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| **TCA / Application Service Provider**  **Registration Agreement:**  **Road Infrastructure Management** |

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| **Date** |  |
| **Parties** |  |
|  | **Transport Certification Australia Limited** (ABN 83 113 379 936) of Level 17, 360 Elizabeth Street, Melbourne, Victoria, 3000 Australia (**"TCA"**). |
|  | **Insert name of Application Service Provider** (ABN insert ABN) of insert address **(“the Application Service Provider” or “the 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 provide trusted evidence-based advice. |
|  | TCA has agreed to register the 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. **“Agreement”** means this Agreement.
2. **“Application”** means the Road Infrastructure Management Application of the National Telematics Framework.
3. **“Application Information”** means information that has been generated or collected for any purpose relating to an Application of the National Telematics Framework.
4. **“Application Services”** means the services which the ASP is authorised by this Agreement to provide to Transport Operators participating in the Application.
5. **“Application Service Provider” or “ASP”** means an entity which has been registered by TCA as an Application Service Provider and is entitled to provide Application Services.
6. **“Authority”** means an entity which has deployed a Scheme that uses an Application of the National Telematics Framework.
7. **“Business Day”** means a weekday on which banks are open in Melbourne, Victoria.
8. **“Claim”** means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.
9. **“Commencement Date”** means the date of this Agreement.
10. **“Commercial Services”** means technology and data services that are provided to a Transport Operator by the ASP but are not Application Services.
11. **“Confidential Information”** means the 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 the ASP or a Transport Operator, which:
12. is disclosed to the ASP or a Transport Operator by or on behalf of TCA;
13. is otherwise acquired by the ASP or a Transport Operator directly or indirectly from TCA;
14. is disclosed by the ASP, or a Transport Operator, to TCA; or
15. otherwise arises as a result of the provision of Application Services by the ASP to a Transport Operator under this Agreement

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

1. **“Enrolment Form”** means a document that records the enrolment of a vehicle within the Application.
2. **“Enrolment Report”** means a report forwarded to TCA that provides a summary of enrolment for a specified period for vehicles that are enrolled in one or more RIM Scheme(s). An Enrolment Report may contain Personal Information.
3. **“Functional and Technical Specification(s)”** means TCA’s Functional and Technical Specification(s) relevant to the Application which the ASP is registered to provide Application Services for.
4. **“Jurisdiction”** means a geographical area containing a road network (i.e. typically an Australian State or Territory).
5. **“Loss”** includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.
6. **“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.
7. **"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.
8. **“Personnel”** means that party's employees, contractors (provided that they first have a documented and enforceable obligation of confidentiality to the ASP), officers, directors and agents.
9. **“Privacy Laws”** means firstly the *Privacy Act 1988* (Cth), secondly any 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.
10. **“Registration”** means the approval of an ASP to participate in the Application.
11. **“Scheme”** means a specific use of a telematics application linked to delivering a policy objective of the Authority.
12. **“Telematics Device”** has the meaning given to the term in the *Telematics Device Functional and Technical Specification*and is the telematics unit installed in a vehicle in respect of which a Transport Operator is to receive Application Services from the ASP
13. **“Transport Operator”** means an operator of one or more vehicles that operate on the Australian road network and whose vehicle(s) may be obliged, or have decided to opt in, to be monitored in accordance with one or more applications of the National Telematics Framework.
    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. Registration
   1. Registration as an Application Service Provider

TCA hereby registers the ASP as a provider of Application Services for the Application, subject to the terms and conditions of this Agreement. The Registration granted under this Agreement is not transferable by the ASP.

* 1. Term

This Agreement will operate from the Commencement Date until it is terminated pursuant to clause 10.

* 1. Nature of Registration

1. The ASP is registered under this Agreement by TCA as an independent contractor.
2. This Agreement does not create a relationship between the parties of employer and employee, principal and agent, partnership or joint venturers.
3. Neither party is liable for any act or omission of the other party.
4. A party must not incur any liability on behalf of the other party nor in any way pledge or make any contract binding upon the other party without that other party's prior written approval.
   1. Commercial Services

The ASP may provide Commercial Services to a Transport Operator in addition to the Application Services.

1. General Obligations
   1. Standard and Provision of Application Services
2. The 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; and
5. where there are laws applicable to the Application, in accordance with those laws.
6. The ASP must ensure that it:
7. meets, and continues to meet, all the requirements of the Functional and Technical Specification(s); and
8. operates in such a way as to comply with the terms of this Agreement.
   1. Requests for Information

The ASP must at all times comply with all reasonable requests for information, and directions, from TCA and Authorities in accordance with this Agreement.

* 1. Agreements with Transport Operator

Prior to providing a Transport Operator with any Application Services, the ASP must enter into a separate ASP Consent Agreement for TMA and/or RIM Applications with that Transport Operator and with TCA.

* 1. Certificate of Enrolment

1. Upon enrolment of a vehicle in the Application, the ASP must issue a certificate of enrolment to the Transport Operator (in the format provided by TCA and completed according to TCA’s instructions).
2. A certificate of enrolment shall be issued for each participating vehicle. If a vehicle is enrolled in more than one RIM Scheme a separate certificate must be issued for each scheme.
   1. Costs of Compliance

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

* 1. Receiving and Maintaining Enrolment Forms

The ASP must manage all Enrolment Forms as per the requirements of the Functional and Technical Specification(s).

1. Provision of Information to TCA
2. The ASP must provide to TCA all information required by the Functional and Technical Specification(s), which includes Enrolment Forms, Enrolment Reports and vehicle data, within the nominated timeframe and via the approved mechanisms.
3. If data is not transmitted to TCA in accordance with the Functional and Technical Specification(s), TCA will inform the Authority which may take appropriate action.
4. TCA will provide the ASP access to its systems for providing data. If TCA has a system outage or if there are problems accessing TCA systems, the ASP must report this to TCA and resend the appropriate data once the issue is resolved.
5. Fees Payable by the ASP
   1. Enrolment Report and Operational Fees
6. The 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 at its absolute discretion after giving the ASP no less than forty (40) Business Days’ notice in writing of such alterations.
7. 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.
   1. Invoicing and Payment Terms
8. TCA will issue the ASP with an invoice for the Operational Fee once each calendar month.
9. The ASP must pay the amounts invoiced in full within thirty (30) days from the date of the invoice.
10. Obligations of TCA

TCA must:

1. maintain a register of all registered ASPs and their Registration status.
2. advise Authorities of the Registration status of ASPs including if an ASP’s Registration is cancelled.
3. provide a publicly available register of ASPs, including a list of RIM Schemes that each ASP is registered for.
4. Privacy and Confidential Information
   1. No Sale or Provision of Application Information

The ASP must not sell, provide, transfer or copy any Application Information (including Personal Information) relating to the Transport Operator, including aggregated data and reports, collected under the Application to any individual organisation or group, or allow any individual, organisation or group to view any Application Information (including Personal Information) relating to the Transport Operator, except with the written permission of the Transport Operator.

* 1. Privacy

1. The ASP must comply with all applicable Privacy Laws.
2. Without limiting their application, clause 7.2a and other provisions of this Agreement require that the ASP:
3. Obtain the Transport Operator’s written consent before sending any Application Information to an entity domiciled outside Australia, regardless of whether that entity is itself or a third party, and regardless of where outside Australia the entity is located;
4. If using the services of a third-party subcontractor, whether the subcontractor is domiciled in Australia or outside of Australia, obtain TCA’s prior written approval to the use of the subcontractor; and
5. Not send information that is “personal information” as defined in the applicable Privacy Laws to any third party (whether the third party is a subsidiary of the ASP itself; is a third-party contractor, is incorporated, is a real person, or otherwise) which/who is domiciled outside Australia without ensuring that the third party is contractually bound to the ASP to comply with the applicable Privacy Laws in all of the third party’s handlings of and dealings with that personal information. Further, as prescribed in the applicable Privacy Laws, the ASP shall ensure that all personal information that it sends to itself in a location outside Australia shall be dealt with by it strictly in accordance with the requirements of those Laws.
   1. Confidentiality
6. The ASP must ensure its Personnel do not disclose to any person any Confidential Information unless required by law.
7. The ASP must not use such Confidential Information for purposes other than in order to perform its obligations pursuant to this Agreement.
   1. Intellectual Property
8. In performing its obligations under this Agreement, the ASP does not acquire any right to any intellectual property of TCA.
9. TCA grants the ASP a non-transferable and non-exclusive limited licence to use the intellectual property specified in the Application.
10. Liability, Indemnity and Insurances
    1. Exclusions and Limitations on TCA’s Liability
11. 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.
12. TCA hereby excludes all liability in relation to, or in connection with any law, or Government Agency decision, including any decision of any 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 ASP

The ASP indemnifies TCA against any Claim, Loss (including economic loss), liability, cost and expense that may be incurred or sustained by TCA as a result of any breach of the terms and conditions of this Agreement, by the ASP or any negligence of the ASP or any employee or representative of the ASP.

* 1. Apportionment of Liability

The ASP’s liability in clause 8.2 shall be reduced proportionally to the extent that any act or omission of TCA and its employees and agents has contributed to the loss, damage, cost or expense.

1. ASP Non-Compliance and Rectification

The ASP must rectify any breach or non-compliance with the terms and conditions 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.

1. Termination
   1. Termination by TCA with Ten (10) Business Days’ Notice

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

1. The 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).
2. Any decision is taken to wind up TCA or to alter or discontinue TCA’s role in administering the Application.
   1. Termination by TCA Immediately Upon Delivery of Notice

Notwithstanding the provisions in clauses 9 and 10.1, TCA shall have the right to terminate this Agreement, immediately upon delivery of written notice to that effect to the ASP, in the event that:

1. the ASP becomes subject to an insolvency event; or
2. the ASP knowingly provides false or misleading information to TCA or to an Authority.
   1. Termination Subject to Notice Period
3. TCA may terminate this Agreement by giving twenty (20) Business Days’ notice in writing to the ASP.
4. The ASP may terminate this Agreement by giving twenty (20) 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

Immediately upon termination of this Agreement, the ASP’s Registration to provide Application Services for the Application is cancelled, and the ASP must immediately cease to offer or provide Application Services.

* 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 10.1 or 10.3, the ASP must continue to provide Application Services to all Transport Operators it has contracted for the supply of Application Services, until the applicable period of notice has expired.

1. Publicity
   1. Publicity
2. The ASP must follow TCA’s guidelines when advertising or publicising its Registration status and product offerings that include the Application.
3. The ASP must not do anything to damage the brand or reputation of TCA, the Authorities, the Application or the National Telematics Framework.
4. TCA may request at any time that the ASP cease to engage in any publicity where in the reasonable opinion of TCA, the ASP is:
5. engaging in conduct that is misleading and deceptive; or
6. incorrectly expressing information in any publicity regarding the National Telematics Framework, the Application Service(s), TCA or the Authorities.
   1. Public Announcements by TCA

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

1. Miscellaneous
   1. Complaints
2. If the ASP is not satisfied with TCA’s services and/or administration of the Application, it may contact tca@tca.gov.au to make a complaint.
3. TCA will endeavour to resolve any reasonable complaint within a mutually acceptable time period.
   1. Amendment, Waiver and Assignment.
4. 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.
5. The ASP shall not assign its rights or obligations under this Agreement without the written consent of TCA.
   1. Inconsistency

The annexures attached to this Agreement form part of this Agreement. To the extent that there is any conflict or inconsistency between the details contained within this Agreement (including the annexures), the Functional and Technical Specification(s), the ASP Consent Agreement inserted in Annexure 4, then the documents will rank in the order in which they are listed below:

1. this Agreement;
2. the Functional and Technical Specification(s); and
3. the ASP Consent Agreement inserted in Annexure 4.

Executed as an Agreement

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| 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 name of ASP  (ABN insert ABN)** by: |  |  |
|  |  |  |
| Signature of Authorised Representative |  | Date |
|  |  |  |
| Full Name of Authorised Representative |  | Capacity of Authorised Representative |

Annexure 1 – Functional and Technical Specifications

The Functional and Technical Specification(s) for the Application are as follows:

[Insert all Specifications as relevant.]

Annexure 2 – RIM Scheme(s)

The Scheme(s) associated with the Road Infrastructure Monitoring Application for which TCA in this Agreement registers the ASP are as follows:

[Note: State either ‘No restrictions on Scheme provision’ or provide a restricted list of Schemes that the ASP’s vehicles can be enrolled in].

Annexure 3 – Fees (Operational Fee)

For vehicles enrolled in the Application as part of the National Telematics Framework, Table 1 shall apply.

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

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

**Note:**

This Annexure 3 may be amended by TCA from time to time at TCA’s absolute discretion.

Annexure 4 – Consent Agreement Between the Application Service Provider, Transport Operator and TCA

[Note: Insert Consent Agreement appropriate for ASPs and Transport Operators]

Annexure 5 – Application Trademarks and Logos

Licensed Intellectual Property:

Trademarks and Logos:

A drawing of a person

Description automatically generated

Annexure 6 – Guidelines for Using TCA Logos

[Note: Insert Guidelines appropriate for ASPs]