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

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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 provides trusted evidence-based advice. |
|  | TCA has agreed to certify 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. **"ADC"** means the Australian Disputes Centre Limited.
2. **“Adjustment Event”, “Adjustment Note”, “Consideration”, “GST”, “GST Group”, “Input Tax Credit”, “Invoice”, “Tax Invoice”** and **“Taxable Supply”** have the meanings given by the GST Law.
3. **“Agreement”** means this agreement.
4. **“Application”** means the National Telematics Framework Applications specified in Annexure 1.
5. **“Application Information”** means information that has been generated or collected for any purpose relating to an Application of the National Telematics Framework.
6. **“Application Services”** means the services which the ASP is authorised by this Agreement to provide to Transport Operators participating in the Application(s).
7. **“Application Service Provider” or “ASP”** meansan entity which has been certified by TCA as an Application Service Provider and is entitled to provide Application Services.
8. **“Application Service Provider/Transport Operator Agreement”** is an agreement (in the form, or in a form similar to that, set out in Annexure 5) entered into by the ASP, a Transport Operator and TCA with respect to the provision of Application Services by the ASP to the Transport Operator.
9. **“Audit”** means any audit work undertaken by TCA or a person authorised by TCA, in assessing the capacity of the ASP to continue to be certified and perform its obligations as an ASP. Audits comprise the following:
10. Continual Monitoring and Audit Activities;
11. Triggered Audit Activities;
12. Non-Compliance Audit; and
13. Termination Audits.
14. **“Authority”** means an entity which has deployed a Scheme that utilises an Application of the National Telematics Framework. An Authority may appoint a third party, including TCA, to perform specific functions on its behalf. See Schedule A for a list of Authorities.
15. **“Business Day”** means a weekday on which banks are open in Melbourne, Victoria.
16. **“Certification”** means the conferring upon the status of a person as certified by TCA as an ASP entitled to provide Application Services for the Application(s) specified in Annexure 1.
17. **"Change of Control Event"** means, in relation to an entity, the occurrence of an event which has the effect that:
18. if a person Controlled the entity prior to the time the event occurred, that person ceased to Control the entity and another person obtained Control of the entity;
19. if no person Controlled the entity prior to the time the event occurred, a person obtained Control of the entity; or
20. if the entity is owned or Controlled by a group or a consortium of persons, or if a group or consortium could Control the entity were they to act collectively, there is any material change in the composition of the group or consortium.
21. **“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.
22. **“Commencement Date”** means the date of this Agreement.
23. **“Commercial Services”** means technology and data services that are provided to a Transport Operator by the ASP but are not Application Services.
24. **“Confidential Information”** means all information contained within this Agreement and all information provided under or in connection with this Agreement as well as any information relating to the business, affairs or any other technical information of TCA or an Authority or a Transport Operator, which:
25. is disclosed to the ASP or any Authority or a Transport Operator by or on behalf of TCA;
26. is otherwise acquired by the ASP or any Authority or a Transport Operator directly or indirectly from TCA;
27. is disclosed by the ASP or any Authority or a Transport Operator to TCA; or
28. otherwise arises as a result of the provision of Application Services by the ASP to any Authority or 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 a peripheral device connected physically or electronically to the Telematics Device that is necessary for the collection of data as part of the Application, in accordance with the rules specified by the Application, and may include an On-Board Mass (OBM) System.
2. **"Continual Monitoring and Audit Activities"** means continual monitoring and audit activities, undertaken by TCA, of the ASP's Total System. The process is designed to provide assurance that the ASP is meeting the requirements of the Functional and Technical Specification(s) as relevant to this Agreement.
3. **"Control"** has the meaning given to that term in section 50AA of the Corporations Act and "Controlled" has the corresponding meaning.
4. **“Corporations Act”** means the *Corporations Act 2001* (Cth).
5. **“Enrolment Form”** means an electronic document that formally and simultaneously records the enrolment of a vehicle within the Application.

In the Intelligent Access Program (IAP), an Enrolment Form is referred to as an Intelligent Access Condition.

1. **“Enrolment Report”** means a report forwarded to an Authority by the ASP (either directly or via TCA), that provides a summary of enrolments relevant to a given Authority for a specified period for all vehicles that are enrolled in the Application. An Enrolment Report may contain Personal Information.

In the IAP, an Enrolment Report is referred to as a Participants Report.

1. **“Force Majeure”** means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
2. act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide or other adverse weather conditions;
3. strike, lockout or other labour difficulty;
4. act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
5. embargo, power or water shortage or lack of transportation;
6. but it excludes the effect of any Law applying to TCA, an Authority, the ASP or the Application.
7. **“Functional and Technical Specification(s)”** means TCA’s Functional and Technical Specification(s) relevant to the Application which the ASP is certified by this agreement to provide. A copy of the Functional and Technical Specification(s) is attached as Annexure 2.
8. **“Governmental Agency”** means a government or a governmental, semi-governmental or judicial entity or authority.
9. **“GST Amount”** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
10. **“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.
11. **“Insolvency Event”** means any one of the following events that may occur in respect of the ASP:
12. the ASP stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
13. the ASP is insolvent within the meaning of section 95A of the Corporations Act;
14. a court is required by reason of section 459C(2) of the Corporations Act to presume that the ASP is insolvent;
15. the ASP fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
16. the ASP has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
17. the ASP has a controller (within the meaning of section 9 of the Corporations Act) is appointed to all or any of its assets or undertaking; or
18. the ASP 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.
19. **“Intelligent Access Map”** (IAM) means a map, in electronic form, issued, by TCA as the reference map for the Australian road network.
20. **“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.
21. **“Jurisdiction”** means a geographical area containing a road network (i.e. typically an Australian State or Territory).
22. **“Loss”** includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.
23. **“Monitored Vehicle”** means a vehicle that is actively enrolled in the Application and is equipped with a Telematics Device and other Connected Devices (as applicable).
24. **“Malfunction Report”** means a report given by the ASP to TCA and/or the Authority(ies) giving notice of a malfunction of the ASP’s Total System. A system malfunctions if:
25. it ceases to work at all, or works only intermittently;
26. it does not perform one or more functions required under the Application, or performs any such function only intermittently; or
27. it performs such a function in such a way that the results of it doing so are inaccurate or unreliable (including intermittently inaccurate or unreliable).
28. **“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.
29. **"Non-Compliance Audit"** means an audit undertaken by TCA when TCA believes an ASP is in breach of this Agreement and/or in non-compliance with the relevant Functional and Technical Specification(s).
30. **“Non-Compliance Report”** means a report of an event identified through the processing of vehicle telematics data relating to a vehicle enrolment and associated operating conditions, or a possible malfunction or Tampering. A Non-Compliance Report may contain Personal Information.
31. **“OBM System”** means an On-Board Mass System which has been type-approved by TCA as meeting the Category B and/or C requirements of the *On-Board Mass System Functional and Technical Specification*. A Category B or C OBM System is referred to as a Smart OBM System.
32. **"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.
33. **“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.
34. **“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.
35. **“Geoscape”** means Geoscape Australia ABN 23 089 912 710.
36. **“Geoscape Data”** has the meaning given to that term in Annexure 6.
37. **“Geoscape Licence Agreement”** means the licence agreement between Geoscape and TCA for the use of the Geoscape Data as the Intelligent Access Map.
38. **“Recertification”** means an assessment process to determine whether the ASP retains the capacity and capability to be a provider of Application Services and "**Recertify**" has the corresponding meaning.
39. **“Recovery Services”** means temporary services that must be delivered after a Force Majeure event as soon as is practicable to reinstate the Application Services.
40. **“Scheme”** means a specific use of a telematics application linked to delivering a policy objective of the Authority.
41. **“Sub-Licence Agreement”** means the Sub-Licence Agreement between TCA and the ASP to make the Geoscape data available for use as the IAM.
42. **“System Recovery Procedures”** means a set of procedures that facilitate the recovery of the Application Services provided by the ASP. The procedures must meet the requirements of the Functional and Technical Specification specified in Annexure 2.
43. **“Tamper”**, **“Tampering”** means to engage in conduct that has the intention of causing an approved system to:
44. fail to generate, record, store, display, analyse, transmit or report Application Information, or
45. fail to generate, record, store, display, analyse, transmit or report Application Information correctly.
46. **“Tamper Report”** means a report forwarded to an Authority by the ASP with respect to suspected Tampering.
47. **“Telematics Device”** has the meaning given to the term in the *Telematics Device Functional and Technical Specification* and is the telematics unit, which has been type-approved by TCA, that is installed in a vehicle in respect of which the Transport Operator is to receive Application Services from the ASP.

In the IAP, the Telematics Device is referred to as a Telematics In-Vehicle Unit.

1. **“Term”** means the initial Term and any extension of it (as contemplated by clause 2.2b.
2. **"Termination Audit"** means an audit undertaken by TCA, where the term of this Agreement expires or under clause 14 the ASP ceases to be an ASP, to determine the ASP's compliance, up to the expiration or termination date (as applicable), with the terms and conditions of this Agreement and/or the requirements of the Functional and Technical Specification.
3. **“Total System”** means the totality of the ASP’s type-approved Telematics Devices and Connected Devices; its ASP System; its ASP’s Performance System, and its Quality System (all as defined in the Functional and Technical Specification), together with all incidental equipment and systems used by it in connection therewith.
4. **“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.
5. **"Triggered Audit Activities"** means monitoring and audit activities, undertaken by TCA to assess the ASP's capacity to comply and/or its compliance with, the terms and conditions of this Agreement and/or the Functional and Technical Specification.
6. **“User Interface”** means a device or software interface used by a Transport Operator and/or its nominated representative to provide self-declared information as required by the Application.
7. **“User Interface Alternative”** means an alternative to the User Interface facilitated by the ASP and provided for the Transport Operator and/or its nominated representative to provide self-declared information directly to the ASP.
	1. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

1. The singular includes the plural, and the converse also applies.
2. A gender includes all genders.
3. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
4. A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
5. A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
6. A reference to dollars and $ is to Australian currency.
7. A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
8. Certification
	1. Certification as an Application Service Provider

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

* 1. Term
1. Subject to clause 2.2b, the Certification of the ASP will have a Term of three (3) years from the Commencement Date unless this Agreement is terminated earlier by either party in accordance with its terms.
2. Not earlier than six (6) months, and not later than three (3) months, prior to the expiry of the initial Term, or any subsequent term, the parties may, by mutual agreement, further extend the Term for up to three (3) years. TCA's agreement to any extension may be subject to the ASP satisfying any Recertification requirements determined by TCA. Such extension must be evidenced in writing.
	1. Ongoing Audit and Review Program

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

* 1. Nature of Certification
1. The ASP is certified 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. Subcontracting
5. The ASP must not engage any subcontractor in relation to any aspect of the provision of the Application Services or any other of its obligations under this Agreement unless the prior written approval of TCA has been obtained.
6. When requesting such approval, the ASP must inform TCA of:
7. the scope of the proposed work to be subcontracted;
8. the proposed subcontractor;
9. commercial details of the proposed subcontractor as reasonably requested by TCA; and
10. the material terms, conditions and details of the proposed subcontract, excluding all terms and conditions and details relating to the subcontractor's fees.
	1. Commercial Services
11. Subject to clause 2.6e, the ASP may provide Commercial Services to a Transport Operator in addition to the Application Services.
12. Any Commercial Services provided under clause 2.6a are to be provided on terms to be agreed between the ASP and a Transport Operator.
13. If the ASP offers any Commercial Services to a Transport Operator in accordance with clause 2.6a, the ASP must inform the Transport Operator in writing that the Commercial Services are not:
14. Application Services or provided in connection with an application of the National Telematics Framework
15. provided in accordance with the terms of this Agreement
16. providing information or data which constitute evidence for legal purposes.
17. Subject to clauses 10.4, 10.5 and 16, but without limiting clause 2.6e, TCA and the ASP acknowledge that the ASP may use its Certification, as an ASP, to promote, market or advertise the provision by it of Application Services and Commercial Services.
18. Subject to clauses 2.6f and 2.6g, the ASP must not provide any Commercial Services to a Transport Operator whose Commercial Services will adversely affect, in any way, the functionality of Application Services.
19. If TCA considers that any Commercial Services will adversely affect, in any way, the functionality of the Application Services, TCA may notify the ASP and request that the ASP provide reasons as to why the ASP should be permitted to continue and provide the Commercial Services in conjunction with the Application Services. The ASP must comply with any request made by TCA pursuant to this clause 2.6f.
20. If the ASP provides TCA with reasons, in accordance with clause 2.6f, and TCA still considers on reasonable grounds, that the Commercial Services will adversely affect, in any way, the functionality of Application Services, TCA may request that the ASP refrain from providing, or alter or modify the provision of, such Commercial Services. The ASP must abide with any such request.
21. General Obligations
	1. Standard and Provision of Application Services
22. The ASP must provide Application Services:
23. in accordance with the terms of this Agreement and the Functional and Technical Specification(s);
24. in accordance with all applicable Privacy Laws;
25. where there are Laws applicable to the Application (for example the provisions of the *Heavy Vehicle National Law*) in accordance with those Laws; and
26. in a careful, proper and efficient manner so that the Application Services are fit for their intended purpose.
27. The ASP must ensure that the ASP’s Total System:
28. meets, and continues to meet, all of the requirements of the Functional and Technical Specification(s); and
29. operates in such a way as to comply with the terms of this Agreement.
30. The ASP will comply with such fair and reasonable protocols and procedures, as are prescribed from time to time by TCA, as necessary to give efficacy to the Application Services.
	1. Skills and Experience

The ASP must:

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

* 1. Retention of Records

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

* 1. Company Information

The ASP must:

1. identify its staff authorised to sign documentation related to its provision of Application Services on its behalf;
2. advise TCA in writing within five (5) Business Days if the details in Schedule C change; and
3. on request from TCA, provide TCA with a copy of its financial statements which have been prepared, as at:
4. 30 June each year or
5. at the company’s financial year end if not 30 June each year.
	1. Agreements with Transport Operator
6. Prior to providing a Transport Operator with any Application Services, the ASP must enter into an “Application Service Provider/Transport Operator Agreement” (Annexure 5) with that Transport Operator and TCA in the form prescribed by TCA from time to time. However, where TCA intends to substantially alter the form of the Application Service Provider/Transport Operator Agreement in a way which will:
7. materially affect the liability and indemnity regime that the ASP assumes under the Application Service Provider/Transport Operator Agreement; or
8. materially adversely affect the commercial arrangements between the ASP and the Transport Operator,

the ASP will not be obliged to enter into the altered form of the Application Service Provider/Transport Operator Agreement (with a Transport Operator and TCA) until such time as TCA has consulted the ASP about TCA's proposed alterations.

1. The ASP must ensure that the identity of a Transport Operator as shown in the Enrolment Form(s) exactly matches its identity as shown in the Application Service Provider/Transport Operator Agreement.
2. The ASP must not, without the prior written consent of TCA, enter into any agreement, arrangement or understanding with any Transport Operator, or any other person, that has the purpose or effect of excluding, restricting, modifying, amending or derogating from any provision of this Agreement or any Application Service Provider/Transport Operator Agreement as prescribed by TCA.
	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. Recertification and Changes to ASP's Total System
1. The ASP agrees that it may, at TCA’s sole and absolute discretion, be subject to Recertification where:
2. the ASP proposes a change to its Total System;
3. TCA amends the Functional and Technical Specification(s) in the circumstances contemplated by clause 7.3a ;
4. the Term of this Agreement is due to expire and the parties agree to extend the term pursuant to clause 2.2b; or
5. TCA considers on reasonable grounds that a Change of Control Event has materially adversely affect the ASP's ability to provide Application Services and/or comply with the terms of this Agreement and/or the Functional and Technical Specification(s) in accordance with clause 11.11b.
6. Without limiting clause 3.8a(i), the ASP must not implement any change(s) in the ASP’s Total System without the prior written approval of TCA (such approval may not be unreasonably withheld).
7. Whenever Recertification is deemed necessary by TCA in accordance with clause 3.8a, it may arrange a Recertification Audit of the ASP's Total System, or part thereof, for the purposes of Recertification.
	1. Receiving and Maintaining Enrolment Forms
8. From the Commencement Date, the ASP may receive Enrolment Forms from the Authorities in the form described in the applicable Functional and Technical Specification(s).
9. The ASP must collect information from the Transport Operator and use it to complete relevant details within the Enrolment Form.
10. The ASP must manage all Enrolment Forms received by it in accordance with the requirements of the Functional and Technical Specification(s).
	1. Installing, Using and Maintaining the Intelligent Access Map
11. The ASP must install, use and maintain the Intelligent Access Map in accordance with the provisions of the Functional and Technical Specification and the Sub-Licence Agreement as relevant.
12. The ASP acknowledges that it has entered into a Sub-Licence Agreement with TCA for access to the Intelligent Access Map. A copy of the Sub-Licence Agreement is set out in Annexure 6.
	1. System Recovery Procedures

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

1. ASP Audit Obligations
	1. Audit Program

The ASP must participate in and comply with TCA's Audit Program to be conducted by TCA in accordance with clause 4.2.

* 1. TCA Audits
1. TCA may determine the scope of an audit at its sole and absolute discretion, within the bounds of the duties and obligations of the ASP set out in this Agreement and/or the Functional and Technical Specification(s).
2. The timing of audits will be as follows:
3. Continual Monitoring and Audit Activities will be undertaken on a continual ongoing basis with the timing of such activities as contemplated by TCA applying a risk-based process;
4. Triggered Audit Activities and Termination Audits shall be as implemented by TCA from time to time and may be undertaken at TCA’s sole and absolute discretion; and
5. Non-Compliance Audits shall be implemented by TCA if it believes on reasonable grounds that:
6. there is a breach or non-compliance by the ASP with the terms and conditions of this Agreement and/or the requirements of the Functional and Technical Specification(s) and/or applicable Law; or
7. rectification is necessary in order to remedy such a breach or non-compliance and/or whether satisfactory rectification has been achieved, shall be as implemented by TCA from time to time, at TCA’s sole and absolute discretion, and may be undertaken without prior notice to the ASP.
8. The ASP must provide to TCA all access to the ASP’s Total System, and all cooperation reasonably required by TCA to enable it to carry out audits.
9. Where access is required by TCA, to the ASP's premises or Personnel or subcontractors, the ASP must provide such access subject to it receiving reasonable notice of the audit.
10. TCA must provide Audit results to the ASP if the results are adverse to the ASP.
11. Reporting Obligations
	1. Provision of Information to TCA and Authorities

The ASP must provide to TCA and the relevant Authorities all of the information required by the Functional and Technical Specification(s) including, without limitation, Application Information, and as applicable, Non-Compliance Reports, Tamper Reports, Malfunction Reports and Enrolment Reports.

* 1. Disruption to Application Services

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

* 1. Tamper Reporting and Malfunction Reporting
1. The ASP must, in accordance with the requirements of the Functional and Technical Specification(s), report to TCA and the relevant Authority(ies) as required all incidents of Tampering, or suspected or attempted Tampering, and all incidents of malfunctions, with the ASP’s Total System, or part thereof.
2. The ASP must not advise the Transport Operator of the detection of Tampering or of suspected or attempted Tampering.
3. Fees Payable by the ASP
	1. Enrolment Report and Operational Fees
4. 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 in its absolute discretion after giving the ASP no less than forty (40) Business Days’ notice in writing of such alterations.
5. The ASP must provide to TCA, in the time frame specified by TCA, a copy of all Enrolment Reports.
6. 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 or the relevant Authority(ies) in accordance with the Functional and Technical Specification.
7. The Operational Fee shall not be payable when the ASP is by virtue of Force Majeure unable to provide Application Services.
	1. Other Fees
8. The ASP may be required by TCA to pay the reasonable cost to TCA of:
9. any Recertification under clause 3.8 as deemed necessary by TCA (in its absolute discretion) from time to time (including, for the avoidance of doubt, any Recertification Audit); and
10. subject to clause 6.2c, any Non-Compliance Audit or Termination Audit.
11. For the avoidance of doubt, the ASP will not be required to bear the cost of any Continual Monitoring and Audit Activities or periodic audit activities.
12. TCA and the ASP acknowledge and agree that the cost of all Non-Compliance Audits and Termination Audits, shall be paid for in accordance with the following:
13. If TCA nominates that it will undertake a Non-Compliance Audit or Termination Audit, and TCA finds that:
14. the ASP is in breach of this Agreement and/or the Functional and Technical Specification(s), then the ASP shall be liable to pay all of TCA's reasonable costs; or
15. the ASP is not in breach of this Agreement and/or the Functional and Technical Specification(s), then TCA shall absorb all costs associated with the Non-Compliance Audit.
16. If TCA nominates the use of an external auditor to undertake the Non-Compliance Audit or Termination Audit:
17. TCA will nominate and obtain quotes from two or more auditors, but will not be obliged to engage the external auditor which provided the lowest quote; and
18. for the avoidance of doubt, clause 6.2c(i) shall apply to Non-Compliance Audits or Termination Audits conducted by an external auditor.
	1. Invoicing and Payment Terms
19. TCA will issue the ASP with an invoice for the Operational Fee once each calendar month.
20. TCA will issue the ASP with an invoice for such additional fees as may arise from time to time under clause 6.2, promptly on completion of the relevant audit activity.
21. The ASP must pay the amounts invoiced in full within thirty (30) days from the date of the invoice.
22. Obligations of TCA
	1. Functions of TCA

TCA must:

1. advise Authorities in writing of the Certification status of the ASP, including if the ASP’s Certification is cancelled;
2. provide a publicly available register of ASPs, including a list of applications of the National Telematics Framework that each ASP has achieved Certification for;
3. arrange TCA Audits and assessments as necessary and in accordance with this Agreement;
4. advise relevant Authority(ies) if a TCA Audit identifies any non-compliance with an Enrolment Report and/or any Tampering or suspected or attempted Tampering by a Transport Operator, or any malfunction, that has not already been reported in accordance with the Functional and Technical Specification(s) to the Authority(ies);
5. comply with those obligations and duties assigned to TCA in accordance with the Functional and Technical Specification(s); and
6. generally, manage the Certification, Audit and reporting regime for the applications of the National Telematics Framework including, but not limited to, determining whether to certify or Recertify an ASP or to cancel Certification.
	1. Notice of Cancellation of Certification
7. If notice is given by either TCA or the ASP to the other of the termination of this Agreement, then TCA may give notice to all Authorities of the termination and forthcoming cancellation of the ASP’s Certification.
8. If notice is given by either TCA or the ASP to the other of the termination of this Agreement, then TCA will update the publicly available register to indicate the termination and forthcoming cancellation of the ASP’s Certification.
	1. Amendment of Functional and Technical Specifications

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

1. where any such amendment(s) are of a minor or immaterial nature;
2. where, after engaging in a consultative process with all ASPs in relation to proposed amendments, the ASP agrees to the proposed amendments, and requests that TCA amend the Functional and Technical Specification(s); or
3. at, or after, the end of the initial Term or any subsequent Term, but prior to the commencement of any new Term.
4. GST
	1. GST to Be Added to Amounts Payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

* 1. Tax Invoice and Adjustment Note

No payment of any amount pursuant to clause 6, and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

* 1. Liability Net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

* 1. Revenue Exclusive of GST

Any reference in this Agreement (other than in calculation of Consideration) to price, value, revenue or similar amount (**"Revenue"**), is a reference to that Revenue exclusive of GST.

1. Conflicts of Interest
	1. Conflicts of Interest

The ASP must not, unless authorised by TCA in writing:

1. have any managerial, financial, commercial, personal or other relevant interest in any Transport Operator using the Application Services, or in any Transport Operator using the Application Services of another ASP, or another ASP;
2. provide Application Services to a Transport Operator that has any managerial, financial, commercial, personal or other relevant interest in the ASP, or in any other ASP; or
3. have any actual conflict between its obligations as an ASP and its other businesses, interests and activities.
	1. Dealing with Conflicts

If a conflict of interest or risk of conflict does arise (including, any actual or potential conflict between the ASP's Certification as an ASP and the ASP's other businesses, interests and activities) the ASP must:

1. immediately notify TCA in writing;
2. if, having been notified under clause 9.2a, TCA believes that a conflict of interest or risk of conflict does exist, implements such measures as are specified by TCA as necessary eliminate the conflict of interest or risk of conflict, within ten (10) Business Days of written notice from TCA requiring the ASP to take such measures; and
3. within a further two (2) business days, confirm to TCA in writing that the measures required by TCA under clause 9.2b have been implemented.
4. Privacy and Confidential Information
	1. No Sale or Provision of Application Information
5. The ASP must not sell, provide, transfer or copy any Application Information (including Personal Information) 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 a Transport Operator except with the written permission of the Transport Operator.
6. For the avoidance of doubt, this clause does not apply to the reporting and information provision requirements specified in this Agreement.
	1. Privacy
7. The ASP must comply with all applicable Privacy Laws.
8. “applicable Privacy Laws” includes the privacy requirements of the *Heavy Vehicle National Law*.
9. Without limiting their application, clauses 10.2a and 10.2b and other provisions of this Agreement require that the ASP:
10. 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;
11. 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
12. 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. Restricted Use and Disclosure of Information Related to Event Reports
13. The ASP agrees that:
14. It will only use information for the purposes of the performance of its monitoring and reporting obligations under this Agreement
15. It will not use the information collected by it for any other purposes and
16. Where the Application is the Intelligent Access Program, it will comply with the requirements of the *Heavy Vehicle National Law* relating to the disclosure and non-disclosure of Non-Compliance Reports and the information contained therein.
17. Without limiting this clause 10.3 of this Agreement, the ASP must not:
18. supply any information collected by it in the performance of its monitoring and reporting obligations under this Agreement, or any Non-Compliance Report, any modified version of any Non-Compliance Report, or any information contained in or derived from any Non-Compliance Report, to any person, other than to Authorities and TCA when in accordance with this Agreement; or
19. modify any Non-Compliance Report outside the form and standard specified in the Functional and Technical Specification.
20. Where the Application is the Intelligent Access Program, then:
21. Notwithstanding any other provision of this Agreement, the ASP must make available to the relevant Authority, on request, access to the information collected by the ASP under this Agreement to the extent required under the *Heavy Vehicle National Law*.
22. Notwithstanding the provisions of clauses 10.3a and 10.3b, the ASP may, at the request of a Transport Operator, make available to it any Information collected by it under that Program (including Personal Information) to the extent permitted by the *Heavy Vehicle National Law*. For the avoidance of doubt, this does not include reports of Tampering or suspected or attempted Tampering.
23. Nothing in this Agreement overrides the ASP's obligations under the *Heavy Vehicle National Law* relating to the collection, storage, use and disclosure of information, including Personal Information; and the disclosure and non-disclosure of Non-Compliance Reports and Tampering Reports.
	1. Confidentiality
24. The ASP must not, and must ensure its Personnel and subcontractors do not, either during the Term of this Agreement or at any time afterwards, disclose to any person any Confidential Information.
25. The ASP must not use such Confidential Information for purposes other than in order to perform its obligations pursuant to this Agreement.
26. The ASP may use or disclose any part of the Confidential Information that has been published or is otherwise in the public domain other than by reason of any breach by the ASP, its Personnel or subcontractors of its obligation of confidentiality or any other obligation under this Agreement.
	1. Intellectual Property
27. Subject to clause 10.5b, the ASP must not, and must use its reasonable endeavours to ensure its Personnel and subcontractors do not, either during the Term or at any time afterwards, use the information or data gathered in the course of the provision of the Application Services for commercialisation without the consent of TCA (where such consent cannot be unreasonably withheld), or in breach of or non-compliance with applicable Laws.
28. In performing its obligations under this Agreement, the ASP does not acquire any right to any Intellectual Property of TCA or any of the Authorities.
29. TCA shall not acquire any right to the Intellectual Property rights of the ASP existing at the Commencement Date.
30. TCA shall not acquire any right to the Intellectual Property rights of the ASP created by the ASP after the Commencement Date.
31. TCA grants the ASP a non-transferable and non-exclusive limited licence to use the Intellectual Property specified in Schedule E in accordance with the guidelines specified in Annexure 4 for the duration of this Agreement.
32. For the avoidance of doubt, nothing in clause 10.5 permits the ASP to use any Intellectual Property of any Authority without the consent of the relevant Authority.
33. Liability, Indemnity and Insurances
	1. Exclusions and Limitations on TCA’s Liability
34. 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.
35. TCA gives no warranty to the ASP in respect of the number of vehicles that will participate in the National Telematics Framework from time to time.
36. Subject to clause 11.1d:
37. 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 ASP for any matter in relation to this Agreement; and
38. without limiting subclause 11.1c(i), TCA hereby excludes all liability in relation to, or in connection with:
39. any cancellation of the ASP’s Certification to provide Application Services; and
40. any Law, or Government Agency decision, including any decision of any road authority, to cancel or abandon any application of the National Telematics Framework, or to adopt in addition to or in substitution for those applications, any other vehicle monitoring program.
41. TCA’s liability to the ASP for breach of any non-excludable condition, warranty or term (other than one implied by the Trade Practices Act) is limited to the cost of the application fee for Certification.
	1. Indemnity by the ASP

Subject to clause 11.3 and clause 11.4, the ASP must indemnify and keep indemnified TCA and each of its officers, agents and employees against any Loss which any such person may incur or be subjected to, arising from or in connection with:

1. any breach of or default under this Agreement by the ASP;
2. any negligence or wilful misconduct of the ASP, or any misrepresentation or breach of warranty by the ASP;
3. any loss, loss of use, or damage to, any property of TCA or any Authority;
4. any Claim the ASP may bring against any third party (including but not limited to any Authority or Geoscape);
5. any Claim brought by any person against TCA that arises in connection with the provision of Application Services by the ASP, including but not limited to:
6. personal injury, death, disease or illness (including mental illness);
7. economic loss;
8. loss, or damage to, or loss of use of, property;
9. breach by the ASP of any Privacy Laws; and
10. where the Application is the Intelligent Access Program, breach by the ASP of the *Heavy Vehicle National Law*.
	1. Apportionment of Liability

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

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

Prior to the Commencement Date, the ASP must procure and maintain insurance policies in accordance with Schedule B on terms approved by TCA and must maintain the policies of insurance for the risks identified and for the period of cover specified in Schedule B.

* 1. Evidence of Insurance Policies
1. The ASP must, promptly following a reasonable request by TCA, provide proof that the policies of insurance required in Schedule B (including insurance for any subcontractors) have been effected and are current at all times during the period of insurance.
2. As proof of compliance, the ASP must provide certificates of currency to TCA in the form specified in Schedule B.
3. The ASP must notify TCA within two (2) Business Days of:
4. the cancellation of any of the policies of insurance required under this Agreement; or
5. the variation or reduction in the limits or coverage of such insurance policies.
	1. Professional Indemnity of Subcontractors

The ASP remains responsible to TCA for all acts and omissions of its permitted subcontractors.

* 1. Appearance as an Expert Witness
1. If legal proceedings arise in connection with the operation of an application of the National Telematics Framework, TCA and the ASP may be required to appear as an expert witness and/or prepare expert witness statements in connection with the legal proceedings.
2. The ASP must 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 the event of legal proceedings.
3. The costs of making any such appearances or drafting any such reports will be met by the relevant Authority involved in the legal proceedings or actions, in accordance with Schedule D.
4. For the avoidance of doubt, this clause 11.9:
5. 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
6. 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 the National Telematics Framework.
	1. ASP Warranty and Agreement
7. The ASP warrants that all information submitted to TCA by the ASP in connection with its application for Certification, including, but not limited to, information relating to the financial capacity, probity, and functional and technical capability of the ASP is true and correct.
8. Without limiting clauses 3.8 and 11.10a, the ASP agrees to notify TCA, as soon as reasonably practicable, of any material change in any information, which was submitted to TCA in connection with the ASP's application for Certification, during the Term and any extension agreed in accordance with clause 2.2b where such change is likely to have a material adverse effect on the ASP's ability to provide the Application Services.
	1. Change of Control
9. The ASP agrees to:
10. provide TCA with twenty (20) Business Days' notice of any potential Change of Control Event; and
11. 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 ASP.
12. If TCA considers that the Change of Control Event will have a material adverse affect upon the ASP's ability to provide Application Services and/or comply with the terms of this Agreement and/or the Functional and Technical Specification(s), then TCA may require the ASP to undergo Recertification in accordance with clause 3.8a(iv) or terminate this Agreement in accordance with clause 14.2d, by issuing a written notice to that effect.
13. Disputes
	1. Negotiation

If there is a dispute or difference (**"Dispute"**) between the parties arising out of or in connection with this Agreement, then within seven (7) Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours, acting in good faith, to resolve the Dispute by joint discussions.

* 1. Mediation
1. If the Dispute is not settled within five (5) Business Days of the meeting stipulated in clause 12.1, the parties will submit the Dispute to mediation administered by the ADC.
2. The mediator will be an independent person agreed between the parties from a panel suggested by the President of the ADC or, failing agreement, a mediator will be appointed by the President of the ADC.
3. Any mediation meetings and proceedings under this clause must be held in Melbourne.
	1. Court Proceedings and Other Relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

* 1. Continuation of Rights and Obligations

Despite the existence of a dispute or difference each party must continue to perform this Agreement.

1. ASP Non-Compliance and Rectification
2. The ASP must rectify any breach or non-compliance by it with the terms of this Agreement and/or the requirements of the Functional and Technical Specification(s) within a reasonable period of time specified by TCA in a written notice.
3. The ASP must provide TCA with a written report on the breach or non-compliance and the steps taken to rectify it, within five (5) Business Days of the expiration of the time period as specified in a notice issued by TCA in accordance with clause 13a.
4. At the discretion of TCA, a Non-Compliance Audit may be undertaken to determine:
5. what rectification is necessary; and/or
6. whether satisfactory rectification has been achieved.
7. 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) which has been the subject of notice given by TCA to the ASP under clause 13a within the period of time specified by TCA;
2. any decision is taken to wind up TCA or to alter or discontinue TCA’s role in administering any or all applications of the National Telematics Framework, in order to comply with, or accommodate, any Law, statutory licensing, government or Governmental Agency policy or decision, or otherwise; or
3. the Geoscape Licence Agreement is terminated, and TCA using its best endeavours cannot procure an alternative, within twenty (20) Business Days.
	1. Termination by TCA Immediately Upon Delivery of Notice

Notwithstanding the provisions in clauses 13 and 14.1, TCA shall have the right to terminate this Agreement, immediately upon delivery of written notice to that effect to the ASP, in the event that:

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

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

1. the ASP becomes subject to an Insolvency Event;
2. the ASP knowingly provides false or misleading information to TCA or to an Authority;
3. TCA issues a written notice as contemplated by clause 11.11b to the ASP; or
4. if the ASP is unable to comply with an obligation of this Agreement by virtue only of a Force Majeure event, and a written notice served upon it by TCA as contemplated by clause 15.3b.
	1. Termination Subject to Notice Period
5. TCA may terminate this Agreement by giving sixty (60) Business Days’ notice in writing to the ASP in the event that TCA has to terminate all like agreements which it has with like parties.
6. The ASP may terminate this Agreement by giving sixty (60) Business Days’ notice in writing to TCA.
	1. Decision to Wind Up TCA

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

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

Where a notice of termination is given by either party in accordance with clauses 14.1 or 14.3, the 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. Termination Audits
1. Subject to clause 14.7b, if the term of this Agreement expires or the ASP ceases to be an ASP in accordance with clause 14, a Termination Audit may be undertaken by TCA of the ASP’s compliance up to the termination date, and the ASP must cooperate in respect of that audit.
2. The Termination Audit undertaken pursuant to clause 14.7a must be completed within forty-five (45) Business Days of the termination date.
	1. Surviving Clauses

Clauses 1, 3.4, 4.2b, 6.2c, 8, 10, 11, 12, 14.5, 14.7, 14.8, 16.1d, 16.2, 16.3 and 17.8 survive and continue beyond the termination of this Agreement.

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

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

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

On the occurrence of a Force Majeure event, the ASP must use its best endeavours to continue or resume performance without delay, including by way of Recovery Services, alternate sources, work-arounds or other means.

* 1. Effect of a Force Majeure Event
1. Subject to clause 15.3b, where the ASP is unable to comply with an obligation of this Agreement by virtue only of a Force Majeure event, then it shall not be in breach of that obligation.
2. If the ASP is sixty (60) Business Days after the date of the first occurrence of the Force Majeure event still unable to comply with an obligation of this Agreement by virtue only of a Force Majeure event, then either party may terminate this Agreement by issuing a written notice to that effect to the other party.
3. Publicity
	1. Publicity
4. Nothing in this clause 16.1 limits clauses 10.4 and 10.5 of this Agreement and the rights granted pursuant to this clause 16.1 must be read as being subject to those clauses.
5. The ASP may promote, market, advertise, publish or otherwise disclose the fact that it is an ASP and can provide Application Services in any media, including but not limited to, audio, visual and combined audiovisual form, printed, published, or electronic form (**"Publicity"**).
6. The content of any Publicity must be provided by the ASP to TCA for approval prior to its publication. Once the content of such Publicity has been approved, the ASP may publish such Publicity without further approval by TCA.
7. When engaging in any Publicity, the ASP must:
8. comply with all Laws, including but not limited to Laws prohibiting misleading and deceptive conduct;
9. comply with any reasonable direction given by TCA from time to time as regards the presentation or content of any Publicity;
10. comply with the guidelines set out in Annexure 4 to this Agreement or any other guidelines given to the ASP by TCA from time to time in connection with the use of TCA’s trademarks and Intellectual Property; and
11. not do anything to damage the brand or reputation of TCA, the Authorities, the Application(s) and/or the National Telematics Framework.
12. 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:
13. engaging in conduct that is misleading and deceptive;
14. incorrectly expressing information in any Publicity regarding the National Telematics Framework, the Application Service(s), TCA or the Authorities and such expression of information is likely to have an adverse effect on the National Telematics Framework, the Application(s), TCA or the Authorities; or
15. is in breach of clause 16.2.
	1. Reputation of Applications of the National Telematics Framework

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

* 1. Public Announcements by TCA

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

1. Miscellaneous
	1. Good Faith
2. The parties agree that whenever an issue arises which is not provided for expressly in this Agreement, they will work together in good faith to attempt to resolve that issue consistently within the spirit of this Agreement and the Functional and Technical Specification(s) as relevant to this Agreement.
3. Nothing in this clause is intended to derogate from any right expressly provided to any party under this Agreement.
	1. Further Assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.

* 1. No Restriction on Rights

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

* 1. Severability of Provisions

Any provision of this Agreement that is prohibited or unenforceable in any state, territory or municipality of Australia is ineffective as to that state, territory or municipality to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other state, territory or municipality.

* 1. Taxes and Duties

The ASP and any subcontractor and agents of the ASP 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 ASP shall not assign its rights or obligations under this Agreement without the written consent of TCA.
	1. Governing Law

This Agreement is governed by the Laws of Victoria. The parties irrevocably submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this Agreement.

* 1. Counterparts

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

* 1. Inconsistency

The annexures and schedules to this Agreement (other than Annexures 5, 6 and 7) form part of this Agreement. To the extent that there is any conflict or inconsistency between the terms and conditions of this Agreement, the Functional and Technical Specification(s), the “Application Service Provider/Transport Operator Agreement” (Annexure 5), and the schedules and annexures to this Agreement, the documents will rank in the order in which they are listed below:

1. the terms and conditions of this Agreement;
2. the Functional and Technical Specification(s) (and if more than one, then in the order in which they appear in Annexure 2) (except where such conflict or inconsistency relates to functional or technical aspects of the Application(s) in which case the Functional and Technical Specification(s) will rank ahead of the terms and conditions of this Agreement);
3. the Application Service Provider/Transport Operator Agreement; and
4. subject to clauses 17.10b and 17.10c, the other annexures and schedules to this Agreement.
	1. Notices

Any notice, demand, consent or other communication (**"Notice"**) given or made under this Agreement:

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

Attention: The General Manager Service Delivery

Level 17, 360 Elizabeth Street

MELBOURNE VICTORIA 3000

operations@tca.gov.au

1. To the Application Service Provider:

Attention: Name of Contact Person

Email address

Postal address

CITY STATE POSTCODE

Email address

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

Schedule A

Authorities

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

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

Schedule B

Insurance Requirements

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

Not less than $20 million for any one occurrence.The insurer's liability is to be unlimited in the aggregate, and there is to be no limit on the number of occurrences to which the policy will respond.1. Products Liability:

The insurer's total aggregate liability during any one period of insurance for all claims arising out of the ASPs’ products shall be not less than $20 million. | During the Term of this Agreement (including any subsequent Term under clause 2.2b of this Agreement). | 1. The ASP, its officers, agents and employees, shall be named insureds.
2. Where the ASP engages a subcontractor in accordance with clause 2.5 of this Agreement, unless the ASP shall have ensured that such subcontractor itself carries insurance meeting the requirements of this Schedule, the ASP must procure that such subcontractor, its officers, agents and employees, are additional named insureds for their respective rights, interests and liabilities under a policy effected by the ASP for its own benefit in accordance with this Schedule.
3. The policy can be taken out annually. However, the ASP must make reasonable efforts to ensure that cover in any subsequent year is to be on terms no less favourable than the previous year, and in any event the cover must comply with the requirements of this Schedule.
4. Named insureds are to be covered for all Liability arising out of the use of all plant and equipment, including the use of hoists, cranes, unregistered vehicles, boilers and pressure vessels.
5. The policy is to be governed by Australian Law as defined in Definitions and Notes at the end of this Schedule.
 |

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of insurance** | **Minimum sum insured** | **Period of insurance** | **Name insureds, policy terms and renewal** |
| Workers' Compensation effected with an approved insurer as defined in Definitions and Notes at the end of this Schedule. | According to the Law of each relevant State or Territory. | During the Term of this Agreement (including any subsequent Term under clause 2.2b of this Agreement). | According to the Law of each relevant State or Territory. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of insurance** | **Minimum sum insured** | **Period of insurance** | **Name insureds, policy terms and renewal** |
| Professional Indemnity insurance effected with an approved insurer as defined in Definitions and Notes at the end of this Schedule. | Not less than $5 million per Claim.There is to be no limit to the number of Claims to which the policy will respond.The insurer's aggregate limit of liability must be not less than $5 million. | 1. During the Term of this Agreement (including any subsequent Term under clause 2.2b of this Agreement); and
2. for a further period of 7 years following the expiry of the Term of this Agreement.
 | 1. The ASP, its officers, agents and employees shall be named insureds.
2. The policy is to include a definition of the professional services covered, which includes the provision of Commercial Services, Application Services under the terms of this Agreement.
3. The policy shall not include any exclusion or other policy term which precludes or limits the right of a named insured to indemnity in relation to:
* a liability assumed under contract, other than a liability for a trading debt or a guarantee provided by the insured in relation to such a debt; or
* a liability for death, bodily injury or property damage.
1. The policy can be taken out annually. However, the ASP must make reasonable efforts to ensure that cover in any subsequent year is to be on terms no less favourable than the previous year, and in any event the cover must comply with the requirements of this Schedule.
2. Where the cover is subject to a retroactive date, that date must be no later than the date being the Commencement Date of this Agreement.
3. The policy is to be governed by Australian Law and subject to Australian jurisdiction as defined in Definitions and Notes at the end of this Schedule.
 |

Definitions and Notes:

“Approved insurer” means a general insurer that is authorised by the Australian Prudential Regulatory Authority (APRA) under s 12 of the *Insurance Act 1973* (Cth) to carry on insurance business in Australia.

However, in relation to Workers' Compensation insurance, "approved insurer" means an insurer licensed, authorised or otherwise permitted (as the case may be) to carry on such business in the relevant State or Territory under the Law of the relevant State or Territory.

"The policy is to be governed by Australian Law and subject to Australian jurisdiction" means that the insurance policy shall include terms that provide that it is to be governed by the Law of an Australian State or Territory, and that the parties submit to the jurisdiction of an Australian court.

Schedule C

Representatives

ASP(s) Authorised Representatives

The Authorised Representatives of the ASP as identified in this Schedule may perform any function of the ASP under this Agreement. The ASP may change the Authorised Representative by providing written notice to TCA.

|  |  |  |
| --- | --- | --- |
| **Name** | **Position** | **Email** |
| Name  | Position | Email address  |

TCA Authorised Representatives

The Authorised Representatives of TCA as identified in this Schedule may perform any function of TCA under this Agreement. TCA may change the Authorised Representative by providing notice to the ASP.

|  |  |  |
| --- | --- | --- |
| **Name** | **Position** | **Email** |
| Paddy Goodall | General Manager Service Delivery | paddyg@tca.gov.au |

Schedule D

Expert Witness Costs

Airfares

Return economy airfare at cost.

Accommodation

The accommodation rates shown for domestic travel apply only for stays in commercial establishments like hotels, motels and serviced apartments.

|  |  |
| --- | --- |
| **Place** | **Rate per day\*** |
| Adelaide | $211 |
| Brisbane | $257 |
| Canberra | $246 |
| Darwin | $293 |
| Hobart | $235 |
| Melbourne | $231 |
| Perth | $245 |
| Sydney | $264 |
| Non-Capital City | $207 |

\* based on Table 2 of Taxation Determination TD 2024/3, which is updated annually by the Australian Taxation Office and is subject to change.

Expert Witness Fees

Expert witness fees at a reasonable rate to be agreed between the ASP and the relevant Authority.

Schedule E

Licensed Intellectual Property

Trademarks and Logos:



Schedule F

Special Conditions

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

**Executed as an Agreement**

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

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

Annexure 1 – Application(s)

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

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

Annexure 2 – Functional and Technical Specifications

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

[Insert all Specifications as relevant.]

Annexure 3 – Fees (Operational Fee)

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

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

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

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

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

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

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

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

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

**Note:**

This Annexure 3 may be amended by TCA from time to time in its absolute discretion in accordance with clause 6.1a of the TCA / Application Service Provider Certification Agreement.

Annexure 4 – Guidelines for Using TCA Logos

[Note: Insert Guidelines appropriate for ASPs]

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

[Insert Consent Agreement appropriate for ASPs and Transport Operators]

Annexure 6 – TCA/IAM Sub-Licence Agreement for Application Service Providers

[Include only when applicable.]

Annexure 7 – TCA/IBIRS Licence Agreement for Application Service Providers

[Include only when applicable.]