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| **Application Service Provider / Transport Operator Agreement**  |

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| **Date** |  **Insert date:** dd month yyyy  |
| **Parties** |  |
|  | **Insert name of Application Service Provider** ABN Insert ABN of Insert address of Application Service Provider (**“Application Service Provider”**); |
|  | **Insert name of Transport Operator** ABN Insert ABN of Insert address of Transport Operator (**“Transport Operator”**); and |
|  | **Transport Certification Australia Limited** ABN 83 113 379 936 of Level 17, 360 Elizabeth Street Melbourne Victoria 3000 (**“TCA”**). |
| **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. |
|  | The Application Service Provider (ASP) is Certified by TCA to provide services meeting the requirements of Application(s) of the National Telematics Framework. |
|  | The Transport Operator (TO) is the operator of one or more vehicles that are monitored in accordance with Application(s) of the National Telematics Framework. |
|  | This Agreement facilitates the provision by the ASP to the TO of monitoring services meeting the requirements of Application(s) of the National Telematics Framework.  |

**It is agreed** as follows.

1. Definitions and Interpretation
	1. Definitions

In this Agreement the following definitions apply unless the context requires otherwise.

1. **“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.
2. **“Agreement”** means this Agreement between the ASP, the Transport Operator and TCA, including the Schedule.
3. **“Application(s)”** means the National Telematics Framework Application(s) that the Transport Operator has enrolled one or more of its vehicles.
4. **“Application Information”** means information that has been generated and/ or collected for any purpose relating to an Application.
5. **“Application Services”** means the services which the ASP must provide to the Transport Operator under this Agreement and/or the Certification Agreement, but excluding, for the avoidance of doubt, any commercial services to be provided to the Transport Operator by the ASP under the Commercial Agreement.
6. **“Authority”** means an entity which has developed and published a scheme which utilises a telematics application as a monitoring and/or assessment solution. The Authority may require that vehicles enrol in a specific Application to ensure monitoring and/or assessment of the vehicles’ operation.
7. **“Business Day”** means a weekday on which banks are open in Melbourne, Victoria.
8. **“Certification”** means the conferring by TCA upon an entity of the status of being certified as an ASP entitled to provide Application Services, and **Certified** shall have the corresponding meaning.
9. **“Certification Agreement”** means the Transport Certification Australia/Application Service Provider Certification Agreement entered into between the ASP and TCA.
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. **“Commercial Agreement”** has the meaning given to that term in clause 3b.
13. **“Commercial Services”** means all telematics services or location based monitoring services, including associated communications services, that are provided to the Transport Operator by the ASP but are not Application Services.
14. **“Confidential Information”** means the terms and conditions of 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 the TO or any Authority, which:
15. is disclosed to the ASP or the Transport Operator by or on behalf of TCA or any Authority;
16. is otherwise acquired by the ASP or the Transport Operator directly or indirectly from TCA or any Authority;
17. is disclosed by the ASP, or the Transport Operator, to TCA or any Authority; or
18. otherwise arises as a result of the provision of Application Services by the ASP to the 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. **“Connected Device”** means any peripheral device connected physically or electronically to a Telematics Device that is necessary for the collection of data as part of an Application of the National Telematics Framework and includes the TID, User Interface or an On-Board Mass (OBM) System.
2. **“Corporations Act”** means the *Corporations Act 2001* (Cth).
3. **“Customer”** means any person who receives Commercial Services from the ASP.
4. **“Enrolment Form”** means an electronic document that formally and simultaneously records the enrolment of a vehicle within a particular Application of the National Telematics Framework.
5. **“Enrolment Report”** means a report forwarded to an Authority by an ASP (either directly or via TCA), that provides a summary of enrolment relevant to a given Authority for a specified period for vehicles that are enrolled in one or more Applications. An Enrolment Report may contain Personal Information.
6. **“Event Report”** means a report of an event identified through processing of vehicle telematics data in the context of a vehicle enrolment and any associated operating conditions, or a possible malfunction or Tampering. An Event Report may contain Personal Information.
7. **“GST Amount”** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
8. **“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.
9. **“Intelligent Access Program”** (IAP) means the application of the National Telematics Framework, administered by TCA, which provides to the operators of heavy vehicles access, or improved access, to the Australian road network in return for the monitoring of their vehicle(s)’ compliance with specific access conditions.
10. **“Jurisdiction”** means a geographical area containing a road network (typically a Jurisdiction will be an Australian State or Territory).
11. **“Monitored Vehicle”** means a vehicle that is actively enrolled in an Application and is equipped with a Telematics Device and other Connected Devices (as applicable).
12. **“National Telematics Framework”** means the digital business platform with infrastructure and rules, intended to ensure an open marketplace of telematics and related intelligent technology providers.
13. **"OBM System”** means an On-Board Mass System as defined in the *On-Board Mass System Functional and Technical Specification*.
14. **“Personnel”** means a party's employees, officers, directors and agents.
15. **“Personal Information”** has the same meaning given to it in the Privacy Laws and, where the Application is the Intelligent Access Program, Chapter 7 of the *Heavy Vehicle National Law*.
16. **“Privacy Laws”** means the *Privacy Act 1988* (Cth) and any applicable Commonwealth, State or Territory privacy law.
17. **“Scheme”** means a specific use of an Application linked to delivering a policy objective of the Authority.
18. **“Tamper”**, **“Tampering”** means to engage in conduct that has the intention of causing an approved system to:
19. fail to generate, record, store, display, analyse, transmit or report Application Information, or
20. fail to generate, record, store, display, analyse, transmit or report Application Information correctly.
21. **“Tamper Report”** means a report forwarded to an Authority by an ASP in respect of suspected Tampering.
22. **“TCA Audit”** means audit work undertaken by or on behalf of TCA, to assess the capacity of the ASP to continue to be certified and perform its obligations as an ASP.
23. **“Telematics Device”** means a telematics unit, which has been type-approved by TCA and is installed in a vehicle in respect of which the ASP is to provide Application Services to the TO, and which:
24. collects, monitors and stores global navigation satellite system data, and other information from within that unit or from Connected Devices; and
25. transfers that information to the ASP.

In the IAP, this device is referred to as the ‘telematics in-vehicle unit’.

1. **“Term”** means the period specified in clause 2.
2. **“Trailer Identification Device”** (TID) means a device which has been type-approved by TCA as capable of uniquely identifying a trailer.
3. **“User Interface”** means a device used by a TO and/or its nominated representative to provide self-declared information into the Telematics Device.
4. **“User Interface Alternative”** means an ASP facilitated alternative to the User Interface provided for the TO and/or its nominated representative to provide self-declared information directly to the ASP.
	1. Terms Defined in Other Documents

Words used in this agreement that are defined in the Certification Agreement but not defined in clause 1.1 of this Agreement shall have the same meaning in this Agreement as in the Certification Agreement, unless the context requires otherwise.

1. Term

The term of this Agreement will be from the Commencement Date until it is terminated pursuant to clause 11.

1. Relationship of the Parties
2. The ASP and the Transport Operator each acknowledge that they have entered into this Agreement with TCA and with each other with the understanding that the purpose of the Agreement is to enable TCA, consistent with its function as stated above, to provide to Authorities assurance in connection with the availability and delivery of Application Services, and to enable TCA to ensure that all relevant parties are aware of their responsibilities and obligations in relation to the operation of those Applications of the NTF in which the Transport Operator is enrolled.
3. The commercial arrangements between the ASP and the Transport Operator with respect to the supply of Application Services shall be recorded by them independently of this Agreement in a written agreement (the **"Commercial Agreement"**) which shall be made available to TCA upon request, for the purposes of TCA’s Audit function. The ASP and the Transport Operator must each separately ensure that no provision in the Commercial Agreement is in conflict with any provision of this Agreement.
4. Obligations of the ASP
	1. Provision of Application Services
5. The ASP must provide Application Services to the Transport Operator in accordance with the terms of this Agreement and (as between TCA and the ASP) the Certification Agreement.
6. TCA will issue to the ASP from time to time, a Certificate listing each Application which TCA has, as at the date of the Certificate, certified the ASP as authorised to provide. The ASP agrees, as a material term of this Agreement, that it will not provide, or offer to provide, Application Services to any party, including the Transport Operator, Application Services for which it has not been certified by TCA.
7. The ASP must ensure that no provision of any Commercial Agreement or other arrangement between it and the Transport Operator is in conflict with any provision of this Agreement and/or with any provision of the Certification Agreement.
	1. Receipt and Use of Enrolment Forms
8. It is acknowledged and agreed by the Transport Operator that the ASP will receive Enrolment Forms from the Authority(ies) and/or from the Transport Operator.
9. On receipt of an Enrolment Form, the ASP must validate its contents.
10. If an Enrolment Form and/ or information within it appears to be invalid, then the ASP must return the Enrolment Form to the Transport Operator or to the Authority (as applicable) for correction and re-submission.
11. The ASP must maintain for a period of 4 years from date of receipt all Enrolment Forms it receives.
	1. Certification and Technical Obligations
12. The ASP warrants to the Transport Operator that:
13. It is certified as an ASP at the time of the signing of this Agreement;
14. It will not provide to the Transport Operator Application Service(s) which it has not been certified by TCA to provide;
15. It will notify the Transport Operator if its Certification is cancelled.
16. It holds all equipment, systems, permits, licences, authorisations and accreditations required for it to perform its obligations under this Agreement, and will perform those obligations in compliance with all relevant permits, licences, authorisations and accreditations and all applicable laws, standards, specifications and procedures; and
17. It does and will during the term of this Agreement meet all requirements of the Certification Agreement and all applicable laws, including the Privacy Laws regarding:
18. use and disclosure of Application Information (including Personal Information); and
19. Confidential Information.
20. The ASP must bear all its own costs of complying with its obligations under this Agreement.
	1. Appearance as an Expert Witness
21. If legal proceedings against the Transport Operator arise in connection with the operation of an Application of the NTF, TCA and the ASP may be required to appear as an expert witness and/or prepare expert witness statements in connection with those proceedings.
22. The ASP shall not, and must use reasonable endeavours to ensure that its Personnel do not, appear as an expert witness on behalf of the Transport Operator in such legal proceedings.
23. For the avoidance of doubt, this clause:
24. is intended to make the ASP available as an expert witness when required by TCA or an Authority(ies) for legal proceedings. In such proceedings, the ASP may not appear as an expert witness on behalf of the Transport Operator, but will be available for cross-examination by the Transport Operator; and
25. does not preclude the Transport Operator calling the ASP as a witness in court proceedings which are not legal proceedings related to the operation of an Application.
	1. Authority to Execute the Agreement

Each party represents and warrants to the other two parties that:

1. it is duly authorised to enter into and execute this Agreement; and
2. its company details set out in Schedule A are true and correct.
3. Obligations of the Transport Operator
	1. No Tampering
4. The Transport Operator must not, and must ensure that its Personnel do not, do anything that constitutes Tampering with a Telematics Device and/ or a Connected Device, and must not allow or cause any other person to do an act that constitutes Tampering.
5. If the Transport Operator becomes aware of any Tampering, then it must notify the ASP as soon as practicable.
	1. Malfunction or Unintentional Interference
6. The Transport Operator must notify the ASP and the Authority(ies) as soon as practicable of any malfunction of, or unintentional interference with, a Telematics Device or Connected Device by any person resulting in disconnection of, damage to, or alteration of the operation of the Telematics Device, or Connected Device.
7. If any malfunction or unintentional interference occurs with a Telematics Device or Connected Device, the Transport Operator must arrange for the ASP to restore that Telematics Device or Connected Device as soon as practicable to the standards and specifications required by the ASP, and must provide the ASP with reasonable assistance, including providing access to a Monitored Vehicle to enable a Telematics Device or Connected Device to be restored as soon as practicable.
8. The ASP must notify the Transport Operator and the Authority(ies) of any action taken under clause 5.2b as soon as practicable after the action is taken.
9. The cost (if any) associated with the restoration of the Telematics Device or Connected Device, and who bears such cost (if any), shall be determined by the Commercial Agreement.
	1. General Acknowledgement

The Transport Operator acknowledges and accepts that failure by it to comply with this Agreement may result in the relevant Authority(ies) cancelling its eligibility to continue to be enrolled in one or more Applications.

1. Application Monitoring Obligations
	1. Monitoring of Monitored Vehicles
2. The Transport Operator acknowledges that all vehicles which it has enrolled in an application of the National Telematics Framework must be monitored at all times by the ASP.
	1. Record Retention

The Transport Operator acknowledges that the ASP must:

1. maintain accurate data, records and information relating to the Application Services provided by it to the Transport Operator under this Agreement;
2. retain all data, records and information according to the terms of the Certification Agreement; and
3. provide the Transport Operator with access to inspect data, records and information maintained under this clause 6 upon reasonable notice.
4. Application Reporting Obligations
	1. Data Reporting
5. The Transport Operator acknowledges and agrees that, in accordance with the terms of the Certification Agreement, the ASP is obliged to transmit Application Information comprising data records to TCA from Monitored Vehicles;
6. The Transport Operator acknowledges that TCA, in accordance with its role under the National Telematics Framework, will securely store Application Information for a period of up to four (4) years from receipt of the data, after which time, the information will be permanently deleted;
7. The Transport Operator acknowledges that Application Information will be analysed by TCA and will form part of de-identified and aggregated reports that are released, and possibly published for research purposes. Research reports shall not be released if they contain Personal Information;
8. Where the Application is the Intelligent Access Program, the Transport Operator acknowledges that, from time to time, TCA may disclose Application Information to an authorised officer, other than a police officer, if so authorised by a warrant or court order under the *Heavy Vehicle National Law;* and
9. The Transport Operator acknowledges that, from time to time, TCA may disclose Application Information to an authorised officer who is a police officer, if so authorised by a warrant or court order.
	1. Event Reports
10. The TO may be the operator of vehicles that are enrolled in one or more Applications of the National Telematics Framework where the Application includes the requirement for Event Reports to be transmitted to relevant Authorities. Where the Application is the Intelligent Access Program, an Event Report includes Non-Compliance Reports (NCRs) as defined in Chapter 7 of the *Heavy* *Vehicle National Law*.
11. In accordance with section 7.2a, the TO acknowledges that the ASP and/or TCA (as applicable) is obliged to provide an Event Report to the relevant Authority(ies) when a Monitored Vehicle is observed to have been operated contrary to a condition that has been set by the Authority, or a possible malfunction or Tampering has been observed.
12. The ASP and/or TCA (as applicable) will provide an Event Report to the relevant Authority(ies) only when a Monitored Vehicle is being operated contrary to any condition that been set by the Authority to which it is subject, or possible malfunction or Tampering has occurred, and otherwise in accordance with clause 7.2d of this Agreement.
13. The ASP undertakes to the TO that it will:
14. provide an Event Report to the relevant Authority(ies) strictly, and only, in accordance with the terms of the Certification Agreement and any relevant laws;
15. only use the information contained in an Event Report for the purposes of reporting of the operation of a Monitored Vehicle contrary to a condition that has been set by the Authority, or possible malfunction or Tampering to the relevant Authority(ies);
16. ensure that Enrolment Reports are kept in a secure format and location;
17. provide TCA and Authority(ies) only with such information as it is required to provide in accordance with the terms of the Certification Agreement; and
18. not otherwise provide any Event Reports, or any information contained in or derived from any Event Report, to any person, other than in accordance with this Agreement and/orthe Certification Agreement.
19. Notwithstanding the provisions of clauses 7.2a to 7.2d (inclusive) above, the ASP may, but only if in accordance with any relevant laws and at the request of the TO, supply to the TO, the Application Information (including Personal Information) contained in any Event Report issued by the ASP with respect to the TO.
	1. Enrolment Reports

The TO acknowledges that in accordance with the Certification Agreement, the ASP must provide Enrolments Reports to the relevant Authority(ies) with sufficient frequency to keep the Authority(ies) fully informed as to enrolments in the Application(s).

* 1. Tamper Reporting
1. The Transport Operator acknowledges that in accordance with the Certification Agreement and with any relevant laws, the ASP must report to the Authority(ies) any Tampering or suspected or attempted Tampering.
2. The Transport Operator acknowledges that, in accordance with the Certification Agreement and with any relevant laws, the ASP must not advise the TO of the reporting of any Tampering or suspected or attempted Tampering.
	1. Transport Operator Consent to the Provision of Information, and Acknowledgment of TCA’s Audit and Reporting Function
3. The Transport Operator acknowledges and agrees that the ASP:
4. will provide a copy of this Agreement to the relevant Authority(ies) if requested;
5. is required to provide Application Services according to the Certification Agreement;
6. may disclose Application Information (including Personal Information) to the Authority(ies) or to TCA;
7. must disclose Application Information relating to the Transport Operator to a police officer or to an authorised officer of the Authority for law enforcement purposes, if a warrant to compel that disclosure has been issued by a court,
8. will be subject to TCA Audit to determine if the ASP meets, and continues to meet, its obligations under the Certification Agreement. The TCA Audit may be undertaken by TCA or a person authorised by TCA
9. The TO acknowledges and agrees that:
10. if a TCA Audit identifies any instance of failure by the ASP to report (in an Event Report), to a relevant Authority(ies) an event when a Monitored Vehicle is being operated contrary to any condition that has been set by the Authority, then TCA, or a person authorised by TCA may collect, use or store Application Information relating to the Transport Operator;
11. if a TCA Audit identifies any instance of failure by the ASP to report to the Authority (ies) any possible malfunction or Tampering, then TCA is obliged to report that possible malfunction or Tampering to the Authority(ies).
12. Conflicts of Interest
	1. Conflicts of Interest
13. The Transport Operator must not, unless authorised by TCA in writing,
14. have any managerial, financial, commercial, personal or other interest in the ASP or any other ASP providing Application Services to another transport operator;
15. have any relationship with any ASP that causes or may cause an actual, potential or perceived conflict of interest or that may be reasonably perceived to affect an ASP's willingness or capacity to report to the Authority(ies); or
16. engage an ASP to provide Application Services where that ASP has any actual, potential or perceived managerial, financial, commercial, personal or other interest in the Transport Operator.
17. The ASP must not, unless authorised by TCA in writing:
18. have any managerial, financial, commercial, personal or other relevant interest in the Transport Operator or any transport operator using the Application Services of another ASP;
19. provide Application Services to the Transport Operator (or any other transport operator) if the Transport Operator (or any other transport operator) has any managerial, financial, commercial, personal or other relevant interest in the ASP, or any other ASP;
20. have any relationship with or interest in a transport operator that causes or may be reasonably perceived to cause a conflict of interest or that may be reasonably perceived to affect the ASP's willingness or capacity to report to the relevant Authority(ies); or
21. have any actual, potential or perceived conflict between its obligations as an ASP and its other businesses, interests and activities.
	1. Dealing with Conflicts of Interest

If a conflict or risk of conflict does arise (including, any actual, potential or perceived conflict) each of the ASP and the Transport Operator (to the extent that they are aware of it) must:

1. immediately notify TCA in writing of the conflict or risk of conflict;
2. take such measures as are deemed by TCA as reasonably necessary to manage the conflict, or risk of conflict, within ten (10) Business Days of written notice from TCA requiring the ASP and/or the Transport Operator (as the case may be) to take such measures; and
3. within a further two (2) business days, confirm to TCA in writing if they have implemented the measures required by TCA under clause 8.2b.
4. Privacy and Confidential Information
	1. No Sale or Provision of Application Information

Except as otherwise permitted under this Agreement or the Certification Agreement, 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 any Application of the National Telematics Framework 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. Prohibition on the Disclosure of Confidential Information

Each of the ASP, the Transport Operator and TCA hereby undertakes to the others that they and their Personnel will not, without the written consent of the party whose Confidential Information it is, disclose Confidential Information to any person, except where authorised under this Agreement, the Certification Agreement or applicable privacy laws and, where the Application is the Intelligent Access Program, the *Heavy Vehicle National Law*.

* 1. Confidentiality Continues

The obligations of confidentiality under this clause 9 are continuing obligations and will survive the expiration or termination of this Agreement unless such Confidential Information has entered the public domain other than by reason of any breach by the ASP, the Transport Operator, or TCA, or the Personnel of each party, of its obligations of confidentiality or any other obligation under this Agreement or the Certification Agreement.

1. Indemnity and insurance
	1. Indemnity Given by the ASP

The ASP indemnifies each of TCA and the Transport Operator against any Claim, loss (including economic loss), liability, cost and expense that may be incurred or sustained by either or both of TCA and the Transport Operator as a result of a breach of this Agreement by the ASP or any negligence of the ASP or any employee or representative of the ASP, except to the extent that:

1. any negligence by the TCA and/ or Transport Operator (as the case may be) or its/ their respective Personnel; or
2. breach of this Agreement by TCA and /or the Transport Operator; or
3. Tampering, negligence or misuse by the Transport Operator or the Transport Operator’s Personnel or contractors,

caused or contributed to the Claim, loss (including economic loss), liability, cost and expense.

* 1. Indemnity Given by the Transport Operator

The Transport Operator indemnifies each of the ASP and TCA against any Claim, loss (including economic loss), liability, cost and expense that may be incurred or sustained by each of the ASP and TCA as a result of a breach of this Agreement by the Transport Operator or any negligence of the Transport Operator or any employee or representative of the Transport Operator, except to the extent that:

1. any negligence by the ASP or TCA, or the Authority(ies) or their respective Personnel; or
2. breach of this Agreement by the ASP or TCA, caused or contributed to the Claim, loss (including economic loss), liability, cost and expense.
	1. Insurance
3. The ASP warrants that it has taken out and will maintain for the term of this Agreement all insurance policies as required under the Certification Agreement.
4. The ASP must notify the Transport Operator and TCA of any cancellation of its insurance required under this clause 10.3.
5. Termination
	1. Termination for Breach
6. Each party to this Agreement may terminate it on fifteen (15) Business Days' notice, by giving written notice to that effect to the other two, if:
7. any other party to this Agreement is in material breach of this Agreement; or
8. the Commercial Agreement between the ASP and the Transport Operator for the supply of Application Services is terminated.
9. Without limiting clause 11.1a, TCA may terminate this Agreement by giving to each of the ASP and the Transport Operator ten (10) Business Days' notice in writing if the ASP and/or the TO (as applicable) fails to rectify any breach of this Agreement, which TCA has notified the ASP and/or the Transport Operator (as applicable) of, within the period of time specified by TCA for rectification.
	1. False and/or Misleading Information

For the avoidance of doubt, the provision of false and/or misleading information by the ASP or the Transport Operator is a material breach for which TCA may terminate this Agreement in accordance with clause 11.1.

* 1. Termination Without Reason

Each party may without reason terminate this Agreement by giving not less than twenty (20) Business Days’ notice in writing to the other two parties. The ASP must continue to provide Application Services in respect of the Transport Operator’s Monitored Vehicles, for the duration of the notice period.

* 1. Termination of Certification Agreement

This Agreement shall terminate automatically upon the termination of the Certification Agreement. TCA shall give to the ASP and to each relevant Authority, prompt written notice of the termination of the Certification Agreement, and shall make such a termination public by means of its website.

* 1. Return of ASP’s Equipment and Confidential Information
1. Within ten (10) Business Days of the termination of this Agreement, the TO must return to the ASP:
2. subject to the provisions of the Commercial Agreement, all of the ASP’s equipment associated with the provision of Application Services, including the Telematics Device, and any other Connected Devices (as applicable) (where the ASP owns such equipment); and
3. all Confidential Information of the ASP,

as is then held by the Transport Operator, and as is requested back from the Transport Operator by the ASP.

1. The parties agree that, following the termination of this Agreement, the ASP may retain Confidential Information to the extent required for it to meet its legal, financial or TCA Audit obligations.
	1. Provision of Application Services During Period of Notice of Termination

Where a notice of termination is given by either party under clauses 11.1, 11.3 or 11.4, the ASP must continue to provide Application Services for all Monitored Vehicles for which the Transport Operator has contracted with the ASP for the supply of Application Services, for the duration of the period of notice of termination.

* 1. Continuing Clauses

Clauses 1, 6.2, 9, 10, 11.5, 11.7 and 13.5 will continue to apply after expiration or termination of this Agreement.

1. No Assignment and No Subcontracting
	1. No Assignment

Neither the ASP nor the Transport Operator may assign, transfer, delegate, encumber, pledge or otherwise dispose of or deal with any of its rights or obligations under this Agreement, without the written consent of the other parties where such consent cannot be unreasonably withheld.

* 1. No Subcontracting

Neither the ASP nor the Transport Operator may sub-contract any of its obligations under this Agreement, unless the prior written approval of TCA is obtained.

1. 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 and the transactions contemplated by it.

* 1. Entire Agreement
1. Subject to clause 13.2b, this Agreement and the Commercial Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.
2. The Commercial Agreement forms part of this Agreement only as between the ASP and the Transport Operator. TCA is not a party to, nor bound by any provision of, the Commercial Agreement.
	1. Inconsistency
3. If there is any inconsistency between the provisions of this Agreement and the provisions of the Certification Agreement then the provisions of the Certification Agreement will prevail.
4. To the extent of any conflict or inconsistency between the provisions of the Certification Agreement and the provisions of the Commercial Agreement then the provisions of the Certification Agreement will prevail over the provisions of the Commercial Agreement.
	1. Amendment and Waiver

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 all of the parties.

* 1. Governing Law

This Agreement is governed by the law of Victoria. Each party submits to the non exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this 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. 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. No Effect on ASP Certification

For the avoidance of doubt, nothing in this Agreement changes the nature of the Certification held by the ASP from TCA.

* 1. Notices

Any notice, demand, consent or other communication (a ***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 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 fax number of another person (“the recipient”) to be:

|  |  |
| --- | --- |
| 1. to: **Insert Name of Application Service Provider**
 | **Insert Address**Attention: **Insert Name** |
| 1. to: **Insert Name of Transport Operator**
 | **Insert Address**Attention: **Insert Name** |
| 1. to TCA:
 | Level 17, 360 Elizabeth StreetMELBOURNE VIC 3000Attention: General Manager Service Delivery |

1. 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, or in accordance with, any provision of this Agreement, 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.

Schedule A

Party Details

TCA Details

|  |  |
| --- | --- |
| TCA Name | Transport Certification Australia Limited |
| ABN | 83 113 379 936 |
| ACN | 113 379 936 |
| Address | Level 17, 360 Elizabeth Street, Melbourne, Victoria, 3000 |
| Phone | 03 8601 4600 |
| Email | tca@tca.gov.au |

ASP Details

|  |  |
| --- | --- |
| ASP Name | [Enter details] |
| ABN | [Enter details] |
| ACN | [Enter details] |
| Address | [Enter details] |
| Phone | [Enter details] |
| Email | [Enter details] |

Transport Operator Details

|  |  |
| --- | --- |
| Transport Operator Name | [Enter details] |
| ABN | [Enter details] |
| ACN | [Enter details] |
| Address | [Enter details] |
| Phone | [Enter details] |
| Email | [Enter details] |

**Executed as an Agreement**

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

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

|  |  |  |
| --- | --- | --- |
| Executed for and on behalf of **Transport Certification Australia Limited (ABN 83 113 379 936)** by:**PADDY GOODALL**General Manager Service Delivery |  |  |