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| **TCA / Operator Application Service Provider****Certification Agreement** |

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| **Date** |  |
| **Parties** |  |
|  | **Transport Certification Australia Limited** (ABN 83 113 379 936) of Level 6, 333 Queen Street, Melbourne, Victoria, 3000 Australia (**"TCA"**). |
|  | **Insert name of Operator Application Service Provider** (ABN insert ABN) of insert address **(**the **“Operator Application Service Provider” or “the Operator ASP”).** |
| **Recitals** |  |
|  | Transport Certification Australia (TCA) is a national organisation that provides assurance services relating to transport technologies and data to enable improved public purpose outcomes from road transport.TCA administers the National Telematics Framework, including its rules, specifications, agreements, digital infrastructure and other supporting services, and provides trusted evidence-based advice. |
|  | TCA has agreed to certify the Operator ASP as a provider of Application Services through the National Telematics Framework subject to the terms and conditions of this Agreement. |

**It is agreed** as follows.

1. Definitions and Interpretation
	1. Definitions

The following definitions apply in this Agreement.

1. **"ADC"** means the Australian 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 this agreement.
4. **“Application”** means the National Telematics Framework Applications specified in Annexure 1.
5. **“Application Information”** means information that has been generated or collected for any purpose relating to an Application of the National Telematics Framework.
6. **“Application Services”** means the services which the Operator ASP is authorised by this Agreement to provide to vehicles which are under its custody and direct control.
7. **“Audit”** means any audit work undertaken by TCA or a person authorised by TCA, in assessing the capacity of the Operator ASP to continue to be certified and perform its obligations as an Operator ASP. Audits may comprise the following:
8. Continual Monitoring and Audit Activities;
9. Triggered Audit Activities.
10. **“Authority”** means an entity which has deployed a Scheme that utilises an Application of the National Telematics Framework. See Schedule A for a list of Authorities.
11. **“Business Day”** means a weekday on which banks are open in Melbourne, Victoria.
12. **“Certification”** means the conferring upon the status of a person as certified by TCA as an Operator ASP entitled to provide Application Services for the Application(s) specified in Annexure 1.
13. **"Change of Control Event"** means, in relation to an entity, the occurrence of an event which has the effect that:
14. if a person Controlled the entity prior to the time the event occurred, that person ceased to Control the entity and another person obtained Control of the entity;
15. if no person Controlled the entity prior to the time the event occurred, a person obtained Control of the entity; or
16. if the entity is owned or Controlled by a group or a consortium of persons, or if a 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.
17. **“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.
18. **“Commencement Date”** means the date of this Agreement.
19. **“Confidential Information”** means all information contained within this Agreement and all information provided under or in connection with this Agreement as well as any information relating to the business, affairs or any other technical information of TCA or any Authority, which:
20. is disclosed to the Operator ASP or any Authority by or on behalf of TCA;
21. is otherwise acquired by the Operator ASP or any Authority directly or indirectly from TCA;
22. is disclosed by the ASP or any Authority to TCA; or
23. otherwise arises as a result of provision of Application Services by the Operator ASP to any Authority under this Agreement,

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

1. **“Connected Device”** means a peripheral device connected physically or electronically to the Telematics Device that is necessary for the collection of data as part of the Application, in accordance with the rules specified by the Application, and may include an On-Board Mass (OBM) System.
2. **"Continual Monitoring and Audit Activities"** means continual monitoring and audit activities, undertaken by TCA, of the Operator ASP's Total System. The process is designed to provide assurance that the Operator ASP is meeting the requirements of the Functional and Technical Specification(s) as relevant to this Agreement.
3. **"Control"** has the meaning given to that term in section 50AA of the Corporations Act and "Controlled" has the corresponding meaning.
4. **“Corporations Act”** means the *Corporations Act 2001* (Cth).
5. **“Enrolment Form”** means an electronic document that formally and simultaneously records the enrolment of a vehicle within the Application.
6. **“Enrolment Report”** means a report forwarded to an Authority by the Operator ASP (either directly or via TCA), that provides a summary of enrolments relevant to a given Authority for a specified period for all vehicles that are enrolled in the Application. An Enrolment Report may contain Personal Information.
7. **“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:
8. act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide or other adverse weather conditions;
9. strike, lockout or other labour difficulty;
10. act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
11. embargo, power or water shortage or lack of transportation;
12. but it excludes the effect of any Law applying to TCA, an Authority, the Operator ASP or the Application.
13. **“Functional and Technical Specification(s)”** means TCA’s Functional and Technical Specification(s) relevant to the Application which the Operator ASP is certified by this agreement to provide. A copy of the Functional and Technical Specification(s) is attached as Annexure 2.
14. **“Governmental Agency”** means a government or a governmental, semi-governmental or judicial entity or authority.
15. **“GST Amount”** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
16. **“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.
17. **“Intellectual Property”** means all industrial and intellectual property whether protectable by statute, at common law or in equity, including, but not limited to, trademarks and logos, copyright, design rights, inventions, patents, technology, trade secrets, know-how and all other rights and interests of a like nature.
18. **“Jurisdiction”** means a geographical area containing a road network (i.e. typically an Australian State or Territory).
19. **“Loss”** includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.
20. **“Monitored Vehicle”** means a vehicle that is actively enrolled in the Application and is equipped with a Telematics Device and other Connected Devices (as applicable).
21. **“National Telematics Framework”** means the use of digital technology and data coordinated by TCA between Authorities, Application Service Providers and Transport Operators to deliver public purpose outcomes.
22. **“OBM System”** means an On-Board Mass System which has been type-approved by TCA as meeting the Category B and/or C requirements of the *On-Board Mass System Functional and Technical Specification*. A Category B or C OBM System is referred to as a Smart OBM System.
23. **“Operator Application Service Provider” or “Operator ASP”** meansan entity which has been certified by TCA as an Operator Application Service Provider and is entitled to provide Application Services to vehicles within its custody and direct control.
24. **"Personal Information"** means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be found out, from the information or opinion.
25. **“Personnel”** means that party's employees, contractors (provided that they first have a documented and enforceable obligation of confidentiality to the Operator ASP), officers, directors and agents.
26. **“Privacy Laws”** means the *Privacy Act 1988* (Cth) and any applicable Commonwealth, State or Territory privacy law.
27. **“Recertification”** means an assessment process to determine whether the Operator ASP retains the capacity and capability to be a provider of Application Services and "**Recertify**" has the corresponding meaning.
28. **“Recovery Services”** means temporary services that must be delivered after a Force Majeure event as soon as is practicable to reinstate the Application Services.
29. **“Scheme”** means a specific use of a telematics application linked to delivering a policy objective of the Authority.
30. **“System Recovery Procedures”** means a set of procedures that facilitate the recovery of the Application Services provided by the Operator ASP. The procedures must meet the requirements of the Functional and Technical Specification specified in Annexure 2.
31. **“Tamper”**, **“Tampering”** means to engage in conduct that has the intention of causing an approved system to:
32. fail to generate, record, store, display, analyse, transmit or report Application Information, or
33. fail to generate, record, store, display, analyse, transmit or report Application Information correctly.
34. **“Telematics Device”** has the meaning given to the term in the *Telematics Device Functional and Technical Specification*and is the telematics unit, which has been type-approved by TCA, that is installed in a vehicle in respect of which an Operator ASP provides Application Services to vehicles within its custody and direct control.
35. **“Total System”** means the totality of the Operator ASP’s type-approved Telematics Devices and Connected Devices; its Operator ASP System; its Operator ASP’s Performance System, 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.
36. **"Triggered Audit Activities"** means monitoring and audit activities, undertaken by TCA to assess the Operator ASP's capacity to comply and/or its compliance with, the terms and conditions of this Agreement and/or the Functional and Technical Specification.
37. **“User Interface”** means a device or software interface used by an Operator ASP or its nominated representative to provide self-declared information as required by the Application.
	1. Interpretation

Headings are for convenience only and do not affect interpretation. 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 a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
5. A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
6. A reference to dollars and $ is to Australian currency.
7. 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).
8. Certification
	1. Certification as an Operator Application Service Provider

TCA hereby confirms the Operator ASP’s Certification, subject to the terms and conditions of this Agreement (including the Special Conditions set out in Schedule E) as competent to provide the Application Services. The Certification granted under this Agreement is not transferable by the Operator ASP.

* 1. Ongoing Audit and Review Program

The Operator ASP may be subject to Continual Monitoring and Audit Activities and Triggered Audit Activities. The ASP may also be subject to Non-Compliance Audits and Termination Audits from time to time.

1. General Obligations
	1. Standard and Provision of Application Services
2. The Operator ASP must provide Application Services:
3. in accordance with the terms of this Agreement and the Functional and Technical Specification(s);
4. in accordance with all applicable Privacy Laws;
5. where there are Laws applicable to the Application in accordance with those Laws; and
6. in a careful, proper and efficient manner so that the Application Services are fit for their intended purpose.
7. The Operator ASP must ensure that the Operator ASP’s Total System:
8. meets, and continues to meet, all of the requirements of the Functional and Technical Specification(s); and
9. operates in such a way as to comply with the terms of this Agreement.
10. The Operator ASP 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 Application Services.
	1. Skills and Experience

The Operator ASP must:

1. ensure that the Personnel it assigns to perform the Application Services:
2. are properly trained;
3. are appropriately qualified; and
4. have the necessary skills and knowledge to undertake the Application Services they are to perform;
5. ensure that criminal record checks are undertaken on Personnel and where such checks indicate a current criminal record, that person will not be assigned to perform the Application Services, unless authorised by TCA in writing; and
6. provide a list of all Personnel assigned to perform the Application Services, and their respective roles and responsibilities, to TCA if requested.
	1. Requests for Information

The Operator ASP must at all times comply with all reasonable requests for information, and directions, from TCA and Authorities in accordance with this Agreement and/or the Functional and Technical Specification(s) relevant to each application.

* 1. Retention of Records

All Application Information must be stored by the Operator ASP in accordance with the Functional and Technical Specification(s).

* 1. Company Information

The Operator ASP must:

1. identify its staff authorised to sign documentation related to its provision of Application Services on its behalf; and
2. advise TCA in writing within five (5) Business Days if the details in Schedule C change.
	1. Costs of Compliance

The Operator ASP is responsible for and must bear all its own costs of complying with its obligations under this Agreement.

* 1. Recertification and Changes to Operator ASP's Total System
1. The Operator ASP agrees that it may, at TCA’s sole and absolute discretion, be subject to Recertification where:
2. the Operator ASP proposes a change to its Total System;
3. TCA amends the Functional and Technical Specification(s) in the circumstances contemplated by clause 8.3a; or
4. TCA considers on reasonable grounds that a Change of Control Event has materially adversely affect the Operator ASP's ability to provide Application Services and/or comply with the terms of this Agreement and/or the Functional and Technical Specification(s) in accordance with clause 12.9b.
5. Without limiting clause 3.7a(i), the Operator ASP must not implement any change(s) in the Operator ASP’s Total System without the prior written approval of TCA (such approval may not be unreasonably withheld).
6. Whenever Recertification is deemed necessary by TCA in accordance with clause 3.7a, it may arrange a Recertification Audit of the Operator ASP's Total System, or part thereof, for the purposes of Recertification.
	1. Receiving and Maintaining Enrolment Forms
7. The Operator ASP must collect information and use it to complete relevant details within the Enrolment Form.
8. The Operator ASP must manage all Enrolment Forms received by it in accordance with the requirements of the Functional and Technical Specification(s).
	1. System Recovery Procedures

The Operator ASP must prepare and maintain System Recovery Procedures that meet the requirements of the Functional and Technical Specification(s).

1. No Authority to Provide Application Services to Third Parties

The Operator ASP acknowledges that this Agreement does not authorise the Operator ASP to offer or provide Application Services to any third party(ies) (whether on commercial or other terms).

1. Operator ASP Audit Obligations
	1. Audit Program

The Operator ASP must participate in and comply with TCA's Audit Program to be conducted by TCA in accordance with clause 5.2.

* 1. TCA Audits
1. TCA may determine the scope of an audit at its sole and absolute discretion, within the bounds of the duties and obligations of the Operator ASP set out in this Agreement and/or the Functional and Technical Specification(s).
2. The Operator ASP must provide to TCA all access to the Operator ASP’s Total System, and all cooperation reasonably required by TCA to enable it to carry out audits.
3. Where access is required by TCA, to the Operator ASP's premises or Personnel, the Operator ASP must provide such access subject to it receiving reasonable notice of the audit.
4. TCA must provide Audit results to the Operator ASP if the results are adverse to the Operator ASP.
5. Reporting Obligations
	1. Provision of Information to TCA and Authorities

The Operator ASP must provide to TCA all of the information required by the Functional and Technical Specification including Application Information.

* 1. Disruption to Application Services

The Operator ASP must give notice of (and must resolve) any disruption to its provision of the Application Services strictly in accordance with the requirements of the Functional and Technical Specification(s).

* 1. Tamper Reporting and Malfunction Reporting

The Operator ASP must, in accordance with the requirements of the Functional and Technical Specification(s), report to TCA all incidents of Tampering, or suspected or attempted Tampering, and all incidents of malfunctions, with the Operator ASP’s Total System, or part thereof.

1. Fees Payable by the Operator ASP
	1. Enrolment Report and Operational Fees
2. The Operator ASP must pay to TCA the Operational Fee set out in Annexure 3. TCA reserves the right to alter the fees set out in Annexure 3 in its absolute discretion after giving the Operator ASP no less than forty (40) Business Days’ notice in writing of such alterations.
3. The Operator ASP must provide to TCA, in the time frame specified by TCA, a copy of all Enrolment Reports.
4. The calculation of the Operational Fee shall be based on the fee as set out in Annexure 3 multiplied by the number of vehicles monitored for each calendar month, or part thereof, as specified in the Enrolment Report issued to TCA in accordance with the Functional and Technical Specification.
5. The Operational Fee shall not be payable when the Operator ASP is by virtue of Force Majeure unable to provide Application Services.
	1. Invoicing and Payment Terms
6. TCA will issue the Operator ASP with an invoice for the Operational Fee once each calendar month.
7. The Operator ASP must pay the amounts invoiced in full within thirty (30) days from the date of the invoice.
8. Obligations of TCA
	1. Functions of TCA

TCA must:

1. advise Authorities in writing of the Certification status of the Operator ASP, including if the Operator ASP’s Certification is cancelled;
2. arrange TCA Audits and assessments as necessary and in accordance with this Agreement;
3. advise relevant Authority(ies) if a TCA Audit identifies any non-compliance with an Enrolment Report and/or any Tampering or suspected or attempted Tampering, or any malfunction, that has not already been reported in accordance with the Functional and Technical Specification(s);
4. comply with those obligations and duties assigned to TCA in accordance with the Functional and Technical Specification(s); and
5. generally, manage the Certification, Audit and reporting regime for the applications of the National Telematics Framework including, but not limited to, determining whether to certify or Recertify an Operator ASP or to cancel Certification.
	1. Notice of Cancellation of Certification

If notice is given by either TCA or the Operator ASP to the other of the termination of this Agreement, then TCA may give notice to all Authorities of the termination and forthcoming cancellation of the Operator ASP’s Certification.

* 1. Amendment of Functional and Technical Specifications

TCA may amend the Functional and Technical Specification(s):

1. where any such amendment(s) are of a minor or immaterial nature; or
2. where, after engaging in a consultative process with all Operator ASPs in relation to proposed amendments, the Operator ASP agrees to the proposed amendments, and requests that TCA amend the Functional and Technical Specification(s).
3. GST
	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.

* 1. Tax Invoice and Adjustment Note

No payment of any amount pursuant to clause 7, 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.

* 1. 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.

* 1. 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.

1. Privacy and Confidential Information
	1. Restricted Use and Disclosure of Information Related to Event Reports

The Operator ASP agrees that:

1. It will only use information for the purposes of the performance of its monitoring and reporting obligations under this Agreement; and
2. It will not use the information collected by it for any other purposes.
	1. Intellectual Property
3. In performing its obligations under this Agreement, the Operator ASP does not acquire any right to any Intellectual Property of TCA or any of the Authorities.
4. TCA shall not acquire any right to the Intellectual Property rights of the Operator ASP existing at the Commencement Date.
5. TCA shall not acquire any right to the Intellectual Property rights of the Operator ASP created by the Operator ASP after the Commencement Date.
6. TCA grants the Operator ASP a non-transferable and non-exclusive limited licence to use the Intellectual Property specified in Schedule D in accordance with the guidelines specified in Annexure 4 for the duration of this Agreement.
7. For the avoidance of doubt, nothing in clause 10.2 permits the Operator ASP to use any Intellectual Property of any Authority without the consent of the relevant Authority.
8. Liability, Indemnity and Insurances
	1. Exclusions and Limitations on TCA’s Liability
9. 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.
10. TCA gives no warranty to the Operator ASP in respect of the number of vehicles that will participate in the National Telematics Framework from time to time.
11. 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 Operator ASP for any matter in relation to this Agreement; and
12. TCA hereby excludes all liability in relation to, or in connection with:
13. any cancellation of the Operator ASP’s Certification to provide Application Services; and
14. any Law, or Government Agency decision, including any decision of any road authority, to cancel or abandon any application of the National Telematics Framework, or to adopt in addition to or in substitution for those applications, any other vehicle monitoring program.
	1. Indemnity by the Operator ASP

Subject to clause 11.3 and clause 11.4, the Operator ASP 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 Operator ASP;
2. any negligence or wilful misconduct of the Operator ASP, or any misrepresentation or breach of warranty by the Operator ASP;
3. any loss, loss of use, or damage to, any property of TCA or any Authority;
4. any Claim the Operator ASP may bring against any third party (including but not limited to any Authority);
5. any Claim brought by any person against TCA that arises in connection with the provision of Application Services by the Operator ASP, including but not limited to:
6. personal injury, death, disease or illness (including mental illness);
7. economic loss;
8. loss, or damage to, or loss of use of, property;
9. breach by the Operator ASP of any Privacy Laws.
	1. Apportionment of Liability

The Operator ASP’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 Authorities and their respective employees and agents, has contributed to the loss, damage, cost or expense.

* 1. Limitation of Operator ASP's Liability
1. Subject to clause 11.4b, the Operator ASP's liability to indemnify TCA under clause 11.2 is limited to $20,000,000.
2. Clause 11.4a does not in any way limit the Operator ASP's liability to indemnify TCA under clause 11.2 for:
3. any breach of, and/or non-compliance with, this Agreement by the Operator ASP, where such breach or non-compliance gives TCA the right to terminate the Agreement in accordance with clauses 14.1a, 14.2a or 14.2b; or
4. without limiting clause 11.4b(i), wilful default or dishonest conduct by the Operator ASP (including the provision of false or misleading information).
	1. Insurances

Prior to the Commencement Date, the Operator ASP must have in place insurance policies referred to in Schedule B .

* 1. Operator ASP Warranty and Agreement
1. The Operator ASP warrants that all information submitted to TCA by the Operator ASP 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 Operator ASP is true and correct.
2. Without limiting clauses 3.7 and 11.8a, the Operator ASP 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 Operator ASP's application for Certification, where such change is likely to have a material adverse effect on the Operator ASP's ability to provide the Application Services.
	1. Change of Control
3. The Operator ASP agrees to:
4. provide TCA with twenty (20) Business Days' notice of any potential Change of Control Event; and
5. 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 Operator ASP.
6. If TCA considers that the Change of Control Event will have a material adverse affect upon the Operator ASP's ability to provide Application Services and/or comply with the terms of this Agreement and/or the Functional and Technical Specification(s), then TCA may require the Operator ASP to undergo Recertification in accordance with clause 3.7a(iii) or terminate this Agreement in accordance with clause 14.2c, by issuing a written notice to that effect.
7. 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 12.1, the parties will submit the Dispute to mediation administered by the ADC.
2. The mediator will be an independent person agreed between the parties from a panel suggested by the President of the ADC or, failing agreement, a mediator will be appointed by the President of the ADC.
3. Any mediation meetings and proceedings under this clause must be held in Melbourne.
	1. 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.

1. Operator ASP Non-Compliance and Rectification
2. The Operator ASP 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(s) within a reasonable period of time specified by TCA in a written notice.
3. The Operator ASP must provide TCA with a written report on the breach or non-compliance 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 13a.
4. Termination
	1. Termination by TCA with Ten (10) Business Days’ Notice

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

1. the Operator ASP fails to rectify any breach of the terms and conditions of this Agreement and/or non-compliance with the Functional and Technical Specification(s) which has been the subject of notice given by TCA to the Operator ASP under clause 13a within the period of time specified by TCA;
2. any decision is taken to wind up TCA or to alter or discontinue TCA’s role in administering any or all applications of the National Telematics Framework, in order to comply with, or accommodate, any Law, statutory licensing, government or Governmental Agency policy or decision, or otherwise.
	1. 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 Operator ASP, in the event that:

1. the
2. Operator ASP commits a breach of this Agreement; and/or
3. Operator ASP does not comply with the Functional and Technical Specification(s) as relevant to this Agreement;

and the breach or non-compliance such that in TCA’s view the Operator ASP should not be permitted to continue to participate as an Operator ASP in the provision of the Application to Authorities,

1. the Operator ASP knowingly provides false or misleading information to TCA or to an Authority;
2. TCA issues a written notice as contemplated by clause 11.9b to the Operator ASP; or
3. if the Operator ASP is unable to comply with an obligation of this Agreement by virtue only of a Force Majeure event, and a written notice served upon it by TCA as contemplated by clause 15.3b.
	1. Termination Subject to Notice Period
4. TCA may terminate this Agreement by giving sixty (60) Business Days’ notice in writing to the Operator ASP in the event that TCA has to terminate all like agreements which it has with like parties.
5. The Operator ASP may terminate this Agreement by giving sixty (60) Business Days’ notice in writing to TCA.
	1. Decision to Wind Up TCA

Should a decision be made to wind up TCA, then TCA will at the time the decision is made, use reasonable endeavours to arrange with Governmental Agencies to maintain continuity of this Agreement.

* 1. Effect of Termination
1. Immediately upon termination of this Agreement, the Operator ASP’s Certification to provide Application Services for the Application(s) is cancelled and the Operator ASP must immediately cease to offer and provide Application Services.
2. The Operator ASP must, as soon as reasonably practicable, return to TCA:
3. any certificate issued by TCA to the Operator ASP recording its Certification; and
4. any other materials as may be issued by TCA from time to time.
5. Termination of this Agreement is without prejudice to any accrued rights or remedies of the parties.
	1. Provision of Application Services During Period of Notice of Termination

Where a notice of termination is given by either party in accordance with clauses 14.1 or 14.3, the Operator ASP must continue to provide Application Services until the applicable period of notice has expired.

* 1. Surviving Clauses

Clauses 1, 3.4, 5.2a, 9, 10, 11, 12, 14.5, 14.7, 16.1c, 16.2, 16.3 and 17.7 survive and continue beyond the termination of this Agreement.

1. Force Majeure Events
	1. Operator ASP’s Obligations Affected

If the Operator ASP’s performance of its obligations under this Agreement is affected by a Force Majeure event, it must immediately:

1. notify TCA; and
2. describe in a reasonable level of detail the nature of the Force Majeure event and its likely effect on its obligations under this Agreement.
	1. Operator ASP to Resume Application Services

On the occurrence of a Force Majeure event, the Operator ASP 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.

* 1. Effect of a Force Majeure Event
1. Subject to clause 15.3b, where the Operator ASP 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.
2. If the Operator ASP is sixty (60) Business Days after the date of the first occurrence of the Force Majeure event 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.
3. Publicity
	1. Publicity
4. The Operator ASP may promote, market, advertise, publish or otherwise disclose the fact that it is an Operator ASP in any media, including but not limited to, audio, visual and combined audiovisual form, printed, published, or electronic form (**"Publicity"**).
5. When engaging in any Publicity, the Operator ASP must:
6. comply with all Laws, including but not limited to Laws prohibiting misleading and deceptive conduct;
7. comply with any reasonable direction given by TCA from time to time as regards the presentation or content of any Publicity;
8. comply with the guidelines set out in Annexure 4 to this Agreement or any other guidelines given to the Operator ASP by TCA from time to time in connection with the use of TCA’s trademarks and Intellectual Property; and
9. not do anything to damage the brand or reputation of TCA, the Authorities, the Application(s) and/or the National Telematics Framework.
10. The Operator ASP is not permitted to offer Application Services to other Transport Operators.
11. TCA may request at any time that the Operator ASP cease to engage in any Publicity where in the reasonable opinion of TCA, the Operator ASP is:
12. engaging in conduct that is misleading and deceptive;
13. incorrectly expressing information in any Publicity regarding the National Telematics Framework, the Application Service(s), TCA or the Authorities and such expression of information is likely to have an adverse effect on the National Telematics Framework, the Application(s), TCA or the Authorities; or
14. is in breach of clause 16.2.
	1. Reputation of Applications of the National Telematics Framework

Both parties agree not to do anything to bring the other party, the Authorities, the Application(s) or the National Telematics Framework into disrepute and each party must do everything in its power to protect the reputations and good names of the other party, the Authorities, the Application(s) and the National Telematics Framework.

* 1. Public Announcements by TCA

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

1. Miscellaneous
	1. Good Faith
2. 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(s) as relevant to this Agreement.
3. Nothing in this clause is intended to derogate from any right expressly provided to any party under this Agreement.
	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. No Restriction on Rights

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

* 1. Severability of Provisions

Any provision of this Agreement that is prohibited or unenforceable in any state, territory or municipality of Australia is ineffective as to that state, territory or municipality 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 state, territory or municipality.

* 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 Operator ASP shall not assign its rights or obligations under this Agreement without the written consent of TCA.
	1. 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.

* 1. Counterparts

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

* 1. Inconsistency

The annexures and schedules to this Agreement (other than Annexure 7) 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(s), the Operator ASP Consent Agreement inserted in Annexure 7 (Annexure 7), and the schedules and annexures to this Agreement, the documents will rank in the order in which they are listed below:

1. the terms and conditions of this Agreement;
2. the Functional and Technical Specification(s) (and if more than one, then in the order in which they appear in Annexure 2) (except where such conflict or inconsistency relates to functional or technical aspects of the Application(s) in which case the Functional and Technical Specification(s) will rank ahead of the terms and conditions of this Agreement);
3. the Operator ASP Consent Agreement inserted in Annexure 7; and
4. subject to clauses 17.9b and 17.9a, the other annexures and schedules to this Agreement.
	1. Notices

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, by electronic mail; by an electronic “execution and exchange of documents service”, or by registered mail;
4. will be taken to be duly given or made;
5. 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;
6. if delivered by electronic mail, on the day of delivery if delivered before 5:00 pm on a Business Day, otherwise on the next Business Day, that the authorised representative acknowledges recipient of the Notice;
7. if delivered by an electronic “execution and exchange of documents service”, on the day of delivery if delivered before 5:00 pm on a Business Day, otherwise on the next Business Day that the service confirms the document was delivered and viewed by the authorised representative of the party to which the Notice is addressed; and
8. if delivered 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;
9. for the purpose of this clause, a person (**“the sender”**) may take the address and of another person (**“the recipient”**) to be:
10. the postal and email addresses set out in this Agreement
11. To TCA:

Attention: The Executive General Manager

Level 6, 333 Queen Street

MELBOURNE VICTORIA 3000

operations@tca.gov.au

1. To the Operator Application Service Provider:

Attention: Name of Contact Person

Postal address

CITY STATE POSTCODE

Email address

1. the last address for the party to which the Notice is addressed as shown in Schedule C or as otherwise notified by the recipient to the sender.

Schedule A

Authorities

The following agencies are empowered to set conditions for which must be reported against for Monitored Vehicles:

* Transport for New South Wales;
* Department of Transport and Main Roads (Queensland);
* Department of Transport (Victoria);
* Department of State Growth (Tasmania);
* Main Roads Western Australia;
* National Heavy Vehicle Regulator; and
* Any other agencies as advised by TCA from time to time.

Schedule B

Insurance Requirements

|  |  |
| --- | --- |
| **Type of insurance** | **Minimum sum insured** |
| Broad form Public and Products Liability\* insurance effected with an approved insurer as defined in Definitions and Notes below.\*If products are not involved in performance of the Services, it will be acceptable not to obtain Products Liability insurance. | 1. 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.1. Products Liability:

The insurer's total aggregate liability during any one period of insurance for all claims arising out of the Operator ASPs’ products shall be not less than $20 million. |
| Workers' Compensation effected with an approved insurer as defined in Definitions and Notes below. | According to the law of each relevant State or Territory. |
| Professional Indemnity insurance effected with an approved insurer as defined in Definitions and Notes below. | Not less than $5 million per Claim.There is to be no limit to the number of Claims to which the policy will respond.The insurer's aggregate limit of liability must be not less than $5 million. |

Definitions and Notes:

“Approved insurer” means 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.

However, in relation to 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.

Schedule C

Representatives

Operator ASP(s) Authorised Representatives

The Authorised Representatives of the Operator ASP as identified in this Schedule may perform any function of the Operator ASP under this Agreement. The Operator ASP 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 Operator ASP.

|  |  |  |
| --- | --- | --- |
| **Name** | **Position** | **Email** |
| Stuart Ballingall | Executive General Manager | stuartb@tca.gov.au |

Schedule D

Licensed Intellectual Property

Trademarks and Logos:



Schedule E

Special Conditions

[List the components of the Operator ASP Total System. Indicate components that apply to only part of the Certification by exception.]

**Executed as an Agreement**

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

|  |  |  |
| --- | --- | --- |
| **Executed** for and on behalf of the**Operator Application Service Provider (ABN insert ABN)** by: |  |  |
|  |  |  |
| Authorised Representative |  | Date |
|  |  |  |
| Full Name (BLOCK LETTERS) |  | Capacity of Authorised Representative |

Annexure 1 – Application(s)

The National Telematics Framework Application(s) for which in this Agreement TCA certifies the Operator ASP are as follows:

[List all certified Applications for the Operator ASP as relevant.]

Annexure 2 – Functional and Technical Specifications

The Functional and Technical Specification(s) for the Application(s) listed in Annexure 1 are as follows:

[Insert all Specifications as relevant.]

Annexure 3 – Fees (Operational Fee)

1. For vehicles enrolled in one or more of the following applications of the National Telematics Framework, Table 2 shall apply:
2. Telematics Monitoring Application; and
3. Other applications of the National Telematics Framework that are published by TCA from time to time that are Level 2 Assurance applications.

|  |  |
| --- | --- |
| **Year** | **Actual Cost $ per vehicle per month** |
| [Year] | [Insert Cost] |

Table 2: Operational Fee for Level of Assurance 2 Applications of the National Telematics Framework

1. For vehicles not enrolled in an application listed in section 2 of this Annexure but that are enrolled in the following application of the National Telematics Framework, Table 3 shall apply:
2. Road Infrastructure Management; and
3. Other applications of the National Telematics Framework that are published by TCA from time to time that are Level 1 Assurance applications

|  |  |
| --- | --- |
| **Year** | **Actual Cost $ per vehicle per month** |
| [Year] | [Insert Cost] |

Table 3: Operational Fee for Level of Assurance 1 Applications of the National Telematics Framework

**Note:**

This Annexure 3 may be amended by TCA from time to time in its absolute discretion.

Annexure 4 – Guidelines for Using TCA Logos

[Note: Insert Guidelines appropriate for Operator ASPs]

Annexure 5 – Consent Agreement Between the Operator Application Service Provider and TCA

[Note: Insert Consent Agreement appropriate for Operator ASPs]