State or Territory privacy law.
7. **“Publicity”** means the marketing of the Type-Approved IVU and/or a Conforming IVU via any medium, including, but not limited to, packaging, posters, brochures, trade journals and magazines, merchandise, editorials, demonstrations, media releases and print, radio, telephone, television, website and email advertising.
8. **“Software”** means the source code(s) and object code(s) comprising the computer program(s) used by the Supplier in connection with the IVU.
9. **“Specification”** means the Telematics In-Vehicle Unit (IVU) Functional and Technical Specification in Annexure A of this Agreement.
10. **“Term”** means the Initial Term and any extension of it (as contemplated by clause 2(b)).
11. **“Trademarks”** means those trademarks/logos of TCA as set out in Schedule C or as otherwise notified to the Supplier from time to time.
12. **“Type-Approval”** means an assessment process conducted by TCA to determine whether an IVU meets the requirements of the Specification and **“Type-Approve”** has the corresponding meaning.
13. **“Type-Approved”** has the meaning given in clause 3.
14. **“Type-Approved IVU”** means an IVU of the Supplier that has been Type-Approved by TCA and that is described in Schedule A.
	1. Interpretation

Headings are for convenience only and do not affect interpretation.

* + 1. Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
		2. Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

The following rules apply unless the context requires otherwise.

* + 1. The singular includes the plural, and the converse also applies.
		2. A gender includes all genders.
		3. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
		4. A reference to aperson includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
		5. A reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Agreement.
		6. 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.
		7. 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).
		8. 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.
		9. A reference to dollars and *$* is to Australian currency.
		10. 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).
	1. Consents or approvals

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

Term

* + 1. Subject to clause 2(b), this Agreement will expire three years from the Commencement Date unless this Agreement is terminated earlier by either party in accordance with its terms.
		2. The parties may, by mutual agreement, agree to extend the Initial Term.
		3. TCA's agreement to any extension of the Initial Term may be subject to the Supplier undergoing a new Type-Approval under clause 4.4(b), as determined by TCA.

TCA Type-Approval

* + 1. TCA hereby confirms the IVU of the Supplier set out in Schedule A as being Type-Approved by TCA ("**Type-Approved"**), subject to the terms and conditions of this Agreement.
		2. The Supplier warrants that the information it has submitted to TCA in connection with its application for Type-Approval of the IVU is true and correct, and agrees to notify TCA, as soon as reasonably practicable, of:
			1. any material change to this information; or
			2. any material information that could have negatively affected TCA's decision to Type-Approve the IVU.

Type- Approved IVU – Standards and Changes

* 1. Standard of Type-Approved IVU
		1. The Supplier must ensure that the Type-Approved IVU and any Conforming IVU:
			1. meets, and continues to meet, all of the requirements of this Agreement (including the Specification);
			2. complies with all Laws; and
			3. is manufactured and supplied so it is of merchantable quality and fit for its intended purpose.
		2. To the extent that TCA determines (acting reasonably) that the Type-Approved IVU no longer meets the requirements set out in this Agreement (including the Specification), TCA may notify the public (including Customers) via its internet site or by any other means of the situation and require the Supplier to:
			1. cease providing Certificates to Customers under clause 5.1;
			2. cease using the Trademarks in any Publicity relating to the IVU;
			3. cease holding out that the IVU is Type-Approved; and/or
			4. as TCA directs:
				1. destroy, deliver up or otherwise deal with all Publicity concerning the IVU bearing a Trademark;
				2. return all Certificates (whether in its possession or the possession of its agents or distributors) which relate to IVUs that have not been supplied to a Customer; and/or
				3. modify all Publicity in respect of the IVU so as to completely obscure the Trademark.

The Supplier must comply with any direction given to it by TCA.

* 1. Notifications in respect of Type-Approved IVU

The Supplier must notify TCA in writing:

* + 1. of any proposed change(s) to the Type-Approved IVU and seek a new Type-Approval; or
		2. if the Type-Approved IVU is not operating in accordance with the Specification.
	1. Cessation of manufacture or distribution

The Supplier must advise TCA promptly in writing if it ceases or suspends the manufacture and/or distribution of the Type-Approved IVU for more than three (3) months and the reason for such cessation or suspension.

* 1. New Type-Approval

The Supplier agrees that the Type-Approved IVU may, at TCA’s sole and absolute discretion, be subject to a new Type-Approval where:

* + 1. the Supplier proposes a change to the Type-Approved IVU (which, includes any changes to processes and procedures submitted by the Supplier as part of the Type-Approval process), but such new Type-Approval shall only occur in respect of the relevant change to the Type-Approved IVU;
		2. the Term is due to expire and the parties agree to extend the Term; or
		3. TCA considers, acting reasonably, that a Change of Control Event will materially adversely affect the Type-Approved IVU and/or the Supplier's ability to comply with the terms of this Agreement in accordance with clause 11.5(b).

Relationship with Customers / Certificate

* 1. Provision of Certificate
		1. Where the Supplier intends to supply a Conforming IVU to a Customer, the Supplier must provide TCA with the unique serial number of each Conforming IVU so that TCA can prepare a Certificate in respect of that Conforming IVU in advance.
		2. At the time of supplying a Conforming IVU to a Customer, the Supplier must provide the Customer with the Certificate obtained from TCA in respect of that Conforming IVU.
		3. The Supplier may supply a Conforming IVU to a Customer for which a Certificate has not been obtained from TCA under clause 5.1(a) **provided** that the Supplier:
			1. applies to TCA for a Certificate with respect to the Conforming IVU within three (3) Business Days of its supply to the Customer; and
			2. gives the Customer the Certificate within five (5) Business Days of receiving the Certificate from TCA.
		4. If the Supplier fails to comply with clause 5.1(a) and 5.1(b) or 5.1(c), it must not:
			1. hold out that the IVU that it is to supply to the relevant Customer conforms with the Type-Approved IVU; and
			2. use the Trademarks in any Publicity relating to the IVU that it is to provide to that Customer.
		5. For the avoidance of doubt, a failure by the Supplier to comply with any of the provisions of this clause 5 will constitute a breach of this Agreement which is of a 'serious nature' for the purposes of clause 16.2(a).
	2. Use of Certificate and Type-Approved Status

(a) The Supplier must not request a Certificate from TCA, provide a Certificate to a Customer or otherwise use a Certificate, in relation to an IVU that is not a Conforming IVU.

(b) Apart from the Type-Approved IVU described in Schedule A or a Conforming IVU, the Supplier must not state, infer or imply that any other product and/or service it offers or supplies is Type-Approved by TCA or comparable with the Type-Approved IVU.

**5.3 Provision of information to Customers**

The Supplier must ensure that detailed instructions for the installation and maintenance of a Conforming IVU are provided with every Conforming IVU that is supplied to a Customer.

Fees

* 1. Fees
		1. The Supplier agrees to pay to TCA the fee set out in Schedule E for each Certificate issued by TCA to the Supplier for provision to a Customer in accordance with clause 5.1 of this Agreement ("**Fees"**).
		2. TCA reserves the right to alter the Fees in its absolute discretion after giving the Supplier no less than forty (40) Business Days’ notice in writing of such alterations.
		3. The Supplier will pay to TCA the reasonable costs of any new Type-Approval required under clause 4.4 or any investigation conducted under clause 13(c).
		4. If the Supplier fails to pay an amount payable by the due date, TCA may charge interest at the rate of interest prescribed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on the unpaid amount accrued daily from the time it falls due until the amount has been paid in full and/or (in the case of outstanding Fees) cease issuing Certificates under clause 5.1 until the outstanding Fees are paid in full.
		5. If GST is payable on a ‘taxable supply’ made in connection with this Agreement, the party providing the consideration for that 'taxable supply’ must also pay an amount of GST as additional consideration.
	2. Invoicing
		1. TCA will issue the Supplier with an invoice for:
			1. applicable Fees once each calendar month; and
			2. any additional fees that may arise from time to time promptly on completion.
		2. The Supplier must pay the amounts invoiced in full no later than thirty (30) days after the date of the invoice.

General Obligations

* 1. Compliance with reasonable requests for information

The Supplier must at all times comply with requests for information from TCA (acting reasonably) in accordance with this Agreement.

* 1. Retention of records

All records, data and information relating to the Type-Approved IVU must be stored by the Supplier in accordance with the Specification or as directed in writing by TCA from time to time.

* 1. Provision of financial statements

The Supplier must, upon request from TCA, allow TCA to inspect financial information and data of the Supplier in order to verify the number of Conforming IVUs supplied in a particular period.

* 1. Costs of compliance

Subject to this Agreement, the Supplier is responsible for and must bear all of its own costs of complying with its obligations under this Agreement.

No Provision of IAP Services or other TCA Services

8.1 The Supplier acknowledges and agrees that the Type-Approved IVU is not type-approved or endorsed to provide IAP Services under this Agreement.

8.2 Further to clause 8.1 above, the Supplier acknowledges that this Agreement does not authorise the Supplier to offer or provide any TCA certified or endorsed service/s utilising the Type-Approved IVU. The Supplier acknowledges and agrees that it must (separately to this Agreement) attain certification and endorsement from TCA to provide any TCA certified or endorsed service/s utilising the Type-Approved IVU.

Privacy and Confidential Information

* 1. Confidentiality
		1. The Supplier must not, and must ensure its Personnel and sub-contractors do not, either during the Term or at any time afterwards, disclose to any person (other than the Supplier's Personnel and sub‑contractors engaged in the manufacture or supply of the Type-Approved IVU where those Personnel or sub-contractors have agreed to comply with the Supplier's confidentiality obligations under this Agreement) any Confidential Information.
		2. The Supplier must not use such Confidential Information for purposes other than in order to perform its obligations pursuant to this Agreement.
		3. The Supplier may use or disclose any part of the Confidential Information that has been published in the public domain or is otherwise in the public domain other than by reason of any breach by the Supplier, its Personnel or sub-contractors of its obligation of confidentiality or any other obligation under this Agreement.
		4. Upon the termination or expiration of this Agreement, the Supplier acknowledges and agrees that TCA may retain any and all information received from the Supplier, including confidential information, for its official records.
	2. Privacy

The Supplier must comply with all applicable Privacy Laws.

Intellectual Property

* 1. Licence

TCA grants the Supplier a non-transferable and non-exclusive limited licence to use the Trademarks set out in Schedule C for the Term in accordance with the Guidelines and this Agreement.

* 1. General
		1. The Supplier does not acquire any right to any Intellectual Property rights of TCA.
		2. TCA does not acquire any right to the Intellectual Property rights of the Supplier existing at the Commencement Date or created by the Supplier after the Commencement Date.
	2. Third party intellectual property rights

The Supplier warrants that if TCA was or is required to use the Intellectual Property rights of any third party relating to the Type-Approved IVU or the Software in connection with this Agreement or the Type-Approval of the IVU, the Supplier has obtained, or will obtain at no cost to TCA, from the relevant third party, all necessary licences and consents to use, or assignments of, such Intellectual Property rights.

* 1. Indemnity – third party Intellectual Property rights
		1. The Supplier indemnifies TCA and must keep TCA indemnified in respect of any loss, damage, cost or expense incurred or sustained by TCA resulting from the actual or alleged infringement of any Intellectual Property rights of any third party arising out of or caused by TCA Type-Approving the IVU (including using the Software in connection with such Type-Approval) or otherwise performing its obligations under this Agreement.
		2. The Supplier must notify TCA immediately upon the Supplier becoming aware of a Claim being threatened or made against TCA in relation to any of the matters covered by the indemnity above.

Liability and Indemnity

* 1. Exclusions and limitations on TCA’s liability
		1. TCA excludes all conditions, warranties and terms implied by statute, general law or custom, except any non-excludable condition, warranty or term that exists under *The Australian Consumer Law* (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) or other legislation.
		2. Subject to clause 11.1(c):
			1. 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 Supplier for any matter in relation to this Agreement; and
			2. without limiting subclause 11.1(b)(i), TCA hereby excludes all liability in relation to, or in connection with, any cancellation of the Type-Approval of the Type-Approved IVU.
		3. TCA’s liability to the Supplier for breach of any non-excludable condition, warranty or term (other than one implied by *The Australian Consumer Law* (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) is limited to the cost of the application fee for Type-Approval and Fees paid by the Supplier to TCA under this Agreement.
	2. Indemnity by the Supplier

Subject to clause 11.3 and clause 11.4, the Supplier 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:

* + 1. any breach of or default under this Agreement by the Supplier or any of its Personnel or sub-contractors;
		2. any negligence or wilful misconduct of the Supplier or any of its Personnel or sub-contractors, or any misrepresentation or breach of warranty by the Supplier or any of its Personnel or sub-contractors;
		3. any loss of, loss of use of, or damage to, any property of TCA;
		4. any Claim the Supplier may bring against any third party;
		5. any Claim brought by any person against TCA that arises in connection with the Type-Approved IVU or the Type-Approval of the IVU, including but not limited to:
			1. personal injury, death, disease or illness (including mental illness);
			2. economic loss;
			3. loss, or damage to, or loss of use of, property; or
			4. breach by the Supplier or any of its Personnel or sub-contractors of any Privacy Laws or other Laws.
	1. Apportionment of liability

The Supplier’s liability in clause 11.2 shall be reduced proportionally to the extent that any act or omission of TCA or its employees or agents, has contributed to the loss, damage, cost or expense.

* 1. Limitation of Supplier's liability
		1. Subject to clause 11.4(b), the Supplier's liability to indemnify TCA under clause 11.2 is limited to $20,000,000.
		2. Clause 11.4(a) does not in any way limit the Supplier's liability to indemnify TCA under clause 11.2 for:
			1. any breach of, and/or non-compliance with, this Agreement by the Supplier or any of its Personnel or sub-contractors, where such breach or non-compliance gives TCA the right to terminate this Agreement in accordance with clauses 16.1(a), 16.2(a) or 16.2(c);
			2. death or personal injury arising in connection with the Type-Approved IVU or the supply of a Conforming IVU; or
			3. without limiting clause 11.4(b)(i), wilful default or dishonest conduct by the Supplier or any of its Personnel or sub-contractors (including the provision of false or misleading information).
	2. Change of Control
		1. The Supplier agrees to:
			1. provide TCA with twenty (20) Business Days' notice of the potential of any Change of Control Event; and
			2. 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 Supplier.
		2. If TCA considers, acting reasonably, that the Change of Control Event will materially adversely affect the Supplier's ability to comply with the terms of this Agreement, then TCA may conduct a new Type-Approval of the IVU in accordance with clause 4.4(c) or terminate this Agreement in accordance with clause 16.2(d), by issuing a written notice to that effect.

Insurance Requirements

Prior to the Commencement Date, the Supplier must have in place the insurance policies referred to in Schedule B on terms approved by TCA(and must provide Certificates of Currency as proof of compliance on request by TCA prior to the Commencement Date and during the Term). Each insurance policy must be effected with:

* + 1. a general insurer that is authorised by the Australian Prudential Regulatory Authority (APRA) under section 12 of the *Insurance Act 1973* (Cth) to carry on insurance business in Australia; or
		2. Lloyd's Underwriters.

Supplier Non-compliance and Rectification

* + 1. The Supplier must rectify any issue in relation to this Agreement or breach or non-compliance by it with the terms of this Agreement within a reasonable period of time (not less than five (5) Business Days) specified by TCA in a written notice.
		2. The Supplier must also provide TCA with a written report on the issue, breach or non-compliance with this Agreement and the steps taken to rectify it, within the time period specified in the notice issued by TCA in accordance with clause 13(a).
		3. If TCA is not satisfied with the Supplier’s handling of an issue, breach or non-compliance with this Agreement under this clause, TCA may (acting reasonably) conduct its own investigation of the issue, breach or non-compliance and the Supplier will:
			1. cooperate with TCA’s investigation;
			2. implement any recommendations of TCA based on TCA’s investigation;
			3. pay to TCA the reasonable costs of TCA’s investigation.

Suspension

To the extent that TCA determines (acting reasonably) that the Supplier is in breach of this Agreement, TCA may (without limiting any other remedy or right it may have under this Agreement or the law) by giving written notice to the Supplier:

(a) suspend the Type-Approved status of the IVU granted under clause 3(a); and/or

(b) suspend the Supplier’s right under clause 10.1 to use the Trademarks; and/or

(c) suspend the Supplier’s right under clause 17.1 to Publicise in any way the fact that the IVU has been Type-Approved by TCA; and/or

(d) suspend the issuing of Certificates to the Supplier under clause 5; and/or

(e) suspend the Supplier from providing Certificates to Customers under clause 5; and/or

(f) notify the public via its internet site or by any other means of the suspension of the Supplier under this clause (including relevant details of the suspension);

# until such time as TCA is satisfied of the compliance of the Supplier with this Agreement.

Disputes

* 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.

* 1. Mediation
		1. If the Dispute is not settled within five (5) Business Days of the meeting stipulated in clause 15.1, the parties will submit the Dispute to mediation administered by the ACDC.
		2. 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.
		3. Any mediation meetings and proceedings under this clause must be held in Melbourne.
	2. 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.

* 1. Continuation of rights and obligations

Despite the existence of a dispute or difference each party must continue to perform this Agreement. For the avoidance of doubt, the exercise by a party of a right under this Agreement is not prevented or paused by the other party invoking this clause 15.

Termination

* 1. Termination by TCA with ten (10) Business Days notice

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

* + 1. the Supplier fails to rectify any breach of this Agreement which has been the subject of a notice given by TCA to the Supplier under clause 13(a) within the period of time specified by TCA; or
		2. any decision is taken to wind-up TCA.
	1. Termination by TCA immediately upon delivery of notice

Notwithstanding the provisions in clauses 13 and 16.1, TCA shall have the right to terminate this Agreement, immediately upon delivery of written notice to that effect to the Supplier, in the event that:

* + 1. 1. the Supplier commits a breach of this Agreement; and/or
			2. the Type-Approved IVU no longer complies with:
				1. the Specification; or
				2. the Law,

and such breach or non-compliance is of such a serious nature (as determined by TCA acting reasonably) that the Type-Approved IVU should cease to be Type-Approved;

* + 1. the Supplier becomes subject to an Insolvency Event;
		2. the Supplier knowingly or recklessly provides false and/or misleading information to TCA; or
		3. after following the procedures set out in clause 11.5(a), TCA issues a written notice as contemplated by clause 11.5(b).
	1. Termination subject to notice period
		1. TCA may terminate this Agreement by giving ninety (90) days' notice in writing to the Supplier.
		2. The Supplier may terminate this Agreement by giving ninety (90) days' notice in writing to TCA.
	2. Effect of termination of this Agreement
		1. Immediately upon termination of this Agreement, the Type-Approval of the IVU granted under clause 3(a) is cancelled and the Supplier:
			1. must cease providing Certificates to each Customer to whom the Supplier supplies an IVU;
			2. agrees:
				1. not to use the Trademarks in its Publicity; and
				2. not to hold out that the IVU is Type-Approved; and
			3. as TCA directs, must as soon as reasonably possible:
				1. destroy, deliver up, or otherwise deal with all Publicity bearing a Trademark; or
				2. modify all Publicity so as to completely obscure the Trademark.
		2. Without limiting clause 16.4(a), the Supplier must, as soon as reasonably possible after this Agreement is terminated, return to TCA:
			1. any Certificate issued by TCA to the Supplier in respect of an IVU that has not been sold or supplied to a Customer;
			2. any materials given to it by TCA, for use in any Publicity, or any materials relating to any Publicity; and
			3. any other materials as may be issued by TCA from time to time.
		3. Termination of this Agreement is without prejudice to any accrued rights or remedies of the parties.
	3. No refund

TCA will be entitled to retain any Fees received by it as at the date of the termination of this Agreement and the Supplier will remain liable for any Fees due to TCA but unpaid by the Supplier as at the date of the termination.

* 1. Notice of Cancellation of Type-Approval

If notice is given by either TCA or the Supplier to the other of the termination of this Agreement, then TCA may give notice to all Customers of the termination and forthcoming cancellation of the Type-Approval of the IVU.

* 1. Surviving provisions

Clauses 1, 6, 7.2, 8, 9, 10.4, 11, 15, 16.4, 16.5, 16.6, 16.7, 17.2, 17.3, 17.4, 20.4 and 20.7 survive and continue beyond the termination of this Agreement.

Publicity

* 1. Publicity

The Supplier may Publicise the fact that the Type-Approved IVU is Type-Approved but must not use the Type-Approved status of the IVU to Publicise any other products or services.

* + 1. The content of any Publicity must be approved by TCA.
		2. When engaging in any Publicity, the Supplier must comply with all Laws, comply with any direction given by TCA (acting reasonably) as regards the presentation or content of any Publicity, comply with the Guidelines, only use the Commercial Name of the Type-Approved IVU when Publicising the fact that the Type-Approved IVU is Type-Approved, and not do anything to damage the brand or reputation of TCA.
	1. Request to cease engaging in Publicity
		1. TCA may request that the Supplier cease engaging in any Publicity where in the reasonable opinion of TCA, the Supplier is:
			1. engaging in conduct that is misleading and deceptive;
			2. incorrectly expressing information in any Publicity as regards ‘TCA Type-Approval’, the IVU, the Type-Approved IVU, a Conforming IVU or TCA and such expression of information is likely to have an adverse effect on TCA or the ‘TCA Type-Approval’ program, or
			3. in breach of clause 17.3.
		2. The Supplier must comply with any such request.
	2. Reputation

The Supplier must not to do anything to bring TCA into disrepute and must protect the reputation and good name of TCA.

* 1. Public announcements by TCA

The Supplier agrees that TCA may publicly announce (including without limitation, via its internet site) information regarding the status of the Type-Approval of the IVU, the terms and conditions on which the IVU has been Type-Approved, the scope of TCA's Type-Approval and (where applicable) the suspension or cancellation of Type-Approval and the reasons (if any) for the suspension or cancellation. TCA may retain a notice of the cancellation of the Type-Approval of the IVU on its internet site for up to eighteen (18) months from the date of such cancellation.

Representatives

* + 1. TCA's Representative for the purposes of this Agreement is:

General Manager Operations
Transport Certification Australia Limited
Level 12
535 Bourke Street
MELBOURNE VICTORIA 3000
Facsimile Number: 03 8601 4611
Email: peterg@tca.gov.au

* + 1. The Supplier's Representative for the purposes of this Agreement is:

insert name and/or position/title
insert full company name of Supplier
insert address
INSERT CITY STATE POSTCODE
Facsimile Number: insert fax number
Email: insert email address

Nature of Type-Approval

* + 1. In manufacturing or supplying the IVU, the Type-Approved IVU or a Conforming IVU, the Supplier acknowledges and agrees that it is acting in the capacity of independent contractor.
		2. This Agreement does not create a relationship between the parties of employer and employee, principal and agent, partnership or joint venturers.
		3. Neither party is liable for any act or omission of the other party.
		4. 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.
		5. The Supplier acknowledges and agrees that the Type-Approval of the IVU is not exclusive and that TCA may Type-Approve the IVU of any other person.

Miscellaneous

* 1. 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.

* 1. Remedies cumulative

The rights, powers and remedies of TCA under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

* 1. 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.

* 1. Taxes and duties

The Supplier must pay such taxes, fees, duties and other impositions as may be levied under applicable laws.

* 1. 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.

* 1. Amendment, waiver and assignment
		1. 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.
		2. The Supplier shall not assign its rights or obligations under this Agreement without the prior written consent of TCA.
	2. Governing Law

This Agreement is governed by the laws of Victoria.

* 1. Inconsistency

The annexures and schedules to this Agreement form part of this Agreement. To the extent that there is any conflict or inconsistency between the terms and conditions contained in this Agreement and the Specification, the documents will rank in the order in which they are listed below:

* + 1. the terms and conditions of this Agreement; and
		2. the Specification (except where such conflict or inconsistency relates to functional or technical aspects of the IVU, where in such circumstances the Specification will rank ahead of the terms and conditions of this Agreement).
	1. Notices
		1. Any notice, demand, consent or other communication (**“Notice”**) given or made under this Agreement:
			1. must be in writing;
			2. must be signed by a person duly authorised by the sender;
			3. must be delivered either by hand, sent by registered mail or facsimile;
			4. will be taken to be duly given or made:
				1. 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;
				2. 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
				3. 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
			5. for the purpose of this clause, a person (**“the sender”**) may take the address and fax number of another person (**“the recipient”**) to be:
				1. the address and fax number set out in clause 18 (as applicable) of this Agreement; or
				2. the last address or fax numbers notified by the recipient to the sender.
		2. The parties acknowledge that any notice, demand, consent or other communication under this Agreement which may be given or made under this Agreement may be sent by secure email as advised by TCA from time to time if:
			1. the notice, demand, consent or other communication is signed by the Representative (as referred to in clause 18) of the sender; and
			2. the notice, demand, consent or other communication is sent to the email address set out in clause 18 or the email address last notified by the intended recipient to the sender.
		3. A notice, demand, consent or other communication sent under clause 20.9(b) will be conclusively taken to be duly given or made on the first to occur of:
			1. receipt by the sender of an email acknowledgement from the recipient’s information system showing that the notice, demand, consent or other communication has been delivered to the email address stated above;
			2. the time that the notice, demand, consent or other communication enters an information system which is under the control of the recipient; and
			3. the time that the notice, demand, consent or other communication is first opened or read by an employee of the recipient.

**Executed** as an Agreement

|  |
| --- |
| **Executed** for and on behalf of**Transport Certification Australia Limited (ABN 83 113 379 936)** by: |
|  |
| Signature of Authorised Representative |  | Signature of Witness |
|  |  |
| Full Name of Authorised Representative (BLOCK LETTERS) | Full Name of Witness (BLOCK LETTERS) |
|  |  |  |
| Capacity of Authorised Representative |  | Date |
|  |  |  |
| Date |  |  |

|  |
| --- |
| **Executed** for and on behalf of**insert full company name of Supplier (ABN insert ABN)** by: |
|  |
| Signature of Authorised Representative |  | Signature of Witness |
|  |  |
| Full Name of Authorised Representative (BLOCK LETTERS) | Full Name of Witness (BLOCK LETTERS) |
|  |  |  |
| Capacity of Authorised Representative  |  | Date |
|  |  |  |
| Date |  |  |

Schedule A - Type-Approved IVU

The Type-Approved IVU is described below:

* IVU Model: insert
* IVU Serial Number: insert
* IVU Firmware Version: insert

IVU Key Components:

* IVU Processor: insert
* GPS Chipset Manufacturer: insert
* GPS Chipset Name: insert
* GPS Chipset Firmware: insert
* Communications Modem Name: insert
* Communications Modem Model: insert
* Communications Modem Firmware: insert
* GPS Antenna: insert
* Backup Battery: insert

Scope of Type-Approval:

The IVU has been assessed for its conformance to the following requirements of the Telematics In-Vehicle Unit (IVU) Functional and Technical Specification (version 2.22):

* Physical Characteristics
* Environmental Characteristics
* Data Collection
* Record Generation
* Data Storage
* Data Security
* Data Transfer

Schedule B - Insurance requirements

Subject to paragraph (2), the insurance policies must be maintained for the Term.

The policies can be taken out annually.

* + 1. Broad form public liability insurance: for 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.
		2. Broad form products liability insurance: the insurer's total aggregate liability during any one period of insurance for all claims arising out of the Supplier's products shall be not less than $20 million.

Under each of the broad form public liability insurance policy and broad form products liability insurance policy:

* the Supplier, its officers, agents and employees are to be named insureds;
* TCA, its officers, agents and employees are to be additional named insureds;
* the policy shall include a cross liability and waiver of subrogation clause (both in a form acceptable to TCA); and
* the policy is to be governed by the laws of an Australian state or territory and subject to the jurisdiction of an Australian court.

Schedule C – Trademarks/Logos



Schedule D – Certificate (Sample)

Certificate of Conformance

Telematics In-Vehicle Unit (IVU)

Supplier: insert full company name of the Supplier (ABN insert)

**Telematics IVU Model:** insert

**Telematics IVU Firmware Version:** insert

**Telematics IVU Serial Number:** To be inserted

(all of the above details constitute the “Specific IVU” in this Certificate)

Purpose of this Certificate

This Certificate confirms that the Specific IVU conforms to the IVU type-approved by TCA as set out below.

***NOTE:***

* *TCA HAS NOT ASSESSED THE SPECIFIC IVU IDENTIFIED IN THIS CERTIFICATE.*
* *THIS CERTIFICATE IS PROVIDED SUBJECT TO THE INFORMATION CONTAINED HEREIN AND THE TERMS AND CONDITIONS IN SCHEDULE 1.*

IVU Type-Approval

* The Supplier submitted an application to TCA requesting that TCA assess the Supplier's IVU (as described below) to determine whether it satisfied the *Telematics In-Vehicle Unit (IVU) Functional and Technical Specification*.
* TCA assessed, and on insert date, type-approved the IVU (described below).

Type-Approved IVU

The IVU type-approved by TCA is described below:

* Supplier: insert
* Telematics IVU Model: insert
* Telematics IVU Firmware Version: insert

(all of the above details constitute the “Type-Approved IVU” in this Certificate)

Scope of IVU Type-Approval

The Type-Approved IVU has been assessed for its conformance to the requirements of the Telematics In-Vehicle Unit (IVU) Functional and Technical Specification (version 2.22) including:

* Physical Characteristics
* Environmental Characteristics
* Data Collection
* Record Generation
* Data Storage
* Data Security
* Data Transfer

*(For details of the above requirements, refer to the Telematics In-Vehicle Unit (IVU) Functional and Technical Specification (version 2.22) available from www.tca.gov.au)*

This Certificate is issued by TCA on the terms and conditions set out in Schedule 1.

|  |  |
| --- | --- |
| **Signed**: | **Date of Issue**: |
| **General Manager Operations – TCA** | **Certificate Number**: |

**Schedule 1**

**Terms and Conditions**

This Certificate confirms that as at the date of issue of the Certificate, the Specific IVU is of the same description as the Type-Approved IVU.

This Certificate is provided for the sole benefit of the original purchaser or recipient of the Specific IVU.

Other than as confirmation that the Specific IVU is of the same description as the Type-Approved IVU, this Certificate may not be relied upon for any other purpose whatsoever.

This Certificate is not a manufacturer's, supplier's or any other type of warranty. Any defects in the operation of the Specific IVU should be referred directly to the Supplier, agent, distributor or retailer.

To the extent permitted by law:

* + 1. TCA excludes all conditions, warranties and terms implied by statute, general law or custom, except any non-excludable condition, warranty or term that exists under *The Australian Consumer Law* (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) or other legislation; and
		2. TCA excludes any liability for any demand, claim, action or proceeding made or brought against TCA by you, however arising and whether present, unascertained, immediate future or contingent, that may arise out of contract, tort or statutory provision or otherwise that would accrue to you in connection with this Certificate or the Specific IVU.

Without limiting paragraph 3 or 4 above, TCA takes no responsibility for and excludes any and all liability in connection with:

* + 1. any use of the Specific IVU;
		2. the supply, installation or configuration of the Specific IVU;
		3. any good or product within which the Specific IVU is contained or operates; and
		4. the reliance on, or use of, any information or data generated by, or transmitted to or from, the Specific IVU.

Without limiting paragraph 2 above, this Certificate is provided to you and is not transferable. It cannot be sold, assigned or transferred in any other way to any other person. This Certificate is null and void in all circumstances where the Specific IVU is sold, assigned or transferred (including, without limitation, in connection with the sale of a company or business) or where any good or product within which the Specific IVU is contained or operates is sold, assigned or transferred (including, without limitation, in connection with the sale of a company or business).

In this Certificate of Conformance:

* + 1. ***Certificate*** means this Certificate of Conformance;
		2. ***Type-Approved IVU*** means the telematics in-vehicle unit of the Supplier that has been type-approved by TCA and that is described in this Certificate;
		3. ***Specific IVU*** means the telematics in-vehicle unit with the Supplier, model and serial number details specified at the start of this Certificate;
		4. ***Supplier*** means the supplier of the IVU and the Specific IVU, who is named in this Certificate;
		5. ***TCA*** means Transport Certification Australia Limited (ABN 83 113 379 936); and
		6. ***you*** means the original purchaser or recipient of the Specific IVU from the Supplier or an agent, distributor or retailer.

Schedule E - Fees

|  |  |
| --- | --- |
| **Year** | **Fee per Certificate issued by TCA to the Supplier to provide to a Customer in accordance with clause 5.1** |
| 2015 | $20.00 (plus GST) |

Note:

This Schedule E may be amended by TCA from time to time in its absolute discretion in accordance with clause 6.1(b) of the Telematics In-Vehicle Unit (IVU) Type-Approval Agreement.

**Annexure A - Telematics In-Vehicle Unit (IVU) Functional and Technical Specification**

**[*Note Specification to be inserted*]**

**Annexure B - Guidelines for using the TCA Type-Approved logo with In-Vehicle Unit (IVU) Tick Disc**

**[*Note Guidelines to be inserted*]**