



# **Dealer Certification Scheme**

The State of Victoria as represented by its  
Department of Transport (DoT)

and

Version 2.0

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## Table of contents

<b>Parties</b>	<b>6</b>
<b>Background</b>	<b>6</b>
<b>Operative provisions</b>	<b>6</b>
<b>1 Term</b>	<b>6</b>
Term of agreement	6
Holding over	6
Termination of Existing Agreement	7
Power to vary Agreement	7
No constraint or fetter	7
<b>2 Services authorised by this agreement</b>	<b>7</b>
Dealer may provide the Services	7
Cooperation	8
Continuous improvement	8
<b>3 Delegated powers</b>	<b>8</b>
Delegated services	8
Instrument of Delegation	8
Only the Dealer and the Dealer's Representatives may perform Delegated Services	8
Dealer's Representatives	8
Role of the Dealer's Representative	8
Notification of Dealer's Representatives	9
Acceptance or rejection of Dealer's Representatives	9
Training of Dealer's Representatives	9
<b>4 Authorisation to sell number plate rights</b>	<b>9</b>
<b>5 The Secretary's Obligations</b>	<b>9</b>
Forms, number plates etc	9
Copies of Relevant Documentation	10
Training and guidance	10
<b>6 Dealer's Obligations</b>	<b>10</b>
Quality of Services	10
Compliance with requirements	10
Compliance with laws	10
Registration and transfer procedures	10
Independent inspections prior to Registration	11
Allowing Customers to take delivery of a Vehicle	11
Registration of vehicles at certain Premises	11
No fees or other consideration	11
Scope of authority	11
Notice requirements	12
Provision of information and reports	12
Record Keeping	13
Quality Process	13
<b>7 Dealer online and MyVicRoads Partner Account requirements</b>	<b>13</b>

<b>8</b>	<b>Customer Payments.....</b>	<b>13</b>
	The Dealer may receive Customer Payments .....	13
	The Dealer must hold Customer Payments on Trust for the Secretary.....	13
	The Dealer must remit Customer Payments immediately .....	14
	Holding Customer Payments where Dealer not using Dealer Online or the MyVicRoads Partner Account.....	14
	The Secretary may require Dealer to secure Customer Payments .....	14
	Review of security .....	14
	Return of security .....	14
	Retention of Security Deposit.....	14
<b>9</b>	<b>Representatives and Nominated Administrators.....</b>	<b>15</b>
	Appointment of representatives.....	15
	Appointment of Nominated Administrators.....	15
	Role of the Nominated Administrator .....	15
	Role of the Secretary's Representative.....	15
	Availability of Representatives .....	15
	Parties responsible for their Representatives .....	15
	Replacement of representatives.....	16
<b>10</b>	<b>Supplied Property.....</b>	<b>16</b>
<b>11</b>	<b>Audit and review.....</b>	<b>16</b>
	The Secretary may inspect and audit.....	16
	Dealer to provide assistance .....	16
	Dealer must rectify.....	17
	Periodic reviews.....	17
<b>12</b>	<b>Intellectual Property .....</b>	<b>17</b>
	Pre-existing IP .....	17
	Developed IP .....	17
	Licence to the Dealer.....	17
	Licence to the Secretary.....	17
	No infringement .....	17
	Moral rights .....	18
	DOT Logo and other signage .....	18
<b>13</b>	<b>Confidentiality.....</b>	<b>18</b>
	Obligations of confidence .....	18
	Compliance and undertakings by Employees.....	19
	Provision of Confidential Information at the Secretary's discretion.....	19
	Equitable remedies.....	19
	Return of Confidential Information.....	19
<b>14</b>	<b>Privacy .....</b>	<b>20</b>
	Disclosure of Personal Information to the Secretary.....	20
	Information Privacy Principles .....	20
	Part 7B of the Road Safety Act 1986 .....	20
<b>15</b>	<b>Insurance.....</b>	<b>20</b>
	Policies .....	20
	Insurer and terms .....	21

	Evidence of insurance .....	21
	Failure to insure .....	21
	Self insurance .....	21
<b>16</b>	<b>Warranties, Quality Systems and Compliance with Policies.....</b>	<b>21</b>
	General Warranties .....	21
	Performance of Services .....	21
	Improper inducement, influence or behaviour.....	22
<b>17</b>	<b>Indemnity.....</b>	<b>23</b>
<b>18</b>	<b>Dispute Resolution.....</b>	<b>23</b>
	Parties must follow dispute resolution procedures.....	23
	Parties must use best efforts to resolve Disputes.....	23
	Meeting to attempt to resolve dispute .....	23
	Performance of obligations.....	23
	Interlocutory relief and right to terminate.....	24
<b>19</b>	<b>Termination and Suspension .....</b>	<b>24</b>
	Termination by Dealer .....	24
	Agreement terminates if Scheme ceases .....	24
	Termination for cause.....	24
	Termination for convenience .....	24
	Notice of termination.....	24
	Suspension.....	24
	Effect of suspension and termination .....	25
	Duration of suspension.....	25
	Return of property.....	25
	Survival .....	25
	No liability .....	25
<b>20</b>	<b>Notices .....</b>	<b>26</b>
	Giving notices .....	26
	Change of address, email or fax number .....	26
	Time notice is given.....	26
<b>21</b>	<b>No agency etc .....</b>	<b>26</b>
	Limitation .....	26
	Appointment.....	26
<b>22</b>	<b>Miscellaneous .....</b>	<b>27</b>
	Approvals and consents .....	27
	Assignments and transfers.....	27
	Compliance with laws .....	27
	Costs.....	27
	Entire agreement .....	27
	Effect of legislative change.....	27
	Execution of separate documents .....	27
	Further acts.....	27
	Governing law and jurisdiction .....	27
	Joint and individual liability and benefits .....	28
	No Agency etc. ....	28

Severability .....	28
Waivers .....	28
<b>23 Definitions and interpretation .....</b>	<b>28</b>
Definitions .....	28
Interpretation.....	32
Meaning of Registration.....	32
Application of this Agreement to vessels .....	33
<b>Execution and date .....</b>	<b>34</b>
 <b>Schedule 1.....</b>	 <b>35</b>
<b>Schedule 2 Services.....</b>	<b>37</b>
<b>Schedule 3 Confidentiality Deed .....</b>	<b>46</b>
<b>Schedule 4 - Dealer Online Terms and Conditions .....</b>	<b>47</b>

## Parties

**The State of Victoria as represented by its Department of Transport (DoT)** of 1 Spring Street Melbourne 3000

and

**The entity named in Schedule 1 (the Dealer)**

## Background

- A The Secretary has established a scheme known as the Dealer Certification Scheme.
- B Section 5AB(1) of the *Road Safety Act 1986* (**the Act**) confers on the Secretary certain functions and powers in relation to the registration and transfer of vehicles, which functions and powers must be exercised in accordance with Regulations made under the Act. Section 91 of the Act provides that the Secretary may delegate its powers to a named person or to the holder of an office or position.
- C The Regulations provide that the Secretary may enter into an arrangement with a person engaged in the sale, distribution or management of vehicles under which it agrees to delegate to the person, or to specified employees of the person, its powers in relation to the registration of such vehicles as described in clause 23.3.
- D The Dealer may wish, in connection with its business, to carry out pre-registration inspections, issue registration documentation, assign registration numbers, issue and affix number plates and do certain other things necessary to effect the registration and transfer of registration of vehicles.
- E In consideration of the Secretary agreeing to delegate powers to the Dealer and certain employees of the Dealer, the Dealer agrees to ensure that those powers are exercised in accordance with, and to observe the terms and conditions of, this Agreement.
- F Under an agreement between the Secretary and the Director of Transport Safety, the Secretary is engaged to perform functions in relation to the registration of vessels under the *Marine Safety Act 2010* and for that purpose exercises various powers pursuant to a delegation from that Director. This Agreement also applies to the registration of vessels by a dealer to whom the necessary functions and powers under the *Marine Safety Act 2010* have been delegated.

## Operative provisions

### 1 Term

#### Term of agreement

- 1.1 This Agreement commences on the Commencement Date and will continue in force until the Expiry Date, unless terminated earlier in accordance with this Agreement.

#### Holding over

- 1.2 If this Agreement expires and the Secretary has not negotiated a new arrangement with the Dealer, the dealings between the parties may continue on a day to day basis or for a period specified by the Secretary (**holding over period**) and will continue to be governed by the terms of this Agreement. Either party may, in its absolute discretion, immediately terminate any holding over period by giving seven Business Days' notice in writing to the other party.

### **Termination of Existing Agreement**

- 1.3 The parties acknowledge and agree that any other agreement between the parties in force as at the Commencement Date under which the Dealer is authorised to register or transfer Vehicles terminates on the Commencement Date without need for any further action. Termination of the existing agreement is without prejudice to accrued rights or liabilities of either party under that agreement.

### **Power to vary Agreement**

- 1.4 Subject to clause 1.5, the Secretary may vary the Agreement (including the description or scope of the Services) from time to time:
- 1.4.1 in order to give effect to changes in the Law, Government policy or any changes to the delegation (including revocation of the delegation in respect of particular powers);
  - 1.4.2 if the Secretary considers it reasonably necessary, for the effective and efficient management and operation of:
    - (a) vehicle registration;
    - (b) the DCS; or
    - (c) the Secretary's Business or IT Systems.
- 1.5 The Secretary must not vary the Agreement unless it gives the Dealer 20 Business Days notice of any proposed variation.
- 1.6 A variation of this Agreement will take effect on the day the notice is given to the Dealer under clause 1.5.
- 1.7 The Secretary will consult with the relevant peak body or other organisation, which The Secretary considers represents the Dealer's interests in the industry, in relation to any proposed variation which the Secretary considers may significantly affect the Dealer's business operations, prior to notifying the Dealer under clause 1.5.

### **No constraint or fetter**

- 1.8 Nothing contained in, implied by or authorised by this Agreement has the effect of placing any fetter, constraint or limitation on the exercise by the Secretary of any of its statutory rights, duties, powers or functions.

## **2 Services authorised by this agreement**

### **Dealer may provide the Services**

- 2.1 Subject to this Agreement, the Dealer may provide:
- 2.1.1 the Services related to registration and/or transfer of registration of Vehicles specified in column 1 of Schedule 2:
    - (a) with respect to vehicles of the type specified in column 2 of Schedule 2;
    - (b) in order to effect the transactions specified in column 3 of Schedule 2;
    - (c) subject to the conditions specified in column 4 of Schedule 2 and any special conditions specified in that Schedule;
    - (d) from the Premises specified in accordance with clauses 6.8.1 or approved in accordance with clause 6.8.2;

- 2.1.2 services which are incidental to, or essential for, the proper performance and provision of the Services; and
- 2.1.3 additional services that the parties may agree in writing to be provided under this Agreement from time to time.

### **Cooperation**

- 2.2 The parties will cooperate and assist each other to ensure the proper and timely performance of the Services.

### **Continuous improvement**

- 2.3 The Secretary seeks to continuously improve processes and reduce costs in respect of the Services. Either party may propose that a new technology or other development be implemented by the Dealer. The Secretary may (but is not required to) provide any assistance it considers necessary to assist the Dealer to implement new technology or other development.

## **3 Delegated powers**

### **Delegated services**

- 3.1 The Dealer acknowledges and agrees that certain Services involve the exercise of legislative powers which can only be lawfully exercised by a person who holds the appropriate delegation from the Secretary.

### **Instrument of Delegation**

- 3.2 The Secretary agrees to execute an instrument of delegation in which it will delegate to the Dealer and to the Dealer's Representatives such of its powers in relation to the registration and/or transfer of registration of vehicles, and subject to such conditions and limitations, as the Secretary considers necessary for the performance of the Services. The Secretary may at any time and at its sole discretion, revoke or vary such instrument of delegation. The Secretary is not obliged to give reasons for any such revocation or variation or to be held liable to the Dealer or the Dealer's Representative for any loss suffered by reason of any such revocation or variation.

### **Only the Dealer and the Dealer's Representatives may perform Delegated Services**

- 3.3 Any Delegated Services that may be performed under this Agreement:
  - 3.3.1 may only be performed by the Dealer and the Dealer's Representatives; and
  - 3.3.2 must be performed subject to any conditions or limitations set out in this Agreement.

### **Dealer's Representatives**

- 3.4 The Dealer may appoint such of its Employees to be the Dealer's Representatives as it requires to exercise the Dealer's delegated powers. A Dealer's Representative must:
  - 3.4.1 have completed any training required by the Secretary under clause 3.8;
  - 3.4.2 be of good character; and
  - 3.4.3 in the reasonable opinion of the Dealer, be capable of properly carrying out Delegated Services and complying with the requirements in relation to confidentiality and security under this Agreement.

### **Role of the Dealer's Representative**

- 3.5 The Dealer's Representative is responsible for:



- 3.5.1 performing the Delegated Services, as required by the Dealer, and
- 3.5.2 certifying that all requirements of the Act and Regulations relating to Registration and transfer of Registration of a Vehicle have been complied with.

#### **Notification of Dealer's Representatives**

- 3.6 The Dealer must:
  - 3.6.1 immediately notify the Secretary of the appointment of a person to the position of Dealer's Representative;
  - 3.6.2 provide any information the Secretary requires about the level of training, duties and responsibilities and authority that the person holding the position of Dealer's Representative will have;
  - 3.6.3 if required by the Secretary, provide a police check for any person appointed to the position of Dealer's Representative, or obtain that person's consent for the Secretary to obtain the police check; and
  - 3.6.4 immediately notify the Secretary if a person who holds the position of Dealer's Representative ceases to be involved in the provision of the Services.

#### **Acceptance or rejection of Dealer's Representatives**

- 3.7 The Secretary may, in its discretion, direct the Dealer that a Dealer's Representative:
  - 3.7.1 not be involved or further involved in the provision of Services;
  - 3.7.2 perform only limited Services; or
  - 3.7.3 perform Services subject to conditions or limitations.

#### **Training of Dealer's Representatives**

- 3.8 Persons who hold the position of Dealer's Representative must undertake such training as is required by the Secretary from time to time.
- 3.9 Where a person is appointed to the position of Dealer's Representative for the first time, the person must undertake the training before performing any of the functions of a Dealer's Representative.
- 3.10 Training may be conducted using such media (including online media), and at such locations (including the Dealer's Premises), as the Secretary determines.

### **4 Authorisation to sell number plate rights**

- 4.1 For the purposes of regulation 65 of the Regulations, the Dealer is authorised to be an agent of the Secretary for the purpose of:
  - 4.1.1 issuing number plates; and
  - 4.1.2 selling registration number rights.
- 4.2 The authorisation under clause 4.1 is subject to the terms and conditions of this Agreement and any other requirements as specified by the Secretary from time to time.

### **5 The Secretary's Obligations**

#### **Forms, number plates etc**

- 5.1 Subject to the Dealer complying with this Agreement, the Secretary agrees to supply the Dealer with all forms, labels, number plates and other documents and items (other than

computer equipment and proprietary software) that the Secretary requires the Dealer to use in performing the Services.

#### **Copies of Relevant Documentation**

- 5.2 The Secretary agrees to make available for inspection (in either hard copy or electronic form) by the Dealer and the Dealer's Representative, any standard, manual or guideline to which it requires the Dealer or the Dealer's Representative to refer and which is not otherwise available in Australia (for purchase or otherwise).

#### **Training and guidance**

- 5.3 The Secretary agrees to provide reasonable:
- 5.3.1 notice of changes to the DCS Rules and other directions to be followed in connection with the Services; and
  - 5.3.2 access during normal business hours to a person who is able to provide the Dealer and the Dealer's Representative with information and guidance about the requirements of the Secretary under this Agreement.

### **6 Dealer's Obligations**

#### **Quality of Services**

- 6.1 The Dealer must, and must ensure that its Employees, provide the Services:
- 6.1.1 promptly, carefully and to appropriate standards;
  - 6.1.2 exercising all due care, skill and judgement; and
  - 6.1.3 in an efficient and professional manner

#### **Compliance with requirements**

- 6.2 In performing the Services, the Dealer must, and must ensure that its Employees, comply with:
- 6.2.1 the Act and Regulations;
  - 6.2.2 this Agreement as amended by the Secretary from time to time;
  - 6.2.3 the DCS Rules as amended by the Secretary from time to time;
  - 6.2.4 all directions issued by the Secretary from time to time in relation to the performance of the Services; and
  - 6.2.5 any relevant government policies that relate to the provision of the Services.

#### **Compliance with laws**

- 6.3 The Dealer must:
- 6.3.1 hold all licences, permits, consents and authorisations required under any law to provide the Services or to carry on the business in connection with which the Services are provided; and
  - 6.3.2 comply with the requirements of all laws of any kind applying to the provision of the Services or to carry on the business in connection with which the Services are provided.

#### **Registration and transfer procedures**

- 6.4 Without limiting clause 6.2, the Dealer must ensure that the following procedures are carried out in accordance with this Agreement and the DCS Rules:

- 6.4.1 any inspections of the Vehicle required prior to Registration;
- 6.4.2 verification of the identity and eligibility of a person or incorporated body in whose name a Vehicle is to be registered;
- 6.4.3 completion and submission of documentation;
- 6.4.4 assigning of registration numbers and the issuing of number plates;
- 6.4.5 affixing plates and labels,
- 6.4.6 issuing certificates of registration; and
- 6.4.7 calculation, collection and remission to the Secretary of Customer Payments.

#### **Independent inspections prior to Registration**

- 6.5 Where this Agreement requires that an independent pre-registration inspection be carried out, the Dealer or the Dealer's Representative must ensure that it does not register the Vehicle unless:
  - 6.5.1 the independent inspection is carried out by a person who is not employed or contracted to the Dealer (**the inspector**); and
  - 6.5.2 the inspector provides a written statement confirming that an independent pre-registration inspection has been carried in accordance with the Secretary's requirements and containing the inspectors name and address.

#### **Allowing Customers to take delivery of a Vehicle**

- 6.6 The Dealer must not allow a customer to take delivery of a new Vehicle until:
  - 6.6.1 all the requirements for Registration of the Vehicle have been completed; and
  - 6.6.2 all Customer Payments have been remitted to the Secretary.
- 6.7 Clause 6.6 does not apply where the Dealer is permitted to register Vehicles without using the Dealer Online System or the MyVicRoads Partner Account, or where the Dealer is registering a Vehicle other than a new Vehicle.

#### **Registration of vehicles at certain Premises**

- 6.8 The Dealer must ensure that the Services are provided only at:
  - 6.8.1 Premises specified in respect of the services in Schedule 1, or
  - 6.8.2 any additional or substituted premises that have been approved in writing by the Secretary.
- 6.9 If the Dealer wishes to change the location of any Premises, the Dealer must provide the Secretary with 10 Business Days prior notice.

#### **No fees or other consideration**

- 6.10 The Dealer must not charge a person a fee or other consideration for providing Services to the person. However, this does not prevent the Dealer:
  - 6.10.1 receiving Customer Payments on the Secretary's behalf, in accordance with clause 8; or
  - 6.10.2 receiving payment in respect of goods or services supplied to the person that are not Services for the purposes of this Agreement.

#### **Scope of authority**

- 6.11 The Dealer must not, and must ensure that the Dealer's Representatives do not:

- 6.11.1 bind the Secretary in any way or hold itself out as having any authority to do so except to the extent authorised by this Agreement;
  - 6.11.2 assume or create any obligations on behalf of the Secretary; or
  - 6.11.3 incur any liability on behalf of the Secretary or in any way pledge or purport to pledge the Secretary's credit.
- 6.12 Any authority conferred on the Dealer or Dealer's Representative under or in connection with this Agreement is limited to lawful acts and acts done in good faith.
- 6.13 The Dealer must not, and must ensure that the Dealer's Representative do not do anything which might adversely affect the reputation of the Secretary.

#### **Notice requirements**

- 6.14 The Dealer must notify the Secretary within 5 Business Days of:
  - 6.14.1 any change in its business name, its directors or partners, or the structure of its business, ownership or composition of partnership, unless otherwise agreed by the Secretary;
  - 6.14.2 any change to the Dealer's Representative;
  - 6.14.3 a Dealer's Representative ceasing to be involved in providing the Services; and
  - 6.14.4 any breach of this Agreement by the Dealer (in which case notification must include advice as to the action taken to remedy the breach).
- 6.15 The Dealer must notify the Secretary within 2 Business Days if a person who is a Dealer's representative ceases to be an Employee, ceases to hold the position of Dealer's representative or is otherwise or unwilling or unable to perform the Services.
- 6.16 The Dealer must notify the Secretary immediately if it:
  - 6.16.1 is unable to provide the Services from any of the Dealer's Premises specified in Schedule 1;
  - 6.16.2 becomes aware of any inaccuracy, incompleteness or change in the information in Schedule 1 or 2;
  - 6.16.3 becomes aware of any suspected, alleged or actual dishonest, corrupt or fraudulent conduct (including by customers or the Dealer's Employees);
  - 6.16.4 ceases to meet the eligibility criteria set out in the DCS rules;
  - 6.16.5 is the subject of an Adverse Event, and
  - 6.16.6 in the case of a Dealer who is a LMCT, the Dealer's motor car trader's licence is varied, suspended or revoked.

#### **Provision of information and reports**

- 6.17 The Dealer must provide to the Secretary:
  - 6.17.1 such reports as are required to be provided under the DCS Rules; and
  - 6.17.2 within 5 Business Days of being requested to do so by the Secretary (or such longer time as is agreed), such information or reports concerning any aspect of the Services as the Secretary reasonably requires.
- 6.18 All reports and information provided by the Dealer under this Agreement will be the property of the Secretary. The Dealer may retain a copy of reports for internal record keeping purposes only.

## **Record Keeping**

- 6.19 The Dealer must, subject to clause 13.7 keep all records and other documentation relating to the provision of the Services for a period of 7 years following expiry or termination of the Agreement. Such records must include:
- 6.19.1 all records required to be retained under the DCS Rules;
  - 6.19.2 all records relating to the provision of the Services that are required to be retained under any law; and
  - 6.19.3 any other records the Secretary reasonably requires the Dealer to retain.
- 6.20 Upon request by the Secretary, the Dealer must promptly make any records or other documentation required to be kept under clause 6.18 available to the Secretary.

## **Quality Process**

- 6.21 The Dealer must carry out its obligations under this Agreement in accordance with a quality process that complies with requirements set out in the DCS Rules, or as otherwise specified by the Secretary, and must have in place documented procedures to demonstrate compliance with that process.

## **7 Dealer online and MyVicRoads Partner Account requirements**

- 7.1 Unless otherwise agreed with the Secretary, the Dealer must use the Secretary's "Dealer Online System" or the "MyVicRoads Partner Account" to register and transfer the registration of Vehicles, and must:
- 7.1.1 provide all computer equipment and proprietary software necessary for the operation of the system;
  - 7.1.2 comply, and ensure that all of its Employees comply, with the Online Terms and Conditions;
  - 7.1.3 take all reasonable care in utilising the information technology systems including all hardware, software and applications and observe all relevant security procedures, access policies and work practice;
  - 7.1.4 not interfere with or disrupt or cause any damage to the information technology systems; and
  - 7.1.5 ensure that the information technology systems are protected from unauthorised access or use, misuse, damage or destruction by any person.

## **8 Customer Payments**

### **The Dealer may receive Customer Payments**

- 8.1 In providing the Services the Dealer is required to accept Customer Payments on the Secretary's behalf, and must do so in accordance with this Agreement, the DSC Rules and any reasonable direction of the Secretary.

### **The Dealer must hold Customer Payments on Trust for the Secretary**

- 8.2 The Dealer acknowledges and agrees that:
- 8.2.1 all Customer Payments held by the Dealer under this Agreement are held on trust solely for the benefit of the Secretary; and
  - 8.2.2 neither the Dealer, its Employees nor any other person (other than the Secretary) has any beneficial interest whatsoever in the Customer Payments.

**The Dealer must remit Customer Payments immediately**

- 8.3 Subject to clause 8.4, the Dealer must remit all Customer Payments to the Secretary at the time they are received. The Dealer must not permit a Vehicle in respect of which a Customer Payment has been received to leave the Dealer's Premises unless the relevant Customer Payment has been remitted in full to the Secretary.

**Holding Customer Payments where Dealer not using Dealer Online or the MyVicRoads Partner Account**

- 8.4 Where, pursuant to clause 7.1, the Dealer is permitted to register vehicles without using the Dealer Online System or the MyVicRoads Partner Account, the Dealer:
- 8.4.1 must remit Customer Payments to the Secretary as soon as practicable, and in any case no later than two Business Days, after they are received;
  - 8.4.2 shall be liable to pay interest on any Customer Payment not remitted to the Secretary within two Business Days after receipt at a rate equal to the Reserve Bank of Australia Cash Rate from time to time plus 2%, accruing daily from the date of receipt by the Dealer to receipt in full by the Secretary; and
  - 8.4.3 must ensure that appropriate security measures are in place to ensure that all Customer Payments held pending remittance to the Secretary's are secure from unauthorised access and theft, including, but not limited to doing the following:
    - (a) depositing and holding Customer Payments in a secure bank account; and
    - (b) having secure transport and logistical processes in place to transport Customer Payments.

**The Secretary may require Dealer to secure Customer Payments**

- 8.5 If the Secretary considers it reasonably necessary for the integrity of the Scheme or the protection of revenue from the Registration of Vehicles, the Secretary may, at any time, require the Dealer to provide security. The security may be provided in a manner and for an amount which the Secretary, acting reasonably, considers appropriate having regard to:
- 8.5.1 the volume and average value of Registration related transactions conducted by the Dealer;
  - 8.5.2 the Dealer's past conduct in relation to the remittance of Customer Payments; and
  - 8.5.3 any other matter the Secretary considers relevant.

**Review of security**

- 8.6 If the Secretary requires the Dealer to secure Customer Payments, the Secretary may review the amount of the security at any time (but not more than once every six months) and, acting reasonably, may increase, decrease or maintain the amount of the security.

**Return of security**

- 8.7 The Secretary will return the security, less any Customer Payments and/or interest owing to the Secretary under the Agreement, upon termination of the Agreement, or as otherwise agreed with the Dealer.

**Retention of Security Deposit**

- 8.8 The Secretary will not deduct any sum from the security unless the Secretary has first made a demand to the Dealer for any Customer Payments and/or interest owing to the Secretary under this Agreement which demand remains unpaid for a period of 7 Business Days.

## **9 Representatives and Nominated Administrators**

### **Appointment of representatives**

- 9.1 Each Party shall appoint one of its Employees to be its representative for the purpose of this Agreement.
- 9.2 The representative for the Dealer shall be the Nominated Administrator, being:
  - 9.2.1 the persons named as such in item 2.1 of Schedule 1; or
  - 9.2.2 any other person substituted in accordance with clause 9.11.
- 9.3 The representative for the Secretary shall be:
  - 9.3.1 the person named as such in item 4 of Schedule 1; or
  - 9.3.2 Any other person substituted in accordance with clause 9.11.

### **Appointment of Nominated Administrators**

- 9.4 The Dealer must appoint an Employee to be its Nominated Administrator at each of the Dealer's Premises.
- 9.5 The Nominated Administrator at each of the Premises shall be:
  - 9.5.1 the persons named as such in item 3 of Schedule 1; or
  - 9.5.2 any other person substituted in accordance with clause 9.11.

### **Role of the Nominated Administrator**

- 9.6 The Nominated Administrator is responsible for the:
  - 9.6.1 administration of this Agreement and liaison with the Secretary;
  - 9.6.2 day to day delivery of the Services; and
  - 9.6.3 supervision of other Employees in the provision of the Services at the relevant Premises.

### **Role of the Secretary's Representative**

- 9.7 The Secretary's Representative is responsible for:
  - 9.7.1 liaison with the Nominated Administrators;
  - 9.7.2 day to day administration of this Agreement on behalf of the Secretary; and
  - 9.7.3 ensuring the provision of training, Supplied Property and other things the Secretary has agreed to provide under this Agreement.

### **Availability of Representatives**

- 9.8 Each Party shall ensure that its Representatives and Nominated Administrators are ordinarily available and able to be contacted during normal business hours.

### **Parties responsible for their Representatives**

- 9.9 Each party is responsible for the acts, omissions and defaults of its Representative, and in the case of the Dealer, its Nominated Administrators.
- 9.10 Any direction, instruction, notice, approval or other communication made by or given to a party's Representative (or in the case of the Dealer, its Nominated Administrator) will be deemed to have been made by or given to the party itself.

## **Replacement of representatives**

- 9.11 A party may at any time substitute a person as its Representative, or in the case of the Dealer, a Nominated Administrator, provided that it:
  - 9.11.1 in the case of the Dealer, it first consults with the Secretary; and
  - 9.11.2 gives notice to the other Party setting out the substituted Representative or Nominated Administrator's name and contact details.

## **10 Supplied Property**

- 10.1 To the extent that The Secretary provides the Dealer with Supplied Property, the Secretary grants the Dealer a non-exclusive, non-transferable licence to use the Supplied Property solely for the provision of the Services. The Dealer must ensure that it, and its Employees (to the extent that those Employees access and/or use the Supplied Property):
  - 10.1.1 take all reasonable care in accessing and/or using the Supplied Property;
  - 10.1.2 only access or use the Supplied Property for the purposes of providing the Services;
  - 10.1.3 not interfere with, disrupt or cause damage to the Supplied Property;
  - 10.1.4 ensure that the Supplied Property is secure and protected from unauthorised access, use or misuse, damage or destruction by any person;
  - 10.1.5 not grant any Security Interest over or in respect of the Supplied Property;
  - 10.1.6 return such items to the Secretary if directed in writing to do so.
- 10.2 Upon the expiry or termination of this Agreement, the Dealer must take all reasonable steps to allow the Secretary or its Employees to remove the Supplied Property from the Premises, including allowing the Secretary or its Employees to access the Premises during Business Hours.

## **11 Audit and review**

### **The Secretary may inspect and audit**

- 11.1 For the purposes of ensuring that the Dealer is complying with its obligations under this Agreement, the Secretary may at any time, and during normal business hours:
  - 11.1.1 access and inspect any Premises at which the dealer provides Services
  - 11.1.2 access, inspect and audit records, equipment and other property used in connection with the Services (including without limitation contracts and other documents relating to the sale of Vehicles);
  - 11.1.3 inspect and copy records and other documents used in connection with the Services, remove them for copying and retain them for a reasonable time, and
  - 11.1.4 access computer equipment used in connection with the Services to read, download, copy or transmit data from that equipment.

### **Dealer to provide assistance**

- 11.2 The Dealer must, and must ensure that its Employees give all assistance reasonably required by the Secretary, or a person authorised in writing by the Secretary, to exercise its powers under clause 11.1. Without limiting this obligation, the Dealer must attend at such other location, and produce such records, equipment (including computer equipment) and other property, as the Secretary may reasonably require.



### **Dealer must rectify**

- 11.3 If, as a result of an inspection or audit conducted under clause 11.1, the Secretary identifies that the Dealer has breached its obligations under this Agreement, upon receiving written notification of the breach from the Secretary, the Dealer must take prompt corrective action to rectify the breach. The Dealer must notify the Secretary of the corrective action taken within 15 Business Days.
- 11.4 Clause 11.3 does not limit the Secretary's other rights arising from a breach of this Agreement by the Dealer.

### **Periodic reviews**

- 11.5 The Secretary may conduct periodic reviews of the provision of the Services to assess the Dealer's performance under this Agreement, to seek improvements in relation to the provision of the Services and to resolve any issues that may arise.
- 11.6 The Dealer must cooperate in the review process, supply the Secretary with any documents or other information reasonably required by the Secretary and comply with all recommendations that result from the review. The Dealer must notify the Secretary of any corrective action taken in response to any recommendations the Secretary makes resulting from the review within 15 Business Days of taking the action.

## **12 Intellectual Property**

### **Pre-existing IP**

- 12.1 All Intellectual Property Rights that subsist in any document, material, electronic record, data, work product, system, methodology, concept or information before signing this Agreement (**Pre-existing IP**) will be retained by that party.

### **Developed IP**

- 12.2 The Dealer assigns and agrees to assign to the Secretary any and all Intellectual Property Rights in all documents, code and other material, including all data and data compilations, that are created or developed by the Dealer in the course of providing the Services and which relate to any Pre-existing IP of the Secretary (**Developed IP**) upon creation. To avoid doubt, Developed IP does not include any Intellectual Property Rights created by the Dealer independently of this Agreement for the benefit of itself or its customers.
- 12.3 The Dealer warrants that it will be entitled to own and assign to the Secretary any and all Developed IP.

### **Licence to the Dealer**

- 12.4 The Secretary grants the Dealer a non-exclusive, non-transferable, limited licence that cannot be assigned, to use any material containing the Secretary's Pre-existing IP and Developed IP solely for the purpose of providing the Services and fulfilling its obligations under this Agreement.

### **Licence to The Secretary**

- 12.5 The Dealer grants the Secretary a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to use any of the Dealer's Pre-existing IP for the purposes of using and exploiting the Developed IP and utilising the benefits of the Services.

### **No infringement**

- 12.6 The Dealer must not infringe the Intellectual Property Rights of the Secretary or any third party.

- 12.7 A party will notify the other party in writing as soon as practicable of any claim or demand made, or action, suit or proceeding threatened or brought against it, arising from the infringement or alleged infringement of any Intellectual Property Rights in connection with this Agreement.

#### **Moral rights**

- 12.8 The Dealer agrees to procure from those of its Employees involved in the provision of the Services, their irrevocable and unconditional consent to the Secretary using, modifying, altering, customising, incorporating, integrating and exploiting the Developed IP in any way which would, but for their consent, constitute an infringement of any of their moral rights.

#### **DOT Logo and other signage**

- 12.9 Except if required under clause 12.10, the Dealer must not use or display any DOT or Victorian Government logo marks or branding, except with the Secretary's prior written consent. If the Secretary consents to use of any DOT or other Victorian Government logo marks or branding, it may do so subject to such limitations and conditions as it thinks fit.
- 12.10 The Dealer must, at the Dealer's cost, display or make available any signs, notices, logos, marks, branding and other materials provided by the Secretary and required to be displayed or made available by the Secretary in connection with the Registration of Vehicles at the Dealer's Premises.

### **13 Confidentiality**

#### **Obligations of confidence**

- 13.1 Where the Dealer receives Confidential Information, the Dealer must, subject to the terms of this Agreement, comply with the following obligations at all times:
- 13.1.1 keep the Confidential Information secret and preserve its confidential nature;
  - 13.1.2 not use the Confidential Information for any purpose other than a purpose permitted by this Agreement;
  - 13.1.3 not disclose or permit the disclosure of Confidential Information to any person except as permitted by this Agreement;
  - 13.1.4 only copy or reproduce Confidential Information for the purposes of this Agreement or with the written consent of the Secretary;
  - 13.1.5 establish and maintain appropriate security measures to protect the Confidential Information against unauthorised access, use or disclosure;
  - 13.1.6 immediately notify the Secretary of any unauthorised access to, use or disclosure of the Confidential Information;
  - 13.1.7 not reverse engineer, decompile or disassemble any Confidential Information; and
  - 13.1.8 ensure that adequate physical (in the case of Confidential Information in hard copy form) and electronic (in the case of Confidential Information in electronic form) security measures have been taken to protect the Confidential Information from misuse or loss or from unauthorised access, modification or disclosure.
- 13.2 The Dealer must ensure that any Employees of the Dealer who have access to Confidential Information sign a Confidentiality Deed in the form set out in Schedule 3 prior to being given access to the Confidential Information.
- 13.3 This Agreement does not prohibit the disclosure of Confidential Information by the Dealer in the following circumstances:

- 13.3.1 the disclosure is specifically contemplated and permitted by this Agreement;
- 13.3.2 the disclosure of Confidential Information is to an Employee of the Dealer who needs that information to enable the Dealer to provide the Services and the Employee has executed a Confidentiality Agreement;
- 13.3.3 the disclosure is to a professional advisor of the Dealer and is necessary for the advisor to provide advice in relation to matters arising under or in connection with this Agreement;
- 13.3.4 the disclosure is required by a court or any governmental or administrative authority;
- 13.3.5 the disclosure is required by or under law or regulation.

#### **Compliance and undertakings by Employees**

- 13.4 The Dealer must ensure that its Employees are made aware of and comply with:
  - 13.4.1 the Dealer's obligations of confidence set out in this clause 13;
  - 13.4.2 the Online Terms and Conditions (if applicable); and
  - 13.4.3 all applicable Privacy Laws.

#### **Provision of Confidential Information at the Secretary's discretion**

- 13.5 Nothing in this Agreement imposes any obligation on the Secretary to provide, or provide access to, any Confidential Information. The Secretary may at its absolute discretion refuse to provide, or provide access to, its Confidential Information. Where the Secretary provides, or provides access to, its Confidential Information, it does so subject to any conditions that it thinks fit. The Secretary is not obliged to give reasons for providing or withholding its Confidential Information or access or for giving access to its Confidential Information subject to conditions.

#### **Equitable remedies**

- 13.6 The Dealer acknowledges that a breach of the confidentiality obligations set out in this Agreement by it may cause the Secretary irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to a claim for damages and any other remedies available at law or in equity, the Secretary may seek specific performance or injunctive relief (as it determines is appropriate) against any breach or threatened breach by the Dealer, or its Employees and the Dealer irrevocably consents to an application for that relief.

#### **Return of Confidential Information**

- 13.7 The Dealer must immediately on demand, or at the expiry or termination of this Agreement (except as required otherwise by the **Public Records Act 1973** (Vic) or any other legislation):
  - 13.7.1 deliver to the Secretary any material containing Confidential Information in its possession, power or control, including any material created or generated by the Dealer; and
  - 13.7.2 ensure that it does not retain copies of any Confidential Information in any form.

## 14 Privacy

### Disclosure of Personal Information to the Secretary

- 14.1 The Dealer warrants to the Secretary that in relation to any Personal Information that the Dealer discloses to the Secretary in connection with this Agreement:
- 14.1.1 the Personal Information has been collected in accordance with applicable Privacy Law;
  - 14.1.2 the individual to whom the Personal Information relates has been made aware of the Secretary's identity, of how to contact the Secretary and of the other matters of which an individual is required to be made aware when Personal Information about them is collected by the Secretary;
  - 14.1.3 the Secretary is authorised, either by the express or implied consent of the individual or by law, to collect and use the Personal Information.

### Information Privacy Principles

- 14.2 Without limiting clause 14.1, the Dealer acknowledges that the Secretary is bound by the Information Privacy Principles set out in the *Privacy and Data Protection Act 2014* (Vic) (**Information Privacy Principles**). The Dealer agrees that it will be bound by the Information Privacy Principles and any code of practice that applies to the Secretary in relation to any act done or practice engaged by the Dealer for the purposes of this Agreement in the same way and to the same extent as the Secretary would be bound by the Information Privacy Principles and any applicable code of practice in respect of that act or practice had it been directly done or engaged in by the Secretary.
- 14.3 The Dealer must immediately inform the Secretary if it becomes aware of any:
- 14.3.1 breach or possible breach of any of the obligations contained in, or referred to in, this clause 14, whether by the Dealer or its Employees; or
  - 14.3.2 complaint that is received concerning the use, disclosure, transfer or handling of Personal Information,
- and comply with any reasonable directions of the Secretary or the Privacy Commissioner in relation to a complaint concerning the use, disclosure, storage, transfer or handling of Personal Information.

### Part 7B of the Road Safety Act 1986

- 14.4 The Dealer acknowledges that it is a "relevant person" for the purposes of Part 7B of the *Road Safety Act 1986* (Vic), and that its rights under this Agreement to collect, use, disclose, store, transfer or otherwise handle Personal Information relating to the registration of vehicles or licensing of drivers are subject to its obligations under that section.

## 15 Insurance

### Policies

- 15.1 Subject to clause 15.7, the Dealer must maintain:
- 15.1.1 the type of insurance policies specified in Schedule 1 for the amounts and on the terms specified in that Schedule 1; and
  - 15.1.2 any other insurance policies reasonably required by the Secretary in writing.

### **Insurer and terms**

- 15.2 The policy must be maintained until all of the Dealer's liabilities and obligations under this Agreement cease.
- 15.3 The Dealer must comply with and observe the terms of all insurance policies required under this clause 15 and must not do anything which may or will result in any policy being rendered void or voidable.

### **Evidence of insurance**

- 15.4 In respect of the insurance policies required to be taken out and maintained by the Dealer under this Agreement, the Dealer must deliver to the Secretary evidence satisfactory to the Secretary that the Dealer has taken out a particular insurance policy and that the policy is current, within 24 hours of a written request by the Secretary to do so.

### **Failure to insure**

- 15.5 If the Dealer fails to maintain any policy required under this Agreement, the Secretary may:
  - 15.5.1 effect or maintain such policy and pay premiums on that policy, the cost of which will be paid on demand by the Dealer to the Secretary or may, at the Secretary's option, be deducted by the Secretary from monies due or becoming due to the Dealer under this Agreement; or
  - 15.5.2 suspend this Agreement until such time as the Dealer provides evidence of insurance as required under this clause 15.

### **Self insurance**

- 15.6 Where the Secretary agrees in writing that the Dealer may self insure for the purposes of this Agreement, the Secretary may exempt the Dealer from complying with any or all requirements of this clause 15.
- 15.7 The Secretary shall notify the Dealer in writing of any exemption under clause 15.7.

## **16 Warranties, Quality Systems and Compliance with Policies**

### **General Warranties**

- 16.1 Each party represents and warrants to the other on a continuing basis that:
  - 16.1.1 it has full corporate power to enter into and give effect to this Agreement and to complete the transactions contemplated by this Agreement;
  - 16.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
  - 16.1.3 at the date of this Agreement, the execution, delivery and performance of this Agreement by it does not contravene any contractual, legal or other obligations that apply to it;
  - 16.1.4 on execution of this Agreement, its obligations under this Agreement will be valid, binding and enforceable; and
  - 16.1.5 unless otherwise stated, it does not enter into this Agreement as trustee of any trust.

### **Performance of Services**

- 16.2 The Dealer represents and warrants to the Secretary on a continuing basis that:

- 16.2.1 it has the skills and resources necessary to perform its obligations under this Agreement;
- 16.2.2 it holds all licences, permits, consents and authorisations required under any law in relation to the provision of the Services and will continue to do so at all times during the term of this Agreement;
- 16.2.3 any goods, equipment or materials provided by it in connection with the Services will be of merchantable quality and fit for the purposes described in this Agreement or otherwise made known to it by the Secretary;
- 16.2.4 it will perform all Services in a professional manner with due care and skill;
- 16.2.5 it will perform the Services in compliance with all laws of any kind applying to the provision of the Services;
- 16.2.6 in performing the Services, the Dealer will not infringe the Intellectual Property Rights or any other rights of any other person;
- 16.2.7 it will take care in accessing or utilising the Secretary's systems and will take all reasonable steps to ensure that its Employees do not interfere with, disrupt or cause any damage, including steps to prevent viruses from being introduced to, the Secretary's Systems; and
- 16.2.8 the Secretary will not be responsible for any defects or performance issues that are caused by the Dealer's Employees when performing the Services and will take all reasonable action to mitigate such defects or performance issues.
- 16.2.9 it will not do anything in performing its obligations under this Agreement, and a Delegate will not do anything in exercising its powers and performing its functions in connection with the Delegation which would adversely affect the reputation of the Secretary.

#### **Improper inducement, influence or behaviour**

- 16.3 The Dealer represents and warrants on a continuing basis that it has not done anything in an improper or unlawful manner to induce, reward or influence any person in relation to the execution of this Agreement or the supply or acquisition of goods or services under this Agreement including:
  - 16.3.1 directly or indirectly offering, soliciting, giving, agreeing to give or receiving any gift, commission, rebate, money or consideration of any kind as an inducement or reward for improperly or unlawfully doing, not doing, influencing, favouring, disavouring or carrying out any act;
  - 16.3.2 seeking to influence decisions by improper means;
  - 16.3.3 any other conduct which would constitute a breach of the Secret Commissions provisions of the *Crimes Act 1958* (Vic) or similar provisions in other jurisdictions.
- 16.4 The Dealer represents and warrants on a continuing basis that it has not improperly or unlawfully given or received, or agreed to give or receive, any gift, commission, rebate, money or consideration of any kind in relation to any advice given to or received by a party to this Agreement which is or was intended in any way to induce or influence the party advised to enter into this Agreement, or been involved in any other conduct prohibited by s179 of the *Crimes Act 1958* (Vic).

## **17 Indemnity**

- 17.1 The Dealer will be fully liable for and continually indemnify the Secretary and its Employees (for the purposes of this clause 17.1, "those indemnified") against, all Loss suffered or incurred by any of those indemnified arising out of or in connection with:
- 17.1.1 the performance or non-performance by the Dealer or its Employees of obligations under this Agreement; or
  - 17.1.2 the exercise or purported of powers in connection with a Delegated Service;
  - 17.1.3 any negligence or other wrongful act or omission of the Dealer, Employee or other person for whose acts or omissions the Dealer is liable;
  - 17.1.4 death, injury loss or damage to the Dealer, or any Employee, visitor, invitee or licensee of the Dealer,
  - 17.1.5 any infringement by the Dealer or its Employees of the Intellectual Property Rights of the Secretary or a third party;
  - 17.1.6 any deliberate unlawful act of the Dealer or its Employees.

## **18 Dispute Resolution**

### **Parties must follow dispute resolution procedures**

- 18.1 No party may bring any legal action or proceedings in relation to any dispute or disagreement concerning this Agreement, the performance of the Services or the rights or obligations of the parties under this Agreement (**Dispute**) until the dispute resolution procedures set out in this clause 18 have been followed.

### **Parties must use best efforts to resolve Disputes**

- 18.2 The parties must use their best efforts to resolve any Dispute in good faith without involving other parties.

### **Meeting to attempt to resolve dispute**

- 18.3 If a Dispute arises, either party's Representative may at any time give written notice to the other party's Representative requesting that a meeting take place to seek to resolve the Dispute.
- 18.4 If a notice is given under the preceding sub-clause:
- 18.4.1 the Dealer's Representative and the Secretary's Representative must meet within 10 Business Days of the notice and endeavour to resolve the Dispute;
  - 18.4.2 if such meeting does not take place or if after 15 Business Days of the meeting the Dispute remains unresolved, either party may refer the Dispute to the Chief Executive Officers of the parties for resolution by them or their nominees (other than their Representatives);
  - 18.4.3 if a Dispute is referred to the Chief Executive Officers, such persons or their nominees must meet within five Business Days of the Dispute being referred to them and endeavour to resolve the Dispute; and
  - 18.4.4 if such meeting does not take place or if after 10 Business Days of the meeting the Dispute remains unresolved, either party may pursue its rights at law.

### **Performance of obligations**

- 18.5 Each party must continue to perform its obligations under this Agreement during a Dispute.

### **Interlocutory relief and right to terminate**

- 18.6 Nothing in this clause 18 restricts or limits the right of either party to obtain interlocutory relief, or to immediately terminate this Agreement where this Agreement provides such a right.

## **19 Termination and Suspension**

### **Termination by Dealer**

- 19.1 The Dealer may terminate this Agreement by giving seven Business Days notice in writing to the Secretary.

### **Agreement terminates if Scheme ceases**

- 19.2 The Secretary may terminate this Agreement at any time if it decides to cease operating the Dealer Certification Scheme.

### **Termination for cause**

- 19.3 Without prejudice to any other rights the Secretary may have under this Agreement or at law, the Secretary may terminate this Agreement immediately by notice in writing if:
- 19.3.1 the Dealer or an Employee of the Dealer fails to comply with an obligation under this Agreement or the DCS Rules, or with any reasonable direction of the Secretary;
  - 19.3.2 a new Director is appointed to the Board of Directors of the Dealer and the Secretary reasonably objects to that appointment;
  - 19.3.3 the Dealer, or a director of the Dealer, is charged with or found guilty of an offence of dishonesty;
  - 19.3.4 where the Dealer is a natural person, the Dealer is prevented by any illness or physical or mental disability from performing its obligations under the Agreement;
  - 19.3.5 an Adverse Event occurs in respect of the Dealer; or
  - 19.3.6 the Dealer ceases, or indicates that it is about to cease, carrying on its business.

### **Termination for convenience**

- 19.4 The Secretary may terminate this Agreement in whole or in part without cause on 60 Business Days written notice to the Dealer.

### **Notice of termination**

- 19.5 When the Secretary terminates the Agreement it must:
- 19.5.1 give the Dealer notice in writing stating the date on and from which the Agreement is terminated; and
  - 19.5.2 revoke all Delegations.

### **Suspension**

- 19.6 Where the Secretary believes that grounds for termination of this Agreement exist, the Secretary must give written notice to the Dealer:
- 19.6.1 suspending the Agreement from the date of the notice;
  - 19.6.2 stating the grounds for termination that it believes exist; and
  - 19.6.3 stating that unless any failure that constitutes grounds for termination is remedied within 10 Business Days, the Agreement will be terminated 10 Business Days after the date of the notice.



- 19.7 Unless the notice of suspension is withdrawn, the Agreement is terminated 10 Business Days after the notice was given.

**Effect of suspension and termination**

- 19.8 During any period of suspension, and following termination, of this Agreement, the Dealer must:
- 19.8.1 not perform any of the Services ;
  - 19.8.2 not hold out to any person that it is able to perform the Services during the period of suspension;
  - 19.8.3 not solicit or accept Customer Payments;
  - 19.8.4 if directed by the Secretary, return to it any forms, documents, number plates or labels in the Dealer's or Dealer's Representative's possession; and
  - 19.8.5 immediately forward to the Secretary any Customer Payments.

**Duration of suspension**

- 19.9 A suspension of the Agreement remains in effect until the Agreement is terminated or until the suspension is withdrawn by the Secretary, whichever occurs first.

**Return of property**

- 19.10 On the expiry, termination or suspension of this Agreement, the Dealer must immediately:
- 19.10.1 return all of the Supplied Property and any other property supplied to it by the Secretary, and
  - 19.10.2 disconnect or disable any electronic link that has been established between the Dealer or its Employees and the Secretary, for the purpose of performing the Services.

**Survival**

- 19.11 The following clauses will continue during any period of suspension and survive the expiration or termination (for whatever reason) of this Agreement:
- 19.11.1 Clauses 6.16, 6.17 and 6.18 (Information and Records);
  - 19.11.2 Clause 11 (Audit and review);
  - 19.11.3 clause 12 (Intellectual Property);
  - 19.11.4 clause 12.10 (Confidentiality);
  - 19.11.5 clause 14 (Privacy);
  - 19.11.6 clause 16 (Warranties);
  - 19.11.7 clause 18 (Dispute Resolution); and
  - 19.11.8 clause 19 (Termination and Suspension).
- 19.12 Clauses 15 and 17 only survive for 7 years past the date of termination or expiration of this Agreement.

**No liability**

- 19.13 The Secretary is not liable to the Dealer, or any person claiming through the Dealer, for any loss caused by or arising out of:
- 19.13.1 the suspension or termination of this Agreement; or

19.13.2 the revocation or variation of a Delegation.

## **20 Notices**

### **Giving notices**

- 20.1 Any notice or communication given to a party under this Agreement is only given if it is in writing and sent in one of the following ways:
- 20.1.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in schedule 1.
  - 20.1.2 Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out in schedule 1.
  - 20.1.3 Emailed to the party at its email address and marked for the relevant department or office (if any) as set out in schedule 1.

### **Change of address, email or fax number**

- 20.2 If a party gives the other party 5 Business Days' notice of a change of its address, email or fax number, any notice or communication is only given by that other party if it is delivered, emailed, posted or faxed to the latest postal or email address or fax number.

### **Time notice is given**

- 20.3 Any notice or communication is to be treated as given at the following time:
- 20.3.1 If it is delivered, when it is left at the relevant address.
  - 20.3.2 If it is sent by post, 2 (or, in the case of a notice or communication posted to another country, 9) Business Days after it is posted.
  - 20.3.3 If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
  - 20.3.4 If it is emailed, as soon as the sender receives from the sender's computer a notification of an error free transmission to the correct email address.
- 20.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

## **21 No agency etc**

### **Limitation**

- 21.1 Subject to clauses 4.1 and 21.2, this Agreement does not create a partnership, fiduciary relationship or any other relationship, except the relationship of independent contracting parties, between the parties. No party is liable for an act or omission of the other party, except to the extent set out in this Agreement.

### **Appointment**

- 21.2 If the Dealer is to collect Customer Payments as part of the Services, the Secretary appoints the Dealer as its agent for the sole purpose of collecting Customer Payments and to issue receipts for those Customers.

## **22 Miscellaneous**

### **Approvals and consents**

- 22.1 Unless this Agreement expressly provides otherwise, the Secretary may give or withhold an approval or consent in its absolute discretion and subject to any conditions determined by it. The Secretary is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 22.2 Where this Agreement refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

### **Assignments and transfers**

- 22.3 A party must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each of the other parties.

### **Compliance with laws**

- 22.4 In performing its obligations under this Agreement, the Dealer must, and must ensure that Employees, agents and Delegates, comply with the provisions of all Acts of the Parliament of the Commonwealth and of the Parliament of Victoria, and with the requirements of all ordinances, regulations, by-laws, local laws, orders and proclamations made or issued thereunder, and with the lawful directions of public authorities.

### **Costs**

- 22.5 Except as otherwise set out in this Agreement, each party must pay its own costs and expenses in relation to preparing, negotiating, executing and completing this Agreement and any document related to this Agreement.

### **Entire agreement**

- 22.6 This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed. The parties expressly exclude any implied duty of good faith in the exercise of their rights under this Agreement.

### **Effect of legislative change**

- 22.7 If any legislative provision referred to in this document is amended, re-enacted or replaced, the new provision is to be treated as being substituted in this document for the original one. The substitution takes place from the time the new provision takes effect.

### **Execution of separate documents**

- 22.8 This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the parties.

### **Further acts**

- 22.9 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions incidental to it.

### **Governing law and jurisdiction**

- 22.10 This Agreement is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **Joint and individual liability and benefits**

- 22.11 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

### **No Agency etc.**

- 22.12 Except to the extent expressly authorised by the Secretary, the Dealer has no authority to incur any obligation on behalf of the Secretary or make any representation on behalf of the Secretary.

### **Severability**

- 22.13 Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### **Waivers**

- 22.14 The fact that the Secretary fails to do, or delays in doing, something the Secretary is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, the Dealer. Waiver by the Secretary is only effective if it is in writing.
- 22.15 A written waiver by the Secretary is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

## **23 Definitions and interpretation**

### **Definitions**

- 23.1 In this Agreement the following definitions apply:

**Act** means the *Road Safety Act 1986*.

**Adverse Event** in relation to a party means anything that reasonably indicates that there is a significant risk that that party is or will become unable to pay its debts as they fall due. This includes:

- (a) a meeting of a party's creditors being called or held;
- (b) a step being taken to make the party bankrupt or wind the party up;
- (c) the appointment of a controller or administrator as defined in section 9 of the Corporations Act;
- (d) the party entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;
- (e) the party being made subject to a deed of company arrangement; or
- (f) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the party or any of its assets; or
- (g) a floating charge becomes fixed, or a security becomes enforceable or is enforced in relation to any of the party's assets or undertakings; or

- (h) anything else happens that reasonably indicates that there is a significant risk that the party is or will become unable to pay debts as they fall due or remit monies held on behalf of the Secretary when required.

**Business Day** means a day that is not a Saturday or Sunday or a day wholly or partly observed as a statutory or public holiday in Melbourne.

**Business Hours** means the hours between 9.00am and 5.00pm on a Business Day.

**Commencement Date** means the date on which this Agreement is executed by the Secretary.

**Confidential Information** means any information provided by the Secretary or any of its Employees to the Dealer or any of its Employees, or otherwise obtained by the Dealer or any of its Employees, whether obtained before or after the execution of this Agreement, in connection with this Agreement or the Secretary in any way. Without limiting the foregoing:

- (a) Confidential Information includes:
- (i) information to which Part 7B of the Act applies, or is otherwise required by law to be kept confidential,
  - (ii) confidential business information, documents, records, financial information, reports, intellectual property, product specifications, technical information and forecasts which relate to the Secretary and the fact that the Confidential Information may be or has been provided, and the terms of this Agreement; and
- (b) Confidential Information does not include information which is in or becomes part of the public domain (other than through a breach of this Agreement or an obligation of confidence) or which the recipient of the Confidential Information can prove was independently acquired or developed by it without breaching the terms of this Agreement.

**Customer Payments** means registration charges, unregistered vehicle permit fees, transfer fees, Transport Accident Commission charges, number plate fees, motor vehicle duty and any other fees or payments payable in connection with the registration of a Vehicle as prescribed under the Regulations.

**Dealer** means a person engaged in the sale, distribution or management of vehicles.

**Dealer Online System** means the Secretary Dealer on-line information technology system for the Registration and transfer of registration of Vehicles.

**Dealer's Representative** means an employee of the Dealer to whom a power under the Act or Regulations that relates to the Registration of Vehicles is delegated in accordance with clause 3.

**Dealer's Usual Trading Stock** includes:

- a vehicle traded under a distribution, franchise or similar agreement between the Dealer and the manufacturer or importer of the vehicle;
- a vehicle that has been acquired by the Dealer, or is otherwise in the possession of the Dealer, for the purposes of resale;
- where the Dealer is a manufacturer or importer, a vehicle manufactured or imported by the Dealer;
- where the Dealer is a fleet manager, a vehicle in a fleet that is managed by the Dealer; and

- where the Dealer provides pre-delivery or similar services, a vehicle in relation to which the Dealer has provided such services.

**Delegated Services** means the Services specified as 'Delegated Services' in schedule 2.

**DCS** means the Dealer Certification Scheme.

**DCS Rules** means the guidelines, procedures and other documents relating to the operation of the DCS issued by the Secretary from time to time, including but not limited to the DCS manual, DCS bulletins and DCS newsletters.

**Eligibility Criteria** means the eligibility criteria for participation on the DCS as determined by the Secretary from time to time.

**Employee** means an officer of a Dealer or a person employed or engaged by a Dealer in relation to the conduct of the Dealer's business and also includes officers, secondees, contractors and agents of the Dealer.

**Expiry Date** means the date on which this Agreement expires as specified in Schedule 1.

**High Risk Vehicle** means:

- a vehicle that is or has been a repairable write-off, a statutory write-off or an inspected repairable write-off on the Victorian or an Interstate Written-off Vehicles Register;
- a vehicle the VIN of which does not decode or is designated as 'restricted' on NEVDIS;
- a vehicle with defaced, damaged or missing identifiers;
- a vehicle that is recorded on the Victorian Vehicles Register with a status of "suspect";
- a vehicle that is only eligible for registration for "evaluation purposes";
- a used imported vehicle that has not been previously registered in Australia (e.g. vehicles imported under the Registered Automotive Workshop Scheme and similar import schemes for used imported vehicles);
- a vehicle that does not have previous history or documentation to support the ownership and origin of the vehicle;
- a vehicle that is or has been modified to the extent that a VASS Approval Certificate is a requirement for the vehicle to be eligible for registration (refer *the Secretary business rule - VASS Approval Certificates*);
- a vehicle that is subject to a VIN restricted comment on NEVDIS; and
- any other vehicle or type of vehicle which the Secretary has, by notice to the Dealer, deemed to be a High Risk Vehicle.

**Intellectual Property Rights** means all present and future rights, title and interests in and to copyright, neighbouring rights, trademarks (registered and unregistered), designs (registered and unregistered), all rights in relation to inventions (including patent rights, semi-conductor and circuit layout rights), Confidential Information (including trade-secrets and know-how), domain names, internet addresses, computer programs, trade or business names, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Loss** means any loss including any liability, cost, expenses (including legal costs on a full indemnity basis), claim, proceeding, action, demand or damage (including any exemplary or punitive damages, special, incidental or indirect damages or economic loss or consequential loss or damage).

**LMCT** means Licensed Motor Car Trader as defined in the *Motor Car Traders Act 1986*.

**MyVicRoads Partner Account System** means the Secretary's information technology system for the Registration and transfer of registration of Vehicles.

**Nominated Administrator** in respect of specified premises means the representative of the Dealer as specified in Schedule 1 or substituted in accordance with clause 9.11 in respect of the Premises.

**Online Terms and Conditions** means the terms and conditions governing the on-line use of and access to the Secretary's web-site to Register Vehicles and set out in Schedule 4 but as amended from time to time.

**Premises** means the premises from which the Dealer provides the Services.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**Privacy Law** means a law that relates to the collection, use, disclosure and handling of Personal Information, and includes:

- the *Privacy and Data Protection Act 2014* (Vic),
- the *Privacy Act 1988* (Cth);
- the *Health Records Act 2001* (Vic); and
- Part 7B of the *Road Safety Act 1986* (Vic).

**Privacy Commissioner** means the Privacy Commissioner appointed under Part 7 of the *Privacy and Data Protection Act 2014* (Vic).

**Registration** has the meaning given in clause 23.3.

**Regulations** means the Vehicle Regulations made under the Road Safety Act 1986.

**Scheme** means the Dealer Certification Scheme administered by the Secretary

**Security Interest** has the meaning it has in the *Personal Property Securities Act 2009* (Cth).

**Services** means the services referred to in Clause 2 and the functions described in Schedule 2, as varied from time to time in accordance with clause 2.

**Supplied Property** means any property described as supplied property in Schedule 1, and any other property supplied by the Secretary to the Dealer for the purpose of this Agreement.

**Vehicle** includes:

- a motor vehicle;
- a trailer; and
- where powers in relation to the registration of vessels under the *Marine Safety Act 2010* have been delegated to the Dealer or the holder of a Nominate Position, a vessel.

**Vehicles Register** means the databases and related systems operated by the Secretary for the purpose of registering or recording information about vehicles and registered operators.

**The Secretary Representative** means the person specified as the Secretary Representative in Schedule 1 or as substituted by the Secretary in accordance with clause 9.11.

**Written off vehicle** has the same meaning that it has in the Road Safety Act 1986.

## Interpretation

- 23.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 23.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
  - 23.2.2 A reference in this Agreement to a Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria.
  - 23.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
  - 23.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
  - 23.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
  - 23.2.6 A reference in this Agreement to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
  - 23.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
  - 23.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 23.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
  - 23.2.10 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
  - 23.2.11 A reference to the word 'include' or 'including' is to be construed without limitation.
  - 23.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
  - 23.2.13 Any schedules and attachments form part of this Agreement.

## Meaning of Registration

- 23.3 In this Agreement, unless the contrary intention appears, **Registration** means:
- 23.3.1 where a person holds a delegation under the Act that authorises the person to register Vehicles, the registration of Vehicles; and
  - 23.3.2 where a person holds a delegation under the Act that authorises the person to issue an Unregistered Vehicle Permit in accordance with the Regulations, the issue of Unregistered Vehicle Permits; and
  - 23.3.3 where a person holds a delegation under the Act that authorises the person to transfer registration of Vehicles, the transfer of registration of Vehicles, and



- 23.3.4 where a person holds an authorisation under the Regulations to issue number plates and sell registration number rights, the issue of number plates and the selling of registration number rights.

**Application of this Agreement to vessels**

- 23.4 Where the Dealer or a Dealer's Representative is a delegate or sub-delegate of the Director of Transport Safety under section 178 of the *Transport Integration Act 2010* in relation to the Registration of vessels, this Agreement applies, with any necessary modifications, as if:
- 23.4.1 a reference to a Vehicle were a reference to a vessel; and
- 23.4.2 a reference to Registration of a vehicle were a reference to Registration of a vessel under the applicable marine safety legislation.

## Execution and date

Executed as an agreement.

Date:     /     / 20

Signed for and on behalf of  
the **Dealer** in the presence of:

.....  
Signature of authorised person

.....  
Signature of witness

.....  
Name of authorised person (print)

.....  
Name of witness (print)

Executed by an authorised representative  
of the **Secretary to the Department of  
Transport** in the presence of:

.....  
Signature of witness

.....  
Signature of Authorised Representative

.....  
Name of witness (print)

.....  
Name and Position

## Schedule 1

### 1 Expiry Date (clause 1.1)

31 May 2025

### 2 Dealer Details

#### 2.1 The Dealer

Dealership Name:

ACN (if applicable):

Trading name (if applicable):

Postal address:

Fax number:

Email:

Dealer type (for Services outlined in Schedule 2):

#### Attention:

#### 2.2 Dealer's Representative (clause 9.2)

Name:

Position:

Phone:

Email:

### 3 The Dealer Premises and Nominated Administrators (clause 6.8 & 9.4)

Premises Code	The Secretary Client Number	Trading Name and Address	Nominated Administrator (Name and Position)	Contact Details (Phone and email)
P1				
P2				
P3				
P4				
P5				
P6				
P7				
P8				
P9				
P10				

## **4 The Secretary's Representatives (clause 9.3)**

### **The Secretary's Representative**

**Position:** Director, Registration & Licensing Services or Nominee

**Postal Address:** Ground Floor, North Building, 60 Denmark St, Kew, Victoria, 3101

## **5 Supplied Property (clause 10)**

- number plates
- number plate order forms
- stationery
- stationery order forms
- Registration labels
- DCS procedures manual
- Vehicle inspection report books
- prepaid envelopes
- authority to Register Vehicle forms
- off-line Registration summary forms
- Registration concession forms
- certificate of approved operations
- new client forms
- Dealer Online and manual
- Registration forms or any documentation relating to the MyVicRoads Partner Account
- certificates of registration

## **6 Insurance Policies (clause 15)**

Public Liability: \$10,000,000 or lesser amount as agreed between the Secretary and the Dealer, for each and every occurrence

Property: Any Supplied Property must be insured for the replacement cost of the Supplied Property

Worker's Compensation Liability: as required by law

## **7 Notices (clause 20)**

### **The Secretary**

Name: The State of Victoria as represented by its Department of Transport

Address: 1 Spring St, Melbourne, Victoria 3000

Email: [dealers@roads.vic.gov.au](mailto:dealers@roads.vic.gov.au)

**Attention: Operations Manager Dealer Schemes**

### **The Dealer**

As set out in Schedule 1 (item 3.1)

## Schedule 2 Services

DEALER TYPE A - LMCTs (new car dealers, fleet operators, pre-delivery companies)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Registration of vehicles</b>			
<b>Services</b> <ul style="list-style-type: none"> <li>• registering vehicles*</li> <li>• registration for less than one year*</li> <li>• verifying eligibility and identity of applicants</li> <li>• pre-registration inspection</li> <li>• inspecting and recording GCM &amp; GVM*</li> <li>• setting conditions of registration*</li> <li>• check RWC</li> <li>• assessing fees*</li> <li>• receiving customer payments</li> <li>• assigning registration number*</li> <li>• issuing and affixing number plates and affixing labels</li> <li>• issuing certificates of registration*</li> <li>• selling registration number rights</li> </ul> <p>(*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)</p>	<p>Authorised to register new vehicles and used vehicles (other than High Risk Vehicles) supplied from the Dealer's Usual Trading stock that are:</p> <ul style="list-style-type: none"> <li>• Standard production light motor vehicles (other than motorcycles)</li> <li>• Standard production motorcycles</li> <li>• Standard production heavy motor vehicles</li> <li>• Light trailers</li> <li>• Heavy trailers</li> <li>• Caravans</li> <li>• Low volume cab/chassis builds</li> <li>• Agricultural Equipment</li> <li>• Plant equipment</li> </ul> <p><i>(Delete if NOT applicable)</i></p>	<p>Registration in the name of:</p> <ul style="list-style-type: none"> <li>• the Dealer.</li> <li>• an employee of the Dealer.</li> <li>• a person who purchases or leases the vehicle from the Dealer.</li> <li>• another person who is a Licensed Motor Car Trader.</li> </ul>	<p>New Registration must be by Dealer On-line for:</p> <ul style="list-style-type: none"> <li>• Standard production vehicles,</li> <li>• Trailers,</li> <li>• Low volume cab chassis builds, and</li> <li>• Motorcycles.</li> </ul> <p>Registration must be manual transaction (Fuji Xerox) for previously registered vehicles. Independent pre-registration inspection required for:</p> <ul style="list-style-type: none"> <li>• heavy trailers,</li> <li>• cab-chassis, and</li> <li>• previously registered heavy vehicles that have been modified.</li> </ul> <p>Separate entity to applicant Dealer must hold delegation to register in the name of the Dealer.</p> <p>Non LMCT pre-delivery companies can only provide the Services on behalf of an LMCT.</p>

DEALER TYPE A - LMCTs (new car dealers, fleet operators, pre-delivery companies)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Transfer of registration</b>			
<b>Services</b> <ul style="list-style-type: none"> <li>transfer of registration*</li> <li>verifying eligibility and identity of applicants</li> <li>check RWC</li> <li>assessing fees*</li> <li>receiving customer payments</li> <li>selling registration number rights</li> <li>assigning registration numbers*</li> <li>issuing and affixing number plates and affixing labels</li> <li>issuing certificates of registration*</li> </ul> <p>(*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)</p>	<p>Authorised to transfer new, used and demonstrator vehicles supplied from the Dealer's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> <li>Standard production light motor vehicles (other than motorcycles)</li> <li>Standard production motorcycles</li> <li>Standard production heavy motor vehicles</li> <li>Light trailers</li> <li>Heavy trailers</li> <li>Caravans</li> <li>Low volume cab/chassis builds</li> <li>Agricultural Equipment</li> <li>Plant equipment</li> </ul> <p><i>(Delete if NOT applicable)</i></p>	<p>Registration transfer into the name of:</p> <ul style="list-style-type: none"> <li>the Dealer.</li> <li>an employee of the Dealer.</li> <li>a person who purchases or leases the vehicle from the Dealer.</li> <li>another person who is a Licensed Motor Car Trader.</li> </ul>	<p>Transfer of registration must be by Dealer On-line.</p> <p>Independent pre-registration inspection required for heavy trailers and cab-chassis.</p> <p>Separate entity to applicant Dealer must hold delegation to transfer registration into the name of the Dealer.</p> <p>Non LMCT pre-delivery companies can only provide the Services on behalf of an LMCT.</p> <p>Transfer of registration must be manual transaction for:</p> <ul style="list-style-type: none"> <li>Agricultural equipment, and</li> <li>Plant equipment</li> </ul>

**DEALER TYPE B - MANUFACTURERS & FULL VOLUME & IMPORTERS**

Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Registration of vehicles</b>			
<b>Services</b> <ul style="list-style-type: none"> <li>• registering vehicles*</li> <li>• registration for less than one year*</li> <li>• verifying eligibility and identity of applicants</li> <li>• pre registration inspection</li> <li>• inspecting and recording GCM &amp; GVM*</li> <li>• setting conditions of registration*</li> <li>• check RWC</li> <li>• assessing fees*</li> <li>• receiving customer payments</li> <li>• assigning registration number*</li> <li>• issuing and affixing number plates and affixing labels</li> <li>• issuing certificates of registration*</li> <li>• selling registration number rights</li> </ul> <p>(*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)</p>	<p>Authorised to register new vehicles and used vehicles (other than High Risk Vehicles) supplied from the Dealer's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> <li>• Standard production light motor vehicles (other than motorcycles)</li> <li>• Standard production motorcycles</li> <li>• Standard production heavy motor vehicles</li> <li>• Light trailers</li> <li>• Heavy trailers</li> <li>• Caravans</li> <li>• Low volume cab/chassis builds</li> <li>• Agricultural Equipment</li> <li>• Plant equipment.</li> </ul> <p><i>(Delete if NOT applicable)</i></p>	<p>Registration in the name of:</p> <ul style="list-style-type: none"> <li>• the Dealer.</li> <li>• an employee of the Dealer.</li> </ul>	<p>New registration must be by Dealer On-Line.</p> <p>Previously registered vehicles:</p> <ul style="list-style-type: none"> <li>• must be registered by manual transaction (Fuji Xerox), and</li> <li>• require independent pre-inspection.</li> </ul> <p>Separate entity to applicant Dealer must hold delegation to register in the name of the Dealer.</p>

**DEALER TYPE B - MANUFACTURERS & FULL VOLUME & IMPORTERS**

Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Transfer of registration</b>			
<b>Services</b> <ul style="list-style-type: none"> <li>• transfer of registration*</li> <li>• verifying eligibility and identity of applicants</li> <li>• check RWC, VASS and import approval conditions</li> <li>• assessing fees*</li> <li>• receiving customer payments</li> <li>• selling registration number rights</li> <li>• assigning registration number*</li> <li>• issuing certificates of registration*</li> <li>• assigning number plates</li> </ul> <p>(*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)</p>	<p>Authorised to transfer new, used and demonstrator vehicles supplied from the Dealer's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> <li>• Standard production light motor vehicles (other than motorcycles)</li> <li>• Standard production motorcycles</li> <li>• Standard production heavy motor vehicles</li> <li>• Light trailers</li> <li>• Heavy trailers</li> <li>• Caravans</li> <li>• Low volume cab/chassis builds</li> <li>• Agricultural Equipment</li> <li>• Plant equipment</li> </ul> <p><i>(Delete if NOT applicable)</i></p>	<p>Registration transfer in name of:</p> <ul style="list-style-type: none"> <li>• the Dealer.</li> <li>• an employee of the Dealer.</li> </ul>	<p>Transfer of registration must be by Dealer On-Line.</p> <p>Separate entity to applicant Dealer must hold delegation to transfer registration into the name of the Dealer.</p>



DEALER TYPE C - <i>Certified RAWs</i>			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Registration of vehicles</b>			
<b>Services:</b> <ul style="list-style-type: none"> <li>• registering vehicles</li> <li>• transfer of registration*</li> <li>• verifying eligibility and identity of applicants</li> <li>• pre registration inspection</li> <li>• setting conditions of registration*</li> <li>• check RWC</li> <li>• assessing fees*</li> <li>• receiving customer payments</li> <li>• assigning registration number*</li> <li>• issuing and affixing number plates and affixing labels</li> <li>• issuing certificates of registration*</li> </ul> <p>(*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)</p>	<p>Authorised to register new, used and demonstrator vehicles supplied from the Dealer's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> <li>• RAWS light motor vehicles (other than motorcycles)</li> <li>• RAWS motorcycles</li> <li>• RAWS heavy motor vehicles</li> </ul> <p><i>(Delete if NOT applicable)</i></p>	<p>Registration in the name of:</p> <ul style="list-style-type: none"> <li>• the Dealer.</li> <li>• an employee of the Dealer.</li> <li>• a person who purchases or leases the vehicle from the Dealer.</li> <li>• another person who is a Licensed Motor Car Trader.</li> </ul>	<p>Registration must be by manual transaction (Fuji Xerox).</p> <p>Separate entity to applicant Dealer must hold delegation to register in the name of the Dealer.</p> <p>Independent pre-registration inspection required.</p> <p>Additional audit and reporting requirements as determined by the Secretary.</p>

**DEALER TYPE D - Trailer/Caravan Dealers & Manufacturers (non LMCT)**

Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Registration of vehicles</b>			
<p><b>Services:</b></p> <ul style="list-style-type: none"> <li>• registering vehicles*</li> <li>• registration for less than one year*</li> <li>• verifying eligibility and identity of applicants</li> <li>• pre registration inspection</li> <li>• inspecting and recording GCM &amp; GVM*</li> <li>• setting conditions of registration*</li> <li>• check RWC</li> <li>• assessing fees*</li> <li>• receiving customer payments</li> <li>• selling registration number rights</li> <li>• assigning registration number*</li> <li>• issuing and affixing number plates and affixing labels</li> <li>• issuing certificates of registration*</li> <li>• selling registration number rights</li> </ul> <p>(*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)</p>	<p>Authorised to register new and used vehicles (other than High Risk Vehicles) supplied from the Dealer's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> <li>• Light trailers</li> <li>• Heavy trailers</li> <li>• Caravans</li> </ul> <p><i>(Delete if NOT applicable)</i></p>	<p>Registration in the name of:</p> <ul style="list-style-type: none"> <li>• the Dealer.</li> <li>• an employee of the Dealer.</li> <li>• a person who purchases or leases the vehicle from the Dealer.</li> <li>• another person who is a Licensed Motor Car Trader.</li> </ul>	<p>New Registration must be by Dealer On-line.</p> <p>Registration must be manual transaction (Fuji Xerox) for previously registered vehicles.</p> <p>Independent pre-registration inspection required for:</p> <ul style="list-style-type: none"> <li>• heavy trailers, and</li> <li>• previously registered modified vehicles.</li> </ul> <p>Separate entity to applicant Dealer must hold delegation to register in the name of the Dealer.</p> <p>Vehicles previously registered interstate are prohibited from registration.</p>

**DEALER TYPE D - Trailer/Caravan Dealers & Manufacturers (non LMCT)**

Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Transfer of registration</b>			
<b>Services:</b> <ul style="list-style-type: none"> <li>• transfer of registration*</li> <li>• verifying eligibility and identity of clients</li> <li>• pre-registration inspection</li> <li>• check RWC</li> <li>• assessing fees*</li> <li>• assigning registration number*</li> <li>• issuing and affixing number plates and affixing labels</li> <li>• issuing certificates of registration*</li> <li>• receiving customer payments</li> </ul> (*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)	Authorised to transfer new, used and demonstrator vehicles supplied from the Dealer's Usual Trading Stock that are: <ul style="list-style-type: none"> <li>• Light trailers</li> <li>• Heavy trailers</li> <li>• Caravans</li> </ul> (Delete if NOT applicable)	Registration transfer into the name of: <ul style="list-style-type: none"> <li>• the Dealer.</li> <li>• an employee of the Dealer.</li> <li>• a person who purchases or leases the vehicle from the Dealer.</li> <li>• another person who is a Licensed Motor Car Trader.</li> </ul>	Transfer of registration must be by Dealer On-line.  Independent pre-registration inspection required for heavy trailers.  Separate entity to applicant Dealer must hold delegation to transfer registration into the name of the Dealer.

DEALER TYPE F - other LMCTs (registrations and transfer on behalf of 3 <sup>rd</sup> parties).			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Registration of vehicles</b>			
<b>Services:</b> <ul style="list-style-type: none"> <li>• registering vehicles*</li> <li>• registration for less than one year*</li> <li>• verifying eligibility and identity</li> <li>• pre registration inspection</li> <li>• setting conditions of registration*</li> <li>• check RWC</li> <li>• assessing fees*</li> <li>• receiving customer payments</li> <li>• assigning registration number*</li> <li>• selling registration number rights</li> <li>• issuing and affixing number plates and affixing labels</li> <li>• issuing certificates of registration*</li> </ul> (*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)	Authorised to register new vehicles and used vehicles (other than High Risk Vehicles) that are: <ul style="list-style-type: none"> <li>• Standard production light motor vehicles (other than motorcycles)</li> <li>• Standard production motorcycles</li> <li>• Standard production heavy motor vehicles</li> <li>• Light trailers</li> <li>• Heavy trailers</li> <li>• Low volume cab/chassis builds</li> <li>• Agricultural Equipment</li> <li>• Plant equipment</li> </ul> <i>(Delete if NOT applicable)</i>	Registration in the name of <ul style="list-style-type: none"> <li>• Third party.</li> </ul>	New Registration must be by Dealer On-line for: <ul style="list-style-type: none"> <li>• Standard production vehicles,</li> <li>• Trailers,</li> <li>• Low volume cab chassis builds, and</li> <li>• Motorcycles.</li> </ul> Registration must be manual transaction (Fuji Xerox) for previously registered vehicles. Independent pre-registration inspection required for: <ul style="list-style-type: none"> <li>• heavy trailers,</li> <li>• cab-chassis, and</li> <li>• previously registered heavy vehicles that have been modified.</li> </ul> Independent pre-registration inspection required for all vehicles. Additional audit and reporting requirements as determined by the Secretary.

DEALER TYPE F - other LMCTs (registrations and transfer on behalf of 3 <sup>rd</sup> parties).			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
<b>Transfer of registration</b>			
<b>Services:</b> <ul style="list-style-type: none"> <li>• transfer of registration*</li> <li>• verifying eligibility and identity of applicants</li> <li>• pre-registration inspection</li> <li>• check RWC</li> <li>• assessing fees*</li> <li>• assigning registration number*</li> <li>• receiving customer payments</li> <li>• issuing and affixing number plates and affixing labels</li> <li>• issuing certificates of registration*</li> </ul> (*Delegated Services which can only be performed by the Dealer or the Dealer's Representative)	Authorised to transfer new, used and demonstrator vehicles that are: <ul style="list-style-type: none"> <li>• Standard production light motor vehicles (other than motorcycles)</li> <li>• Standard production motorcycles</li> <li>• Standard production heavy motor vehicles</li> <li>• Light trailers</li> <li>• Heavy trailers</li> <li>• Low volume cab/chassis builds</li> <li>• Agricultural Equipment</li> <li>• Plant equipment.</li> </ul> (Delete if NOT applicable)	Registration transfer in the name of <ul style="list-style-type: none"> <li>• Third party.</li> </ul>	Transfer of registration must be by Dealer On-line.  Additional audit and reporting requirements as determined by the Secretary.  Transfer of registration must be manual (Fuji Xerox) for agricultural and plant equipment

### Schedule 3 Confidentiality Deed

I acknowledge that in the course of performing duties in relation to the registration or transfer of registration of motor vehicles I may be granted access to information relating to the Secretary's registration and licensing functions and activities that identifies individuals or from which individuals may be identified ('Protected Information'). I further acknowledge that I am familiar with the requirements of Part 7B of the **Road Safety Act 1986** and that I may be guilty of an offence if I use or disclose Protected Information other than in accordance with that section.

I agree as follows:

- 1 I will only access and use Protected Information to the extent that it is necessary for the performance of my official duties.
- 2 I will not disclose Protected Information to any person (other than to another employee who requires the information to carry out his or her official duties).
- 3 I will do everything I can to prevent other people from accessing the Protected Information. I will not leave Protected Information, or copies or records of it, in any place where it is accessible by others.
- 4 I will notify my employer and the Secretary as soon as I become aware of any threat to the confidentiality or security of Protected Information. I will cooperate with my employer and with the Secretary in any action either of them takes to protect that confidentiality or security.
- 5 If I am given a user access code or password to enable me to access the Information:
  - (a) I will not give the user access code or password to anyone;
  - (b) I will not write it down anywhere and leave it where it is not secure;
  - (c) I will make sure I log off from any application through which I have access to Protected Information when I am not using the Protected Information; and
  - (d) I will make sure my user access code or password is de-activated when I no longer need access to the information.

Signature: \_\_\_\_\_ Date:        /        / 20

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Witness Signature: \_\_\_\_\_ Date:        /        / 20

Witness Name: \_\_\_\_\_

Witness Position: \_\_\_\_\_

## **Schedule 4 - Dealer Online Terms and Conditions**

### **1 Use of the Secretary's On-line Services**

#### **Use of the Service**

- 1.1 These terms and conditions govern online use of the Service and by executing this document, the User agrees to be bound by its terms, in relation to the use of the Service.
- 1.2 The Secretary grants the User a non-exclusive, non-transferable right to use the Service for the Purpose and as otherwise specified in this document. The User will not use the Service for any other purpose.
- 1.3 The User shall use the Service in accordance with this document, and, if necessary, in accordance with the access rights granted under the Secretary's On-Line Access Terms and Conditions.
- 1.4 The Service may be modified, altered, varied or discontinued by the Secretary at the Secretary's complete discretion.

#### **Instructions and directions relating to the Service**

- 1.5 The User shall, at its own cost, immediately comply with any instructions, directions, policies, procedures and standards of the Secretary, as amended from time to time, in relation to the use of the Service. The instructions, directions, policies, procedures and standards may include, but are not limited to, anything that relates to (either directly or indirectly) any of the following:
  - 1.5.1 use of appropriate equipment or software required by the Secretary to use the Service;
  - 1.5.2 protection of Personal Information or Intellectual Property of the Secretary; or
  - 1.5.3 use of the Service.
- 1.6 The instructions or directions from the Secretary referred to in this clause may be notified or amended by the Secretary from time to time via a display on the Secretary's website. It is the User's obligation to monitor the website for such notification or amendment.
- 1.7 The User shall not use nor permit anyone else to use the Service for any purpose other than those which the Secretary gives its prior written consent, nor shall it use the Service on any equipment or software except those that meet the Secretary's minimum system specifications for use.

#### **On-Line Users**

- 1.8 On-Line Users may also use the Service pursuant to the access rights granted to them in accordance with the Secretary On-Line Access Terms and Conditions and as otherwise specified by the Secretary in writing.

### **2 Provision of information**

- 2.1 The User must give the Secretary any information about the User's use of the Service, any On-Line User or otherwise in relation to the use of the Service, as well as any information and assistance which is necessary to identify the User if the Secretary requests it. The User must do so immediately.

### **3 Security**

- 3.1 The User must comply with, and ensure that all of the On-Line Users comply with, the Secretary's Information Security policies, as amended from time to time, in relation to the use of the Service

#### **4 Indemnity**

- 4.1 The User agrees to indemnify continually the Secretary and its officers, employees and agents against any claim or proceeding that is made or commenced, and against all losses, expenses, claims, proceedings, costs (including legal costs on a full indemnity basis and any indirect or consequential loss and loss of profits) or damages which arise out of or in connection with:
- 4.1.1 the User's or any On-Line Users' use of the Service;
  - 4.1.2 reliance by the User, any On-Line User or any third parties on any fact, view, opinion, statement, recommendation or other thing derived in whole or in part from the Service;
  - 4.1.3 any error or information in the Information or Material resulting from information provided, directly or indirectly, by the User, an On-Line User or a third party;
  - 4.1.4 any modification to the Information or Material made by the User, an On-Line User or any other third party;
  - 4.1.5 a breach of a requirement of this document or the Services Agreement by the User or an On-Line User;
  - 4.1.6 the collection, use, disclosure and handling of Personal Information in connection with this document.

#### **5 Limitation of liability**

- 5.1 All conditions and warranties of any type in relation to the Service or otherwise relating to this document are excluded to the maximum extent allowed by the law. The liability of the Secretary for a breach of any condition or warranty implied by law is limited, to the extent that the law allows, to any one or more of the following, at the option of the Secretary:
- the resupply of the Services
  - the payment of the cost of having the Services resupplied.
- 5.2 This limitation only applies in respect of Services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- 5.3 The Secretary will have no liability for any indirect or consequential losses suffered or incurred by the User including loss of revenue, loss of savings, loss of profit, loss of goodwill, lost opportunity, loss of data or any financial penalties imposed by any governmental authority or agency.

#### **6 Disclaimers and no warranty**

- 6.1 The Secretary does not warrant:
- 6.1.1 anything in relation to the suitability, fitness for a particular purpose, quality or accuracy of the Service;
  - 6.1.2 that the Service is error free or virus free;
  - 6.1.3 that the use of the Service shall be uninterrupted or accessible at all times; or
  - 6.1.4 that the use of the Service shall not infringe the Intellectual Property rights of a third party.



## **7 Reverse Engineering, copying, modification etc**

- 7.1 The User shall not reverse assemble or reverse compile or reverse engineer or directly or indirectly allow or cause a third party to reverse assemble or reverse compile or reverse engineer the whole or any part of the Service.
- 7.2 Other than in accordance with this document, the User shall not copy, merge, disseminate, distribute or in any way reproduce the Service or directly or indirectly allow or cause a third party to copy, merge, disseminate, distribute or in any way reproduce the Service.
- 7.3 Other than in accordance with this document, the User shall not modify, vary or alter the Service or directly or indirectly allow or cause a third party to modify, vary or alter the Service.

## **8 Privacy**

- 8.1 The User agrees and warrants to the Secretary that any Personal Information that the User provides to the Secretary in connection with the Service has been collected in accordance with applicable Privacy Law; that the individual to whom the information relates has been made aware of the Secretary's identity and of the other matters of which the individual is required to be informed when Personal Information is collected about them; and that the disclosure of the information to, and its use by, the Secretary is authorised by the individual to whom the information relates, or by law.
- 8.2 The User must not, and must ensure that On-Line Users do not, collect, use, disclose, store, transfer or otherwise handle Personal Information collected in connection with the Service except in accordance with applicable Privacy Law and with such policies or directions relating to the collection, use, disclosure, storage, transfer or handling of Personal Information as are notified by the Secretary from time to time.

## **9 Termination or suspension**

- 9.1 The Secretary may terminate this document immediately or temporarily suspend use of the Service (at its option) if any of the following occurs:
  - 9.1.1 the User or an On-Line User commits a breach of a requirement of this document which is not rectifiable;
  - 9.1.2 the User or an On-Line User fail to rectify a breach of a requirement of this document which is rectifiable for 3 days after receiving a written notice from the Secretary specifying the breach and requiring the User or the On-Line User to rectify it;
  - 9.1.3 an Adverse Event happens to the User or an On-Line User;
  - 9.1.4 The Secretary Online Access Terms and Conditions expires or is terminated, whether as a result of a breach or otherwise; or
  - 9.1.5 Services Agreement expires or is terminated, whether as a result of a breach or otherwise.
- 9.2 If the Secretary chooses to temporarily suspend the Service under the previous clause and later agrees to allow the User to use the Service:
  - 9.2.1 the User shall be liable to pay reconnection charges at the Secretary's standard reconnection rates at the time; and
  - 9.2.2 the User shall provide such assurance to the Secretary that it will not contravene the obligations contained in this document as the Secretary regards necessary.

- 9.3 If the Secretary chooses to terminate or suspend the User's right to use the Service, the Secretary may, in addition to terminating or suspending the document:
- 9.3.1 repossess any copies of the Information in the possession, custody or control of the User;
  - 9.3.2 retain any moneys paid;
  - 9.3.3 charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
  - 9.3.4 be regarded as discharged from any further obligations under this document; and
  - 9.3.5 pursue any additional or alternative remedies provided by law.
- 9.4 Immediately upon the termination or suspension of this document for any reason the User shall deliver up to the Secretary, at the User's cost, the Information and all copies, alterations, modifications, developments and enhancements to the Information or, if requested by the Secretary, shall destroy the same and certify in writing to the Secretary that they have been destroyed. Termination or suspension of this document with the User will automatically terminate or suspend (as the case may be) all of the User's On-Line Users' right to use the Service. In all other respects, the Secretary may choose at any time to terminate or suspend any On-Line User's right to use the Service. If the Secretary terminates or suspends the On-Line Users' right to use the Service, the User must comply with any instructions given by the Secretary in relation to the termination or suspension.
- 9.5 The termination or ending of this document does not affect accrued rights.

## 10 Definitions

- 10.1 In this Schedule the following definitions apply:

**Electronic Service Delivery (ESD)** means the delivery of the Secretary's services via various electronic means, such as the Internet to home and business computers.

**Information** means any information which is available to a person as a result of their use to the Service.

**Material** means any and all materials provided by the Secretary at its discretion to the User or an On-Line User.

**On-Line Access Terms and Conditions** means the Secretary's Terms and Conditions for the User to access the service and which the User has agreed to be bound by signing the Secretary's Access Application Form.

**On-Line User** means an employee of the User nominated by the User in accordance with the Secretary's Online Access Terms and Conditions and authorised in writing by the Secretary (in its absolute discretion) to access and use the Service.

**Purpose** means the purpose in which the User is authorised by the Secretary to use the Service as detailed in the ESD Product Description (as modified from time to time by the Secretary) or in the Services Agreement.

**Service** means the Secretary On-Line Electronic Service described in the Product Description (as modified from time to time by the Secretary), or in the Services Agreement, and includes (without limitation) the Material and the Information.

**User** means the party identified in the Organisation Access Application form.

**The Secretary** means the State of Victoria as represented by its Department of Transport (DoT), of 1 Spring Street, Melbourne, Victoria, 3000.