|  |
| --- |
| **On-Board Mass System Type-Approval Agreement for Suppliers** |

|  |  |
| --- | --- |
| **Date** |  |
| **Parties** |  |
|  | **Transport Certification Australia Limited** (ABN 83 113 379 936) of Level 17, 360 Elizabeth Street, Melbourne, Victoria, 3000 Australia (**"TCA"**). |
|  | **Insert full company name of Supplier** (ABN insert ABN) of insert address **(“Supplier”)**; |
| **Recitals** |  |
|  | The Supplier submitted an On-Board Mass (OBM) System for Type-Approval to TCA. |
|  | TCA conducted a Type-Approval of the OBM System submitted by the Supplier. |
|  | TCA and the Supplier enter into this Agreement to record the terms on which TCA has Type-Approved the OBM System submitted by the Supplier. |

**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. **“Agreement”** means this agreement.
3. **“Application Service Provider”** means a person who has been certified by TCA as an Application Service Provider and is entitled to provide TCA-Approved Services.
4. **“Business Day”** means a weekday on which banks are open in Melbourne, Victoria.
5. **“Certificate of Conformance”** means a certificate containing the information set out in Schedule D that is issued by TCA in respect of a Conforming OBM System.
6. **“Change of Control Event”** means, in relation to an entity, the occurrence of an event which has the effect that:
7. 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;
8. if no person Controlled the entity prior to the time the event occurred, a person obtained Control of the entity; or
9. 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.
10. **“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.
11. **“Commencement Date”** means the date of this Agreement.
12. **“Confidential Information”** means all information or knowledge relating to the business, affairs or any other technical information of TCA, which:
13. is disclosed to the Supplier by or on behalf of TCA;
14. is otherwise acquired by the Supplier directly or indirectly from TCA; or
15. 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 OBM System”** means an OBM System of the Supplier that conforms exactly to the manufacture, operation and system delivery with the Type-Approved OBM System for installation in vehicles that are within the custody and direct control of the Supplier.
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 OBM System, 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 6.1a.
7. **“Governmental Agency”** means a government or a governmental authority.
8. **“Guidelines”** means the guidelines for using the TCA Type-Approved logo and terminology (as amended by TCA from time to time) in Annexure B of this Agreement.
9. **“Insolvency Event”** means any one of the following events that may occur in respect of the Supplier:
10. the Supplier stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
11. the Supplier is insolvent within the meaning of section 95A of the Corporations Act;
12. a court is required by reason of section 459C(2) of the Corporations Act to presume that the Supplier is insolvent;
13. the Supplier fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
14. the Supplier has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
15. 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
16. 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.
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. **“Law”** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.
19. **“Loss”** includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.
20. **“OBM System”** has the meaning given to that term in the Specification.
21. **“Personnel”** means that party's employees, officers, directors and agents.
22. **“Privacy Laws”** means firstly the *Privacy Act 1988* (Cth), secondly any other applicable Commonwealth, State or Territory privacy law, and thirdly the *Australian Privacy Principles*, as each of those three may be amended from time to time.
23. **“Publicity”** means the marketing of the Supplier for the Type-Approved OBM System and/or Conforming OBM System publicised 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.
24. **“Smart OBM System”** means an OBM System Type-Approved by TCA to Category B or C.
25. **“Software”** means the source code(s) and object code(s) comprising the computer program(s) used by the Supplier in connection with the OBM System.
26. **“Specification”** means the specification(s) as set out in Annexure A of this Agreement as amended from time to time.
27. **“Supplier”** means the entity that is supplying the OBM System to Customers.
28. **“TCA-Approved Services”** means all of the services an Application Service Provider must provide, and all the obligations an Application Service Provider must observe, as set out in an appropriate TCA Certification Agreement or Registration Agreement as applicable and in the appropriate functional and technical specification between TCA and the Application Service Provider.
29. **“Telematics Device”** has the meaning given to that term in the *Telematics Device Functional and Technical Specification*.
30. **“Term”** means the Initial Term and any extension of it (as contemplated by clause 2b).
31. **“Trademarks”** means those trademarks and logos of TCA as set out in Schedule C or as otherwise notified to the Supplier from time to time.
32. **“Type-Approval”** means an assessment process conducted by TCA to determine whether an OBM System meets the requirements of the Specification.
33. **“Type-Approved”** means that the Supplier’s OBM System has been assessed by TCA as meeting the requirements of the Specification. An OBM System may be Type-Approved in one of three categories:
34. Category A – OBM Systems in this category electronically display collected data to drivers and/or loaders.
35. Category B – OBM Systems in this category also collect and transfer the collected data to a telematics device using a mechanism agreed and implemented by the Application Service Provider and Supplier of the OBM system.
36. Category C – OBM Systems in this category collect data and transfer data records in a standardised way to a Telematics Device (in accordance with *Interconnectivity of* *Telematics Device with Other Systems Functional and Technical Specification*).

Note: A Category B and C OBM System is referred to as a Smart OBM System.

1. **“Type-Approved OBM System”** means an OBM System 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 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 a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Agreement.
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).
   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.

1. Term
2. Subject to clause 2b, this Agreement will have a Term of three years from the Commencement Date unless this Agreement is terminated earlier by either party in accordance with its terms.
3. The parties may, by mutual agreement in writing, agree to extend the Term.
4. TCA's agreement to any extension of the Term may be subject to the Supplier undergoing a new Type-Approval under clause 4.4b, as determined by TCA.
5. TCA Type-Approval
6. TCA hereby confirms that the OBM System of the Supplier as submitted for assessment for Type-Approval, and as described in Schedule A. The Type-Approval is subject to the terms and conditions of this Agreement.
7. The Supplier warrants that the information it has submitted to TCA in connection with its application for Type-Approval of the OBM System is true and correct, and agrees to notify TCA, as soon as reasonably practicable, of:
8. any material change to this information; or
9. any material information that could have negatively affected TCA's decision to Type-Approve the OBM System.
10. Type-Approved OBM System – Standards and Changes
    1. Standard of Type-Approved OBM System
11. The Supplier must ensure that each Conforming OBM System:
12. meets, and continues to meet, all of the requirements of this Agreement (including the Specification); and
13. is manufactured and supplied so as to be of merchantable quality and fit for its intended purpose.
14. To the extent that TCA reasonably determines that the Type-Approved OBM System 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:
15. cease providing Certificates of Conformance to Customers under clause 5.1;
16. cease using the Trademarks in any Publicity relating to the OBM System;
17. cease holding out that the OBM System is Type-Approved; and/or
18. as TCA directs:
19. destroy, deliver up or otherwise deal with all Publicity concerning the OBM System bearing a Trademark;
20. return all Certificates of Conformance (whether in its possession or the possession of its agents or distributors) which relate to OBM Systems that have not been supplied to a Customer; and/or
21. modify all Publicity in respect of the OBM System so as to completely obscure the Trademark.
22. The Supplier must comply with any direction given to it by TCA under this clause 4.1.
    1. Notifications in Respect of Type-Approved OBM System

The Supplier must notify TCA in writing:

1. of any proposed change(s) that impact the information provided for the Type-Approval of its OBM System and seek a new Type-Approval (and must not amend its Type-Approved OBM System without the prior written approval of TCA); or
2. if the Type-Approved OBM System 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 OBM System 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 OBM System 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 OBM System (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 OBM System;
2. the Term is due to expire, and the parties agree to extend the Term; or
3. TCA reasonably considers that a Change of Control Event will materially adversely affect the Type-Approved OBM System and/or the Supplier's ability to comply with the terms of this Agreement in accordance with clause 11.5b.
4. Relationship with Customers and Certificates of Conformance
   1. Provision of Certificate of Conformance
5. Where the Supplier intends to supply a Conforming OBM System to a Customer, the Supplier must provide TCA with the unique serial number of each Conforming OBM System so that TCA can prepare a Certificate of Conformance in respect of that Conforming OBM System in advance.
6. At the time of supplying a Conforming OBM System to a Customer, the Supplier must provide the Customer with the Certificate of Conformance obtained from TCA in respect of that Conforming OBM System.
7. The Supplier may supply a Conforming OBM System to a Customer for which a Certificate of Conformance has not been obtained from TCA under clause 5.1a **provided** that the Supplier:
8. applies to TCA for a Certificate of Conformance with respect to the Conforming OBM System within three (3) Business Days of its supply to the Customer; and
9. gives the Customer the Certificate of Conformance within five (5) Business Days of receiving the Certificate of Conformance from TCA.
10. If the Supplier fails to comply with clause 5.1a and 5.1b or 5.1c, it must not:
11. hold out that the OBM System that it is to supply to the relevant Customer conforms with the Type-Approved OBM System; and
12. use the Trademarks in any Publicity relating to the OBM System that it is to provide to that Customer.
13. 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 17.2a.
    1. Use of Certificate of Conformance and Type-Approved Status
14. The Supplier must not request a Certificate of Conformance from TCA, issue a Certificate of Conformance or otherwise use a Certificate of Conformance, in relation to an OBM System that is not a Conforming OBM System.
15. Apart from the Type-Approved OBM System described in Schedule A or a Conforming OBM System, 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 OBM System.
    1. Provision of Information to Customers

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

1. Fees
   1. Fees
2. The Supplier agrees to pay to TCA the fee set out in Schedule E for each Certificate of Conformance issued by TCA to the Supplier for provision to a Customer in accordance with clause 5.1 of this Agreement (**"Fees"**).
3. 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.
4. 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 13c.
5. 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 of Conformance under clause 5.1 until the outstanding Fees are paid in full.
6. 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.
   1. Invoicing
7. TCA will issue the Supplier with an invoice for:
8. applicable Fees once each calendar month; and
9. any additional fees that may arise from time to time promptly on completion.
10. The Supplier must pay the amounts invoiced in full no later than thirty (30) days after the date of the invoice.
11. General Obligations
    1. Compliance with Reasonable Requests for Information

The Supplier must at all times comply with reasonable requests for information from TCA related to the implementation of this Agreement.

* 1. Retention of Records

All records, data and information relating to the Type-Approved OBM System 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 OBM Systems 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.

1. No Authority to Provide TCA-Approved Services

The Supplier acknowledges that this Agreement does not authorise the Supplier to offer or provide to any third party(ies) (whether on commercial or other terms) any TCA Approved Service(s) utilising the Type-Approved OBM System. The Supplier acknowledges and agrees that it must (separately to this Agreement) attain certification or registration from TCA to provide any TCA-Approved Service(s) to any third part(ies) utilising the Type-Approved OBM System.

1. Privacy and Confidential Information
   1. Confidentiality
2. The Supplier or TCA 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 OBM System where those Personnel or sub-contractors have agreed to comply with the Supplier's or TCA’s confidentiality obligations under this Agreement) any Confidential Information.
3. The Supplier or TCA must not use such Confidential Information for purposes other than the performance of its obligations under this Agreement.
4. The Supplier or TCA 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 or TCA, its Personnel or sub-contractors of its obligation of confidentiality or any other obligation under this Agreement.
5. 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 and vice versa, including Confidential Information, for its official records.
   1. Privacy

The Supplier must comply with all applicable Privacy Laws.

1. 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. Further:
3. the Intellectual Property rights of the other party at the Commencement Date remain the exclusive property of the other party;
4. there will be no transfer of Intellectual Property rights from one party to the other (e.g. through the provision of TCA-Approved Services) without specific written agreement;
5. it has been granted a limited, revokable, non-exclusive licence to use the Intellectual Property of the other solely for the purposes of this Agreement; and
6. Intellectual Property is Confidential Information and that it will not disclose any details of, or information relating to, the Intellectual Property at any time during or after the Term of this Agreement, except where required by Law.
   1. Third-Party Intellectual Property Rights

The Supplier warrants that if TCA has been or is required to use the Intellectual Property rights of any third party comprised within the Type-Approved OBM System (including the Software) in connection with the Type-Approval of the OBM System, or in connection with the performance of this Agreement, 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 OBM System (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.
3. Liability and Indemnity
   1. Exclusions and Limitations on TCA’s Liability
4. 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.
5. Subject to clause 11.1c:
6. 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
7. without limiting subclause 11.1b(i), TCA hereby excludes all liability in relation to, or in connection with, any cancellation of the Type-Approval of the Type-Approved OBM System.
8. 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.
   1. 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 caused or contributed to by the Supplier;
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 OBM System or the Type-Approval of the OBM System, 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; or
9. 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 under 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 11.4b, the Supplier's liability to indemnify TCA under clause 11.2 is limited to $10,000,000.
2. Clause 11.4a does not in any way limit the Supplier's liability to indemnify TCA under clause 11.2 for:
3. 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 16.1a, 16.2a or 16.2c;
4. death or personal injury arising in connection with the Type-Approved OBM System or the supply of a Conforming OBM System; or
5. without limiting clause 11.4b(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).
   1. Change of Control
6. The Supplier agrees to:
7. provide TCA with twenty (20) Business Days' notice of the potential of any Change of Control Event; and
8. 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.
9. 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 OBM System in accordance with clause 4.4c or terminate this Agreement in accordance with clause 16.2d, by issuing a written notice to that effect.
10. 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 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.

1. Supplier Non-Compliance and Rectification
2. 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.
3. 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 13a.
4. 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:
5. cooperate with TCA’s investigation;
6. implement any recommendations of TCA based on TCA’s investigation;
7. pay to TCA the reasonable costs of TCA’s investigation.
8. 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:

1. suspend the Type-Approved status of the OBM System granted under clause 3a; and/or
2. suspend the Supplier’s right under clause 10.1 to use the Trademarks; and/or
3. suspend the Supplier’s right under clause 17.1 to Publicise in any way the fact that the OBM System has been Type-Approved by TCA; and/or
4. suspend the issuing of Certificates of Conformance to the Supplier under clause 5; and/or
5. suspend the Supplier from providing Certificates of Conformance to Customers under clause 5; and/or
6. 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.

1. 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 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 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.

1. 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 13a 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:

2. the Supplier commits a material breach of this Agreement; and/or
3. the Type-Approved OBM System no longer complies with the Specification;

and such breach or non-compliance is of such a serious nature (as determined by TCA acting reasonably) that the Type-Approved OBM System 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 11.5a, TCA issues a written notice as contemplated by clause 11.5b.
   1. Termination Subject to Notice Period
4. TCA may terminate this Agreement by giving ninety (90) days' notice in writing to the Supplier.
5. The Supplier may terminate this Agreement by giving ninety (90) 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 of This Agreement

1. Immediately upon termination of this Agreement, the Type-Approval of the OBM System granted under clause 3a is cancelled and the Supplier:
2. must cease providing Certificates of Conformance to each Customer to whom the Supplier supplies an OBM System;
3. agrees:
4. not to use the Trademarks in its Publicity; and
5. not to hold out that the OBM System is Type-Approved; and
6. as TCA directs, must as soon as reasonably possible:
7. destroy, deliver up, or otherwise deal with all Publicity bearing a Trademark; or
8. modify all Publicity so as to completely obscure the Trademark.
9. Without limiting clause 16.5a, the Supplier must, as soon as reasonably possible after this Agreement is terminated, return to TCA:
10. any Certificate of Conformance issued by TCA to the Supplier in respect of an OBM System that has not been sold or supplied to a Customer;
11. any materials given to it by TCA, for use in any Publicity, or any materials relating to any Publicity; and
12. any other materials as may be issued by TCA from time to time.
13. Termination of this Agreement is without prejudice to any accrued rights or remedies of the parties.
    1. 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 OBM System.

* 1. Surviving Provisions

Clauses 1, 6, 7.2, 8, 9, 10.4, 11, 15, 16.5, 16.6, 16.7, 16.8, 17.2, 17.3, 17.4, 20.4 and 20.7 survive and continue beyond the termination of this Agreement.

1. Publicity
   1. Publicity

The Supplier may Publicise the fact that the Type-Approved OBM System is Type-Approved but must not use the Type-Approved status of the OBM System to Publicise any other products or services. Further, when engaging in any Publicity, the Supplier must comply with all Laws, comply with any reasonable direction given by TCA as regards the presentation or content of any Publicity, comply with the Guidelines, only use the Commercial Name of the Type-Approved OBM System when Publicising the fact that the Type-Approved OBM System 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:
2. engaging in conduct that is misleading and deceptive;
3. incorrectly expressing information in any Publicity as regards ‘TCA Type-Approval’, the OBM System, the Type-Approved OBM System, a Conforming OBM System or TCA and such expression of information is likely to have an adverse effect on TCA or the ‘TCA Type-Approval’ program, or
4. in breach of clause 17.3.
5. The Supplier must comply with any such request.
   1. 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 OBM System, the terms and conditions on which the OBM System 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 OBM System on its internet site for up to eighteen (18) months from the date of such cancellation.

1. Representatives
2. TCA's Representative for the purposes of this Agreement is:

Executive General Manager

Transport Certification Australia Limited

Level 6

333 Queen Street

MELBOURNE VICTORIA 3000

Email: operations@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

Email: insert email address

1. Nature of Type-Approval
2. In manufacturing or supplying the OBM System, the Type-Approved OBM System or a Conforming OBM System, the Supplier acknowledges and agrees that it is acting in the capacity of independent contractor.
3. This Agreement does not create a relationship between the parties of employer and employee, principal and agent, partnership or joint venturers.
4. Neither party is liable for any act or omission of the other party.
5. 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.
6. The Supplier acknowledges and agrees that the Type-Approval of the OBM System is not exclusive and that TCA may Type-Approve the OBM System of any other person.
7. 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.
   1. 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 OBM System, where in such circumstances the Specification will rank ahead of the terms and conditions of this Agreement).
   1. Measuring Standard

This Agreement does not confer National Measurement Institute (NMI) approval for the OBM System to be used as a measuring instrument, as defined in the *National Measurement Act 1960* (Cth).

* 1. Notices

1. Any notice, demand, consent or other communication (**“Notice”**) given or made under this Agreement:
2. must be in writing;
3. must be signed by a person duly authorised by the sender;
4. must be delivered either by hand, by electronic mail; by an electronic “execution and exchange of documents service”, or by registered mail;
5. will be taken to be duly given or made:
6. 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;
7. 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;
8. 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;
9. 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;
10. for the purpose of this clause, a person (**“the sender”**) may take the address and fax number of another person (**“the recipient”**) to be:
11. the postal and email addresses set out in clause 18 (as applicable) of this Agreement; or
12. the last address for the party to which the Notice is addressed as shown in clause 18 or as otherwise notified by the recipient to the sender.
13. 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:
14. the notice, demand, consent or other communication is signed by the Representative (as referred to in clause 18) of the sender; and
15. 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.
16. A notice, demand, consent or other communication sent under clause 20.10b will be conclusively taken to be duly given or made on the first to occur of:
17. 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;
18. the time that the notice, demand, consent or other communication enters an information system which is under the control of the recipient; and
19. 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 |  | Date |
|  |  |  |
| Full Name of Authorised Representative |  | Capacity of Authorised Representative |

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

Schedule A – Type-Approval of OBM System

The OBM System which is the subject of this Agreement is Category insert category Type-Approved, and subject to any special conditions appearing in this Schedule.

The Type-Approved OBM System is described below:

Commercial Name of OBM System: insert details

OBM System Model: insert details

OBM System ECU Model: insert details

OBM System ECU Processing Unit Type: insert details

OBM System ECU Serial Number: insert details

OBM System ECU Hardware Version: insert details

OBM System ECU Firmware Version: insert details

OBM System MSU Model: insert details

OBM System MSU Serial Number: insert details

OBM System MSU Hardware Version: insert details

OBM System MSU Firmware Version: insert details

Maximum Number of MSUs Supported by the ECU: insert details

Installation, Calibration, Operation and Maintenance Documentation:

* insert details

Special conditions which either limit the use of or configuration of the Type-Approved system:

insert details

**Scope of Type-Approval:**

The OBM System has been assessed for its conformance to the conditions of this Agreement inclusive of Category insert category requirements of the:

*On-Board Mass System Functional and Technical Specification*, version insert version; and as applicable,

*Interconnectivity of Telematics Device with Other Systems Functional and Technical Specification*, version insert version.

Schedule B – Insurance Requirements

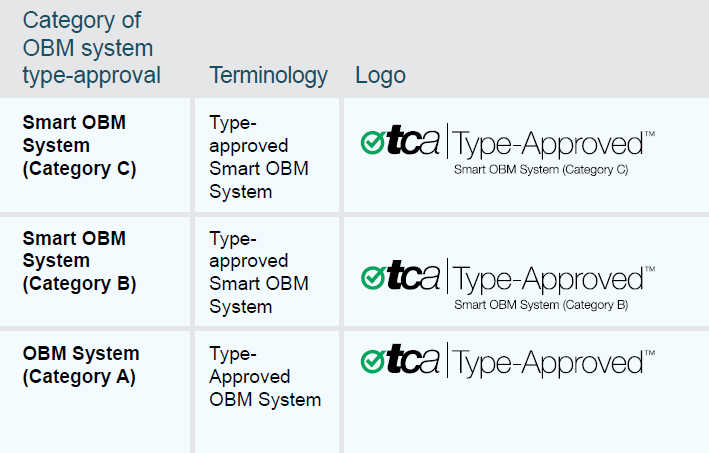
1. Subject to paragraph 2, the insurance policies must be maintained for the Term.
2. The policies can be taken out annually.
3. Broad form public liability insurance: for not less than $10 million for any one occurrence - the insurer's liability is to be unlimited in the aggregate, and there is to be no limit on the number of occurrences to which the policy will respond.
4. 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 $10 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; 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 and Logos



Schedule D – Certificate of Conformance (Sample)

**[Note: Insert Certificate of Conformance (OBM System Category A, B or C)]**

Schedule E – Fees

|  |  |
| --- | --- |
| **Year** | **Fee per Certificate of Conformance issued by TCA to the Supplier to provide to a Customer in accordance with clause 5.1** |
| Enter year | $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 6.1b of the On-Board Mass System Type-Approval Agreement.*

Annexure A – Functional and Technical Specification(s)

**[Note: Insert as applicable:**

* **On-Board Mass System Functional and Technical Specification**
* **Interconnectivity of Telematics Device with Other Systems Functional and Technical Specification]**

Annexure B – Guidelines for Using TCA Logos and Terminology

**[Note: Insert Guidelines]**