



Department
of Transport
and Planning

Dealer Certification Scheme Agreement

The Secretary to the Department of Transport
and Planning for and on behalf of the Crown in
right of the State of Victoria

and

Version 3.1

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Parties

The Secretary to the Department of Transport and Planning for and on behalf of the Crown in right of the State of Victoria (**Secretary**)

The Provider named in Schedule 1 (**Provider**)

Background

- A. The Secretary has various statutory functions relating to the registration of vehicles under the Road Safety Act and the Regulations.
- B. For the purpose of performing those functions, the Secretary operates various Vehicle Schemes under which the Secretary authorises or appoints persons with the appropriate skills, qualifications, premises and/or equipment to provide services relating to the inspection, modification, certification, testing and/or registration of Vehicles.
- C. The Secretary agrees to authorise or appoint the Provider to provide services under the Dealer Certification Scheme in consideration for the Provider agreeing to perform the Services subject to and in accordance with this Agreement.

Operative provisions

1. Term

1.1 Commencement

This Agreement commences on the Commencement Date and will continue in force until terminated in accordance with this Agreement or at Law.

1.2 Termination of Existing Agreement

- (a) Unless the Secretary expressly notifies the Provider to the contrary, the parties agree that any other agreement between the parties in force as at the Commencement Date pursuant to which the Provider is authorised to inspect, modify, certify test and/or register Vehicles (**Prior Agreement**) will be deemed to be terminated on the Commencement Date without need for any further action.
- (b) Neither party will have any claim have any Claim against the other party in connection with the termination of the that Prior Agreement pursuant to clause 1.2(a) other than in relation to any accrued rights or liabilities which exists under that Prior Agreement as at the date of that termination.

2. Variation by the Secretary

2.1 Power to vary Agreement

The Secretary may, by giving 20 Business Days' prior written notice, vary this Agreement from time to time (including by varying the description or scope of the Services to be provided under the Scheme Schedule) and the Provider hereby consents to that variation, in each case if the Secretary considers in its absolute discretion that it is necessary to do so from time to time to give effect to:

- (a) any change of Law or government policy;
- (b) any change to or revocation of a delegation;
- (c) any changes to any Vehicle Scheme including the Dealer Certification Scheme or the Services;

- (d) addressing any ambiguity, discrepancy, inconsistency or omission between or within any one or more of this Agreement, the Law and any of the Business Rules or processes in connection with Services including the registration functions; and
- (e) any change in the Secretary's policies, procedures or business systems which apply to the performance of its functions in relation to the regulation or inspection, modification, certification, testing and/or registration of Vehicles.

2.2 No fetter

- (a) Unless otherwise expressly stated in this Agreement, nothing in this Agreement gives rise to any duty on the part of the Secretary to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under this Agreement.
- (b) Notwithstanding anything expressly stated or implied in this Agreement to the contrary:
 - (i) the Secretary is not obliged to exercise any executive or statutory right, duty or function, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of its executive or statutory rights, duties, functions or powers; and
 - (ii) nothing expressly stated or implied in this Agreement has the effect of constraining the Secretary or placing any fetter, constraint or limitation on the Secretary's discretion to exercise or not to exercise any of executive or statutory rights, duties, functions or powers.
- (c) Unless otherwise expressly stated in this Agreement, the Provider will not be entitled to make any Claim against the Secretary in connection with any exercise or failure of the Secretary to exercise any of its legal, executive or statutory rights, duties, functions or power.

3. Delegation

- (a) The Provider acknowledges and agrees that the Services may involve the performance of functions and the exercise of powers which may only be lawfully performed or exercised by an individual who is a Delegate.
- (b) The Secretary agrees that it will delegate functions, powers and duties (if any) as it considers necessary for the provision of the Services to Delegates.
- (c) The Secretary may at any time and at the Secretary's absolute discretion, and without giving reasons, revoke or vary a Delegation.
- (d) The Provider must not, and must ensure that its Delegates do not;
 - (i) exercise any Delegated Function except:
 - (A) when it is in accordance with the conditions and limitations specified in the Delegation and this Agreement; and
 - (B) only after the Delegate has undertaken the required training under this Agreement which is required for that Delegate to become qualified to perform the Delegated Functions.
 - (ii) permit or authorise any other person who is not a Delegate to exercise any Delegated Function.

4. Provider's Obligations

4.1 Services

The Provider may, at the request of a Customer, provide the Services specified in Item 2 of the Scheme Schedule:

- (a) with respect to Specified Vehicles; and
- (b) for the purposes of Specified Transactions.

4.2 Quality of Services

The Provider must, and must ensure that its Associates, provide the Services:

- (a) promptly, carefully and to appropriate standards;
- (b) exercising all due care, skill and judgement, in an efficient, professional and cost effective manner and in accordance with best industry professional and business practices;
- (c) in a timely manner and within the timeframe specified in the Business Rules;
- (d) otherwise in accordance with the Business Rules as provided by the Secretary from time to time;
- (e) in accordance with the Online Access Terms and myVicRoads Terms and Conditions; and
- (f) in accordance with any other directions, instructions and mandatory standards and guidelines issued by the Secretary in relation to the Services or to the Provider.

4.3 Fitness and suitability

- (a) When applying to join the Dealer Certification Scheme, an applicant must be, and must ensure that its proposed representatives and associates are persons who:
 - (i) are Fit and Proper Persons;
 - (ii) are not persons in relation to whom an Adverse Event has occurred; and
 - (iii) have not had authorisation under the Dealer Certification Scheme, or any other Vehicle Scheme or similar scheme operated or administered by the Secretary, suspended or cancelled.
- (b) Upon joining the Dealer Certification Scheme, the Provider must be, and must ensure that its Delegates are at all times, persons who:
 - (i) are Fit and Proper Persons;
 - (ii) are not persons in relation to whom an Adverse Event has occurred; and
 - (iii) have not had authorisation under the Dealer Certification Scheme, or any other Vehicle Scheme or similar scheme operated or administered by the Secretary, suspended or cancelled.
- (c) Upon request from the Secretary, the Provider must supply a valid nationally coordinated criminal history check for each Director (if applicable) or Delegate identified by the Secretary within 5 Business Days of the request. The nationally coordinated criminal history check must be current and not have been issued more than 30 days prior to the date of request.

4.4 Compliance with Laws and requirements

In performing the Services, the Provider must, and must ensure that its Associates:

- (a) comply with:
 - (i) the Road Safety Act and Regulations;
 - (ii) the conditions of any licence or authorisation from the Secretary held by the Provider;
 - (iii) other Laws applying to the provision of the Services and the Provider's business including the Duties Act and all applicable Privacy Laws;
 - (iv) this Agreement;
 - (v) written directions, instructions and mandatory standards and guidelines issued by the Secretary in relation to the Services;
 - (vi) relevant government policies that relate to the provision of the Services; and
 - (vii) requirements for licences, permits, consents or authorisations to be held or complied with for the conduct of the Provider's business; and
- (b) use the Online System exclusively for Specified Vehicles which are traded or sold in accordance with the Provider's LMCT licence conditions and not for other transactions related to Vehicles including leases, rent to buy arrangements and rentals or those Vehicles.

4.5 Premises

The Provider must ensure that:

- (a) the Services are provided at:
 - (i) the Specified Premises referred to in Item 5 of the Scheme Schedule (if any);
or
 - (ii) if no Premises are specified in Item 5 of the Scheme Schedule, Premises or other places that are of a type and in a condition which will enable the Provider to carry out inspections, assessments or other activities conducted in performing Services to be conducted safely;
- (b) it has the legal right to occupy any Premises;
- (c) any Premises are under the sole control of the Provider and are not shared with another person unless authorised by the Secretary;
- (d) any Premises are maintained to a standard and in a condition which would be reasonably acceptable to the Secretary and comply with any applicable WorkSafe Victoria and Environment Protection Authority Victoria requirements (or the requirements of any relevant authority if the Premises are located in a jurisdiction other than Victoria);
- (e) any Premises have clear access and sufficient storage capacity, sufficient space and height for the Specified Vehicles to be traded; and
- (f) it obtains and complies with any consent or approval required by a municipal council or other statutory planning body for the Premises to be used for the trading of Vehicles.

4.6 Accreditation and training

- (a) The Provider must establish and implement an internal training and accreditation program to train the Provider's Associates (including its Delegates and Nominated

Administrators) so that it and they are able to deliver the Services and otherwise enable the Provider to comply with the Provider's obligations under this Agreement including clause 4.6(b).

- (b) The Provider must, and must ensure that its Associates:
 - (i) undertake the training (if any) specified in Item 7 of the Scheme Schedule; and
 - (ii) obtain and maintain the accreditation (if any) specified in Item 8 of the Scheme Schedule;
 - (iii) undertake any additional training and obtain and maintain any additional accreditation that the Secretary acting reasonably considers necessary for the provision of the Services or the performance of the Provider's obligations under this Agreement;
 - (iv) comply any directions, instructions and mandatory standards and guidelines issued by the Secretary in relation to the Services;
 - (v) comply with any obligation imposed on the Provider under this Agreement, the Online Access Terms and/or pursuant to Law including those related to privacy and confidential information;
 - (vi) comply with the myVicRoads Terms and Conditions.
- (c) If requested by the Secretary to do so, the Provider must give the Secretary copies of certificates or other document to prove, to the reasonable satisfaction of the Secretary, that the Provider and its Associates have undertaken any training and hold any accreditation required under this Agreement including this clause 4.6.

4.7 Scope of authority

- (a) The Provider must not, and must ensure that its Associates do not, except as authorised by this Agreement:
 - (i) bind the Secretary in any way or hold itself out as having any authority to do so;
 - (ii) assume or create any obligations on behalf of the Secretary;
 - (iii) incur any liability on behalf of the Secretary; or
 - (iv) do anything which might adversely affect the reputation of the Secretary or DTP.
- (b) Any authority conferred on the Provider or its Associates under or in connection with this Agreement is limited to lawful acts and acts done in good faith.

4.8 Notice requirements

- (a) The Provider must notify the Secretary within 5 Business Days after:
 - (i) any change in its business name, its directors, trustee or partners, or the structure of its business, company, trust, ownership or composition of partnership; and
 - (ii) any breach of this Agreement by the Provider,

in which case notification must set out the details of the change or breach and include advice as to the action taken to remedy the breach or to remedy the change if it does not have the consent of the Secretary).

- (b) The Provider must notify the Secretary immediately if:

- (i) the Provider is unable to provide Services from any Specified Premises;
- (ii) a Delegate ceases to be an Associate or becomes unwilling or unable to perform the Services;
- (iii) the Provider becomes aware of any inaccuracy, incompleteness or change in the information in Item 2 of Schedule 1;
- (iv) the Provider becomes aware of any suspected, alleged or actual dishonest, corrupt or fraudulent conduct in relation to the Services (including by Associates or Customers) or any breach of clause 4.3;
- (v) an Adverse Event occurs in relation to the Provider; or
- (vi) any licence, authorisation or consent required for the conduct of the Provider's business is suspended or revoked.

4.9 Provision of information and reports

- (a) The Provider must provide to the Secretary within 5 Business Days after being requested to do so (or such longer time as is agreed) such information or reports concerning any aspect of the Services or the performance of its obligations under this Agreement, as the Secretary reasonably requires.
- (b) All reports, certificates and other information given by the Provider to the Secretary under this Agreement will be the property of the Secretary. The Provider may retain a copy of reports for record keeping purposes.

4.10 Record Keeping

- (a) Subject to clause 11.10, the Provider must keep all records and other documentation relating to the provision of the Services (or ensure that they are retained in a location notified in writing to the Secretary) for a period of 7 years (including following termination of the Agreement) and must produce such records and documentation to the Secretary upon request.
- (b) Such records and documentation must include:
 - (i) all records relating to the provision of the Services that are required to be retained under any Law;
 - (ii) the records and documentation (if any) specified in Item 14 of the Scheme Schedule; and
 - (iii) any other records the Secretary reasonably requires the Provider to retain.

4.11 Quality Process

If required by the Secretary to do so, the Provider must provide the Services in accordance with a quality process that complies with requirements reasonably specified by the Secretary, and must have in place documented procedures to demonstrate compliance with that process.

5. Payments and fees

5.1 Regulated Fees and Prescribed Fees

- (a) If any Regulated Fee or Prescribed Fee is payable by a Customer with respect to any Service including pursuant to any Law:
 - (i) the Provider must charge the Customer the Regulated Fee and Prescribed Fee payable in respect of that Service;

- (ii) except as authorised under clause 5.4, the Provider must not request or require the Customer to make any payment other than of the Regulated Fee and Prescribed Fee payable in respect of the Service; and
- (iii) where the Regulated Fee or Prescribed Fee is a fee required to be paid for registering a Vehicle, the Provider must not allow the Vehicle to leave the Provider's Premises unless that Regulated Fee and Prescribed Fee is paid.

5.2 Remittance of fees etc

- (a) The Provider receives all Regulated Fees and Prescribed Fees payable by Customers on the Secretary's behalf and shall hold all such Regulated Fees and Prescribed Fees on trust solely for the benefit of the Secretary.
- (b) Subject to sub-clause (c) and clause 6.2, the Provider must remit all Regulated Fees and Prescribed Fees payable by Customers to the Secretary at the time of receipt.
- (c) If the Provider is permitted to perform Services without using an Online System, the Provider:
 - (i) must remit Regulated Fees and Prescribed Fees payable by Customers to the Secretary as soon as practicable, and in any case no later than two Business Days, after they are received;
 - (ii) shall be liable to pay interest on any Regulated Fees and Prescribed Fees payable by Customers 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 Provider to receipt in full by the Secretary; and
 - (iii) must ensure that all Regulated Fees and Prescribed Fees payable by Customers held pending remittance to the Secretary are kept secure, including but not limited to depositing them with a bank and using secure means to transport or transmit them.
- (d) The Provider shall pay Administrative Fees and Prescribed Fees payable by the Provider to the Secretary in the manner and at the times specified by the Secretary.

5.3 Security Deposits

- (a) If the Secretary considers necessary for the protection of Fees, the Secretary may, at any time, require the Provider to provide security, in a manner and for an amount which the Secretary considers appropriate having regard to:
 - (i) the volume of Services performed by the Provider;
 - (ii) the Provider's past conduct in relation to remittance of fees; and
 - (iii) any other matter it considers relevant.
- (b) If the Secretary requires the Provider to provide security, 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.
- (c) The Secretary will return the security, less any Fees and/or interest owing to the Secretary under the Agreement, upon termination of the Agreement, or as otherwise agreed with the Provider.
- (d) The Secretary will not deduct any sum from the security unless the Secretary has first made a demand to the Provider for any Fees and/or interest owing to the Secretary under this Agreement which demand remains unpaid for a period of 7 Business Days.

5.4 Customer payment

- (a) The Provider must not require a Customer to make any payment in respect of a Service except:
- (i) if a Regulated Fee or Prescribed Fee is payable by the Customer in respect of the Service – of the amount of that fee;
 - (ii) if an Administrative (Transaction) Fee is payable in respect of the Service provided to the Customer - of an amount that is no greater than the amount of that Fee;
 - (iii) if an Administrative (Scheme) Fee is payable by the Provider in respect of the administration of the Vehicle Scheme generally – of an amount that is no greater than a portion of the Administrative (Scheme) Fee that is reasonably referable to the cost of providing the Service to the Customer; and
 - (iv) if other Customer Payments are authorised under Item 11 of the Scheme Schedule - of an amount that does not exceed the reasonable costs of providing the Service to the Customer.
- (b) Clause 5.4(a) does not prevent the Provider charging a Customer for goods or services provided in relation to the Vehicle (including for vehicle delivery, maintenance, repair, modification or construction, or the supply and fitting of components or parts) in conjunction with which the Services are provided.

5.5 Secretary Payment

- (a) If the Secretary has agreed to pay the Provider an amount by way of:
- (i) consideration for the Provider performing Services; or
 - (ii) reimbursement or compensation in respect of costs or expenses incurred by the Provider in performing Services—

the Secretary will pay the Provider the amount in accordance with Item 12 of the Scheme Schedule.

- (b) The Secretary may deduct from any amount payable to the Provider including under clause 5.5(a) any amounts that are payable to the Secretary by the Provider under clause 5.2.

5.6 Definitions

In this Agreement including clause 5 and the Scheme Schedule:

Administrative Fees means fees payable by the Provider to the Secretary under section 97A of the Road Safety Act in respect of services in connection with the registration of Vehicles (which must not exceed the reasonable costs to the Secretary of administering this Agreement and providing services to the Provider in connection with the Dealer Certification Scheme) and may include:

- (a) fees payable generally in respect of the Dealer Certification Scheme (Administrative (Scheme) Fee); or
- (b) fees payable in respect of particular transactions conducted by the Provider under the Dealer Certification Scheme (Administrative (Transaction) Fee).

Regulated Fee means a fee or charge required by Law to be paid to the Secretary for or in connection with the registration of a Vehicle including:

- (a) a fee prescribed in the Regulations; and

- (b) a fee or charge required to be collected by the Secretary on behalf of another government agency when a Vehicle is registered.

6. Failure to process transactions or payments

6.1 Formal warning

- (a) The Secretary may issue a formal warning to the Provider following the first occurrence of a failure by the Provider or its Associate to:
 - (i) process a transaction related to the Services (including registration or transfer of a Vehicle that is sold and/or delivered to a Customer) within the period set out in the Regulations or the Business Rules; and/or
 - (ii) collect and pay to the Secretary the relevant and correct amount of any amount which the Provider or its Associates is obliged to collect on behalf of the Secretary including Customer Payments, Regulated Fees (including motor vehicle duty and transport accident charges (each as identified in the Duties Act) and any other Transport Accident Commission fees and rates) when due and payable, or fails to take reasonable care to ensure that the Provider and/or its Associates comply with their obligations to pay those amounts to the Secretary when due and payable.

6.2 Default interest

Subject to clause 5.2(c)(ii), the Provider shall be liable to pay interest on any Fees not remitted to the Secretary when due and payable at a rate equal to the Reserve Bank of Australia Cash Rate from time to time plus 2%, accruing daily from the due date to receipt in full by the Secretary.

7. Supply of resources, access etc.

7.1 Things the Secretary will provide

Subject to the Provider paying any applicable fees, the Secretary will, to the extent reasonably necessary for the performance the Services, make available to the Provider and the Provider's Associates:

- (a) the forms, documents and other items, or electronic access to the forms and documents, specified in Item 6 of the Scheme Schedule;
- (b) any other forms, documents or other items (other than computer equipment and proprietary software) which the Secretary requires the Provider to use in providing the Services;
- (c) copies of or electronic access to any standard, manual, guideline or similar document which applies to the Services and which is not otherwise available in Australia (for purchase or otherwise);
- (d) reasonable notice of any change of Law or of any standard, manual or guideline referred to in clause 7.1(c); and
- (e) reasonable access to an employee of the Department who is able to provide information and guidance about the requirements of the Secretary with respect to the Services.
- (f) reasonable:

- (i) notice of changes to the Business Rules and other directions, instructions and mandatory standards and guidelines issued by the Secretary in relation to the Services; and
- (ii) reasonable access during normal business hours to a person who is able to provide the Provider and the Representative of the Provider with information and guidance about the requirements of the Secretary under this Agreement.

7.2 Licence

The Secretary grants the Provider a non-exclusive, non-transferable licence to use any form, document or item made available under clause 7.1 solely for the purpose of providing the Services.

7.3 Provider obligations

- (a) If the Secretary supplies the Provider with forms, documents or other items, or access to forms or documents under clause 7.1 (**Supplied Material**), the Provider must, and must ensure that Associates who access and/or use the Supplied Material:
 - (i) take reasonable care in accessing and/or using the Supplied Material;
 - (ii) access or use the Supplied Material solely for the purposes of providing the Services;
 - (iii) not interfere with, disrupt or cause damage to the Supplied Material;
 - (iv) ensure that the Supplied Material is secure and protected from unauthorised access, use or misuse, damage or destruction;
 - (v) not grant any Security Interest over or in respect of the Supplied Material; and
 - (vi) return Supplied Material to the Secretary if directed in writing to do so.
- (b) Upon termination of this Agreement, the Provider must:
 - (i) promptly return Supplied Material to the Secretary and take all reasonable steps to enable the Secretary to recover Supplied Material from the Provider and its Associates, including allowing the Secretary to access any Premises from which the Services are or were provided; and
 - (ii) disconnect or disable any electronic link or access that has been established between the Provider or its Associates and the Secretary for the purpose of performing the Services.

8. Audit and review

8.1 The Secretary may inspect and audit

For the purpose of:

- (a) investigating a complaint from a Customer about a Service provided by the Provider; or
- (b) ascertaining whether the Provider is complying with its obligations under this Agreement:

the Secretary may at any time during Business Hours:

- (c) access and inspect any Premises at which the Provider provides, or the Secretary reasonably believes that the Provider may be providing, the Services;
- (d) access, inspect and audit records, equipment and other property apparently used in connection with the Services;

- (e) copy records and other documents apparently used in connection with the Services, remove them for copying and retain them for a reasonable time, and
- (f) access computer equipment apparently used in connection with the Services to read, download, copy or transmit data from that equipment.

8.2 Provider to assist with audit

The Provider must, and must ensure that its Associates, give all assistance reasonably required by the Secretary, or a person authorised in writing by the Secretary, to exercise its powers under clause 8.1. Without limiting this obligation, the Provider must attend at such locations and must produce to the Secretary or the Secretary's nominee such records, equipment (including computer equipment) and other property, and must do so at such times, as the Secretary may reasonably require.

8.3 Provider must rectify

Without limiting the Secretary's other rights arising from a breach of this Agreement if, as a result of an inspection or audit under clause 8.1, the Secretary considers that the Provider has breached this Agreement, it may direct the Provider in writing to promptly rectify the breach, and the Provider must rectify the breach and notify the Secretary within 15 Business Days after the action has been taken to do so.

8.4 Periodic reviews

- (a) The Secretary may conduct periodic reviews of the Provider's performance of this Agreement (including the performance of the Services) to assess the Provider's performance under this Agreement, to seek improvements in relation to the Services and to resolve any issues that may arise.
- (b) The Provider must cooperate in the review process, supply the Secretary with any documents or other information reasonably required by the Secretary and comply with all directions or recommendations that result from the review. The Provider 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.

9. Intellectual Property

9.1 Pre-existing IP

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

9.2 Developed IP

The Provider 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 Provider 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 Provider independently of this Agreement for the benefit of itself or its customers.

The Provider warrants that it will be entitled to own and assign to the Secretary any and all Developed IP.

9.3 Licence to the Provider

The Secretary grants the Provider 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.

9.4 Licence to the Secretary

The Provider grants to the Secretary a perpetual, irrevocable, transferable and royalty free licence (including the right to sub-license) to use, copy and modify any of the Provider's Pre-existing IP for the purposes of performing its obligations under this Agreement or any functions under the Road Safety Act and Regulations in connection with this Agreement.

9.5 No infringement

- (a) The Provider must not infringe the Intellectual Property Rights of the Secretary or any third party.
- (b) A party will notify the other party in writing as soon as practicable of any Claim threatened or brought against it, arising from the infringement or alleged infringement of any Intellectual Property Rights in connection with this Agreement.

9.6 Moral rights

The Provider agrees to procure from those of its Associates 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.

9.7 DTP logo and signage

- (a) Subject to clause 9.7(b), the Provider must not use or display any DTP or Victorian Government logo, marks or branding, except with the Secretary's prior written consent, which consent may be given to such and limitations and conditions as the Secretary thinks fit.
- (b) The Provider must, at the Provider'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 Services at the Specified Premises.

10. Confidentiality

10.1 Obligations of confidence

- (a) If the Provider receives Confidential Information, the Provider must, subject to the terms of this Agreement comply with the following obligations at all times:
 - (i) keep the Confidential Information secret and preserve its confidential nature;
 - (ii) not use the Confidential Information for any purpose other than a purpose permitted by this Agreement;
 - (iii) not disclose or permit the disclosure of Confidential Information to any person except as permitted by this Agreement;
 - (iv) only copy or reproduce Confidential Information for the purposes of this Agreement or with the written consent of the Secretary;
 - (v) establish and maintain appropriate security measures to protect the Confidential Information against unauthorised access, use or disclosure;
 - (vi) immediately notify the Secretary of any unauthorised access to, use or disclosure of the Confidential Information;
 - (vii) not reverse engineer, decompile or disassemble any Confidential Information;and

- (viii) 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.
- (b) If any Associate of the Provider receives or may have access to Confidential Information in connection with the Services, the Provider must ensure that that Associate:
 - (i) signs a Confidentiality Deed; and
 - (ii) is duly authorised by the Secretary,
 in each case before receiving or being given access to the Confidential Information.
- (c) This Agreement does not prohibit the disclosure of Confidential Information by the Provider in the following circumstances:
 - (i) the disclosure is specifically permitted by this Agreement;
 - (ii) the disclosure of Confidential Information is to an Associate of the Provider who needs that information to enable the Provider to provide the Services and the Associate has executed a Confidentiality Deed;
 - (iii) the disclosure is to a professional advisor of the Provider and is necessary for the advisor to provide advice in relation to matters arising under or in connection with this Agreement and that professional advisor has executed a Confidentiality Deed;
 - (iv) the disclosure is required by a court or any governmental or administrative authority; or
 - (v) the disclosure is required by or under Law.

10.2 Compliance and undertakings by Associates

The Provider must ensure that its Associates are made aware of and comply with:

- (a) the Provider's obligations of confidence set out in this clause 10;
- (b) the Online Access Terms (if applicable);
- (c) the myVicRoads Terms and Conditions; and
- (d) all applicable Privacy Laws.

10.3 Provision of Confidential Information at the Secretary's discretion

Nothing in this Agreement imposes any obligation on the Secretary to provide, or provide access to, any Confidential Information. The Secretary may at the Secretary's absolute discretion refuse to provide, or provide access to, its Confidential Information. Where the Secretary provides, or provides access to, its Confidential Information, the Secretary 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.

10.4 Equitable remedies

The Provider acknowledges that a breach of the confidentiality obligations set out in this Agreement 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 Provider, or its Associates and the Provider irrevocably consents to an application for that relief.

10.5 Return of Confidential Information

The Provider must immediately on demand, or at the termination of this Agreement:

- (a) deliver to the Secretary any material containing Confidential Information in its possession, power or control, including any material created or generated by the Provider; and
- (b) ensure that it does not retain copies of any Confidential Information in any form.

11. Privacy and Data Protection

11.1 Definitions:

In this Agreement including clause 11, unless expressed or implied to the contrary:

Data Breach means an incident involving the misuse, loss or unauthorised access, modification or disclosure of Scheme Personal Information Handled by the Provider.

Data Incident means unauthorised action (including a threat of, or attempt at, such action) by a person (whether known or unknown) that:

- (a) is, or if successfully completed is reasonably likely to be, an attack, penetration, denial of service, misuse of system access, unauthorised access or intrusion (hacking), virus intrusion or scan of the systems, networks, technology, content or websites of the Provider or its Associate; and
- (b) results in, or if successfully completed is reasonably likely to result in, a Data Breach or could adversely affect an Online System.

Good Industry Practice means the exercise of the highest degree of skill, care, prudence, foresight and operating practice which can reasonably be expected from a well-managed, skilled and experienced provider of services in the nature of the Services, under the same or similar circumstances.

Handle includes collect, hold, use, disclose, process, transmit, share, store, transfer, access, correct, deal with or handle.

Personal Information has the meaning given to that term in the *Privacy and Data Protection Act 2014 (Vic)*.

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

Privacy Law means any Law that applies to the Handling of Scheme Personal Information by the Provider, and includes:

- (a) the Privacy and Data Protection Act 2014 (Vic);
- (b) Part 7B of the Road Safety Act;
- (c) Victorian Protective Data Security Standards;
- (d) Privacy Act 1988 (Cth); and
- (e) a Privacy Principle specified in, or a regulation, code, direction or other requirement made under or given effect by, a Privacy Law.

Scheme Personal Information means any Personal Information which is Handled by or on behalf of the Provider in connection with the Dealer Certification Scheme.

11.2 Disclosure of Personal Information to the Secretary

The Provider warrants to the Secretary that in relation to any Personal Information that the Provider discloses to the Secretary in connection with this Agreement:

- (a) the Personal Information has been collected in accordance with Privacy Law;
- (b) 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; and
- (c) the Secretary is authorised, either by the express or implied consent of the individual or by Law, to collect and use the Personal Information.

11.3 Information Privacy Principles

- (a) The Provider 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**).
- (b) The Provider agrees to 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 Provider 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.
- (c) The Provider warrants to the Secretary that in relation to any Personal Information that the Provider discloses to the Secretary in connection with this Agreement:
 - (i) the Personal Information has been collected in accordance with Privacy Law;
 - (ii) 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 other matters of which an individual is required to be made aware when Personal Information about them is collected by the Secretary; and
 - (iii) the Secretary is authorised, either by the express or implied consent of the individual or by Law, to collect and use the Personal Information.

11.4 Handling Scheme Personal Information

Without limiting clause 11.3, the Provider must:

- (a) handle Scheme Personal Information only for the purpose of providing Services in accordance with this Agreement or as required by Law;
- (b) ensure that its Associates are only given access to Scheme Personal Information for the purposes of the Dealer Certification Scheme and on a "need to know" basis;
- (c) take all reasonable steps to ensure Scheme Personal Information is protected from misuse, interference and loss and from unauthorised access, modification or disclosure; and
- (d) not transfer, disclose or access, or allow any person to transfer, disclose or access, Scheme Personal Information outside of Australia without the Secretary's prior written consent.

11.5 Informing the Secretary etc

The Provider must:

- (a) immediately inform the Secretary if the Provider becomes aware of any:
 - (i) breach or possible breach of any of the obligations contained in, or referred to in, this clause 11, whether by the Provider or its Associate; or
 - (ii) complaint concerning the Provider's Handling of Scheme Personal Information.
- (b) promptly comply with any reasonable directions of the Secretary in relation to:
 - (i) the Handling, management or protection of Personal Information by the Provider or its Associates;
 - (ii) any actual or alleged interferences with privacy or breaches of Privacy Law in relation to Scheme Personal Information;
 - (iii) a complaint concerning the Handling of Personal Information; and
 - (iv) an investigation or the exercise of other functions by the Privacy Commissioner.

11.6 Part 7B of the Road Safety Act

The Provider acknowledges that it may be a "relevant person" for the purposes of Part 7B of the Road Safety Act, and that its rights under this Agreement to Handle Personal Information relating to the registration of vehicles or licensing of drivers are subject to its obligations under that Part 7B.

11.7 [Not used]

11.8 Notification of Data Breaches and Incidents

- (a) The Provider must immediately notify the Secretary if it becomes aware that there has been, or suspects that there may have been, a Data Breach or Data Incident, and must provide with that notification all information of which the Provider is aware about:
 - (i) the nature and circumstances (including time and place) of; and
 - (ii) the person or persons responsible for:

the Data Breach or Data Incident or suspected Data Breach or Data Incident.
- (b) The Provider must provide to the Secretary, in a manner and within the time reasonably specified by the Secretary:
 - (i) such further information about a Data Breach or Data Incident, or suspected Data Breach or Data Incident, as the Secretary requires; and
 - (ii) all reasonable assistance requested by the Secretary to investigate, or mitigate the effects of, a Data Breach or Data Incident, or suspected Data Breach or Data Incident.
- (c) Where the Secretary requires, the Provider must notify a Data Breach or Data Incident, or suspected Data Breach or Data Incident to the Privacy Commissioner and such other persons that the Secretary directs and shall do so in accordance with the Secretary's reasonable directions (whether or not the Provider is required to make the notification under a Privacy Law).

11.9 Data security practices and processes

The Provider must implement practices and processes to ensure compliance with its obligations under this Agreement including pursuant to clause 11 and under Privacy Law. Without limitation, such practices and processes shall:

- (a) sufficiently identify and protect against risks of complete or partial loss, destruction or corruption, or unauthorised (whether malicious or accidental) access, disclosure, alteration or deletion, of Scheme Personal Information;
- (b) be consistent with Good Industry Practice; and
- (c) ensure that up-to date protection against viruses, malware and other threats to the security and integrity of Scheme Personal Information are maintained.

11.10 Return or deletion etc of Scheme Personal Information

Except as required by Law, the Provider must return to the Secretary (or, at the Secretary's absolute discretion, delete or destroy in accordance with the requirements of the Secretary and in the presence of a person authorised by the Secretary), materials and records in the Provider's possession or control which contain Scheme Personal Information:

- (a) when the Scheme Personal Information is no longer required by the Provider for the purposes of this Agreement (including materials and records collected for the purpose of determining identification);
- (b) on suspension or termination of this Agreement; or
- (c) on demand by the Secretary.

11.11 Information protection

The Provider:

- (a) must limit access to the Scheme Personal Information to Associates with a Genuine Operational Need for it (other than for Incidental Use).
- (b) must ensure that Associates with access to Scheme Personal Information (other than for Incidental Use) satisfactorily complete Training and do not access or use the Information other than for a Genuine Operational Need.
- (c) acknowledges that the Secretary is bound by the Victorian Protective Data Security Standards and must not do any act or engage in any practice (including by omission) that would, if done or engaged in by the Secretary, contravene the Victorian Protective Data Security Standards.
- (d) must, if requested by the Secretary, assist the Secretary to comply with its obligations under Part 4 of the *Privacy and Data Protection Act 2014* (Vic).

11.12 Policies and Procedures

- (a) The Provider must have policies which meet the obligations under this Agreement, which cover the following areas, which are approved by the Secretary, which are published internally and which are implemented and distributed to its Associates:
 - (i) **Information Security Policy:** requirements for Associates regarding maintaining the confidentiality, integrity and availability of the Scheme Personal Information.
 - (ii) **Acceptable Use Policy:** requirements for the acceptable use of information and communication technology systems.

- (iii) **Access Control Policy:** requirements regarding identity and access management controls (ie role-based access and least privilege access) and multi-factor authentication, as applicable.
 - (iv) **Asset Management Policy:** requirements for an asset register for all device IPs used to access Scheme Personal Information, including ownership and classification.
 - (v) **Business Continuity and Disaster Recovery Plans:** requirements regarding business disruption and disaster recovery, including formal testing of recovery plans at least twice per year.
 - (vi) **Information Management Policy:** requirements regarding classification, labelling, management, handling of data and its destruction.
 - (vii) **Security Incident Management Policy:** requirements for how security events are identified, managed and closed, with continuous improvement learning communicated to key stakeholders. This should include requirements for data breach response and notification.
 - (viii) **Risk Management Policy:** requirements for how risk is identified, assessed and managed, including third-party risk, ensuring compliance with legislative and regulatory obligations.
- (b) The Provider must have a procedure in place to ensure that the Secretary will be notified of any Security Incident in compliance with clause 11.16.

11.13 Roles and Access

- (a) The Provider must screen all Nominated Users to ensure their eligibility, suitability and integrity for the role and apply appropriate vetting checks. The Provider must provide its Nominated Users with appropriate privacy and security training and awareness in relation to the safe handling, access and use of the Scheme Personal Information, and before access to the Scheme Personal Information is granted to those users.
- (b) The Provider must have logical access controls in place to ensure that only Nominated Users with a Genuine Operational Need to access the Scheme Personal Information are able to do so. The Provider must have processes to manage the lifecycle of users accessing the Scheme Personal Information such that access for Nominated Users leaving their role is revoked within 24 hours, and the list of Nominated Users must be reviewed at least every 3 months according to role-based access / need-to-know / least privilege access.
- (c) The Provider must ensure that its Nominated Users are assigned unique user IDs when accessing electronic documents containing the Scheme Personal Information and strong password controls (password length, password complexity, password rotation and lockout on repeat login failures) are in place.

11.14 System Security

- (a) The Provider must ensure that access to its own business IT system is protected by multi-factor authentication, and the Provider must cooperate with the Secretary in the roll out of multi-factor authentication or single sign on by the Secretary or its delegate.
- (b) The Provider must ensure that the Scheme Personal Information is only be available to Nominated Users over a private network or virtual private network. This network must be logically segmented from any non-production environments. No Scheme Personal Information should be stored or used in any non-production systems.

- (c) Personal computers, mobile devices, public cloud storage, open file shares or unencrypted mobile storage (including USB keys) must not be used to hold or transport Scheme Personal Information. Access rights must prevent copying of the Scheme Personal Information to an unapproved device.
- (d) The Provider must ensure that systems are in place to ensure that threats and vulnerabilities are detected and promptly remediated, commensurate with agreed timescales suitable to the classification of the Scheme Personal Information accessed. This includes installation of anti-malware software, antivirus software, data leakage prevention software, vulnerability scanning, patch management and penetration testing where appropriate. All Extreme findings must be remediated within 48 hours of detection and High findings must be remediated within 5 Business Days of detection. (For the avoidance of doubt, 'Extreme' and 'High' risk levels should be assessed consistently with the Discloser Risk Framework, available on request.)
- (e) The Provider must ensure that the Scheme Personal Information is stored/hosted in Australia in its own business IT systems or in an HCF Certified service (data centre or cloud service). Any Software As A Service platforms used to host the Scheme Personal Information must be classified as Low Residual Risk as per the Victorian Government SaaS Security Register or equivalent Third Party Risk Management System. No Scheme Personal Information shall be stored in general office areas or home offices or on unmanaged end user devices. Scheme Personal Information must not be transferred outside of Australia and must not be accessed from outside of Australia without the prior written consent of the Secretary.
- (f) The Provider must ensure that any cloud platforms used to store the Scheme Personal Information have appropriate security control maturity standards and threat defender settings,

11.15 Physical Security

The Provider must have appropriate physical security controls in place to mitigate the risk of unauthorised access to buildings and rooms (such as zone-based controls) where the Scheme Personal Information is held or used. The Provider must inform the Secretary of any breach of physical security or any incident that, but for mitigating action, could have escalated into or resulted in a Security Incident.

11.16 Security Incident Response

- (a) If the Provider or any Associate suspects or is advised that there may have been a Security Incident, the Provider:
 - (i) must take (including by ensuring any impacted Associates take) all reasonable steps to immediately contain the suspected Security Incident (e.g. stop the unauthorised practice, recover the records, shut down the system etc); and
 - (ii) must promptly undertake or have appropriate Associates undertake (including by ensuring any impacted Associates promptly undertake) a Security Incident Assessment.

Security Incident Assessment

- (b) The Security Incident Assessment must assess whether Scheme Personal Information has been used, disclosed or accessed in a manner inconsistent with the Purpose. If it has, the Provider must provide the Secretary with a Security Incident Notification in accordance with the timeframe specified below. Any Security Incident Notification under the Security Incident Response must include the particulars of the Security Incident and the Provider's (proposed) response, including immediate containment and risk minimisation measures, as appropriate.

- (c) The Security Incident Assessment must:
- (i) be undertaken reasonably: the standard is how a reasonable and impartial person would assess the situation.
 - (ii) be completed as quickly as possible and within 10 Business Days maximum.
 - (iii) not delay the taking of appropriate remedial action to minimise the extent of the Security Incident.
- (d) The Security Incident Assessment should cover whether the information was lost or stolen or misused. If there may be criminal activity involved, the police should be notified as soon as possible. In this case, the Provider must provide advance warning to the Secretary, by email marked "Urgent" or telephone, before the notification to police. The advance warning does not need to be a formal Security Incident Notification.
- (e) The Security Incident Assessment should identify who or what was responsible for the Security Incident, plus any Associate involved in the Security Incident, and whether any identified Associate has been involved in any previous Security Incident. Such Associate information should not be included in the Security Incident Notification.
- (f) The Secretary may contact the Security Representative, seeking information about the Security Incident, including information about Associate involvement in the Security Incident on a confidential basis, and the Security Representative must cooperate. The Provider is responsible to ensure that its contractual relationships with Associates allow this provision of information to the Secretary. The Provider acknowledges that the Secretary may apply Scheme Personal Information access restrictions or other technical controls to individual Associates, if the Secretary considers that is appropriate.
- (g) If the Secretary rates the information as 'Official: Sensitive' or higher and the Provider is required to notify OVIC or OAIC, the Provider must complete a Regulator Incident Notification Form with as much detail as possible including all planned rectification and notification activities and provide it in draft form to the Secretary within 10 Business Days after the Security Incident. The Provider must not notify the relevant regulator until after providing the draft notice to the Secretary (preferably at least 5 Business Days after if regulator timeframes allow), or until the Secretary gives written consent to the Provider to proceed, whichever is sooner.
- (h) Following OVIC or OAIC notification, should the regulator contact the Provider or its Associate directly, the Provider must immediately notify the Secretary by email of the contact and provide the details of the regulator contact and any requests made, and provide the draft response to the Secretary within 3 Business Days after the date the relevant regulator makes direct contact. The Provider must not respond to the relevant regulator until at least 5 Business Days after providing the draft notice to the Secretary, or until the Secretary gives written consent to the Provider to proceed, whichever is sooner.
- (i) The Provider (including its Associates) must be careful not to destroy any evidence relating to the potential Security Incident.
- (j) If the Provider or Secretary consider that customer notification is warranted, they will consult on the format and timing for that notification, and act in good faith to reach an agreed approach. The Provider will use reasonable endeavours to ensure that it and its Associates act consistently with that agreed approach.

Timeframe for Security Incident Notification

- (k) If the Scheme Personal Information was stolen, or may be affected by a Cyber Attack, or if a large number of Scheme Personal Information records containing Personal Data are affected (>100), the Provider's Representative must email the Secretary a Security Incident Notification within 24 hours of first becoming aware of the relevant fact or incident. The Provider must promptly comply with any directions from the Secretary in response to that Security Incident Notification.
- (l) Otherwise, the Provider should take appropriate remedial action and investigate the incident and provide the Secretary with a Security Incident Notification within 10 Business Days.

Cyber Attack

- (m) In the event of a Cyber Attack, the Provider must allow (and must ensure that its Associates allow) the Secretary and other government bodies such as Digital Victoria (CIRS), OVIC, the Australian Cyber Security Centre and OAIC, and third parties nominated by the Secretary to have full visibility of and be involved in incident response, incident analysis, incident recovery and post-incident reviews, as well as request and receive copies of breached data sets.
- (n) The Secretary reserves the right to recover from the Provider the cost of the involvement of any of these parties, or any remediation activity that the Secretary reasonably chooses to undertake as a result of the Cyber Attack.
- (o) The Provider must take all reasonable steps to minimize the impact of the Cyber Attack and to prevent a continuation, expansion or repeat of the Cyber Attack.

Incident rectification report

- (p) The Provider must provide the Secretary with an incident rectification report within 60 days after a Security Incident Notification, outlining its progress in rectifying issues raised in the Security Incident Notification (and must continue to provide incident rectification reports at intervals of 60 days until all issues raised in the Security Incident Notification are rectified to the Secretary's satisfaction).

12. Insurance

12.1 Policies

Subject to clause 12.4, the Provider must take out and maintain for the Dealer Certification Scheme:

- (a) insurance policies (if any) of the type specified in Item 16 of the Scheme Schedule for the amounts and on the terms specified in that Item; and
- (b) any other insurance policies reasonably required by the Secretary in writing.

12.2 Insurer and terms

With respect to every insurance policy required under clause 12.1:

- (a) if required by the Secretary, the policy of insurance must note the interest of the Secretary and the State of Victoria;
- (b) the policy must be maintained until all the Provider's liabilities and obligations under this Agreement or in respect of the Services cease;
- (c) the Provider must comply with and observe the terms of all insurance policies and must not do anything which may or will result in any policy being rendered void or voidable; and

- (d) the Provider must deliver to the Secretary evidence satisfactory to the Secretary that the Provider has taken out a particular insurance policy, and that the policy is current, within 24 hours after receipt of a written request by the Secretary to do so.

12.3 Failure to insure

If the Provider fails to maintain any policy required under this Agreement, the Secretary may:

- (a) effect or maintain such policy and pay premiums on that policy, the cost of which will be paid on demand by the Provider to the Secretary or may, at the Secretary's option, be deducted by the Secretary from monies due or becoming due to the Provider under this Agreement; or
- (b) suspend this Agreement until such time as the Provider provides evidence of insurance as required under clause 12.1.

12.4 Self-insurance

- (a) If the Secretary agrees in writing that the Provider may self-insure for the purposes of this Agreement it may exempt the Provider from taking out any or all insurance policies required under clause 12.1.

13. Warranties

13.1 General Warranties

Each party represents and warrants to the other on a continuing basis that:

- (a) it has full power to enter into and give effect to this Agreement and to complete the transactions contemplated by this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) 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;
- (d) on execution of this Agreement, its obligations under this Agreement will be valid, binding and enforceable; and
- (e) unless otherwise stated, it does not enter into this Agreement as trustee of any trust.

13.2 Performance of Services

The Provider represents and warrants to the Secretary on a continuing basis that:

- (a) it has the skills and resources necessary to perform its obligations under this Agreement;
- (b) 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;
- (c) 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;
- (d) it will perform all Services in a professional manner with due care and skill;
- (e) it will perform the Services in compliance with all Laws of any kind applying to the provision of the Services;

- (f) in performing the Services, the Provider will not infringe the Intellectual Property Rights or any other rights of any other person;
- (g) it will take care in accessing or utilising the Online System and will take all reasonable steps to ensure that its Associates do not interfere with, disrupt or cause any damage, including steps to prevent viruses from being introduced to, the Online Systems; and
- (h) it will not hold the Secretary responsible for any defects or performance issues that are caused by the Provider or any of the Provider's Associates when performing its obligations under this Agreement including obligations regarding the Services and will take all reasonable action to mitigate such defects or performance issues; and
- (i) it will not do anything in performing its obligations under this Agreement, and will ensure that a Delegate does not do anything under a Delegation, which would adversely affect the reputation of the Secretary or the State of Victoria.

13.3 Improper inducement, influence or behaviour

The Provider represents and warrants to the Secretary on a continuing basis that it has not done and will not do 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 of the Services including:

- (a) 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, disfavouring or carrying out any act;
- (b) seeking to influence decisions by improper means;
- (c) any other conduct which would constitute a breach of section 179 of the *Crimes Act 1958* (Vic) or provisions of other jurisdictions relating to secret commissions; and
- (d) unlawfully giving or receiving, or agreeing 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.

14. Indemnity

The Provider will be fully liable for and continually indemnify the Secretary, the State of Victoria and its or their respective servants, officers, employees, contractors and agents (**those indemnified**) against, all Loss suffered or incurred by any of those indemnified arising out of or in connection with:

- (a) the performance or non-performance by the Provider or its Associates of obligations under this Agreement;
- (b) the exercise or purported exercise of a Delegated Function;
- (c) any negligence or other wrongful act or omission of the Provider, Associate or other person for whose acts or omissions the Provider is liable;
- (d) death, personal injury, loss or damage to the Provider, or any Associate, visitor, invitee or licensee of the Provider or their property;
- (e) any infringement by the Provider or its Associates of the Intellectual Property Rights of the Secretary, the State of Victoria or a third party; and
- (f) any deliberate unlawful act of the Provider or its Associates.

15. Dispute Resolution

15.1 Parties must follow dispute resolution procedures

No party may bring any legal action or proceedings in relation to any dispute or disagreement arising from or in connection with 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 15 have been followed.

15.2 Parties must use best efforts to resolve Disputes

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

15.3 Dispute resolution process

- (a) 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.
- (b) If a notice is provided by one party to the other party pursuant to clause 15.3(a):
 - (i) the Provider's Representative and the Secretary's Representative must meet within 10 Business Days after receipt of the notice and endeavour to resolve the Dispute;
 - (ii) if such meeting does not take place within that 10 Business Day period or if the Dispute remains unresolved for a period of 15 Business Days after that meeting and a party wishes to pursue that Dispute, that party must refer the Dispute for resolution to the Secretary and the Chief Executive of the Provider or their nominees (other than their Representatives);
 - (iii) if a Dispute is referred to for resolution under the clause 15.3(b)(iii), the Secretary and Chief Executive of the Provider or their nominees must meet within five Business Days after the Dispute being referred to them and endeavour to resolve the Dispute; and
 - (iv) if such meeting does not take place within that five Business Day period or if the Dispute remains unresolved for a period of 10 Business Days after that meeting and a party wishes to pursue that Dispute, that party may pursue its rights at Law.

15.4 Third party dispute resolution

- (a) If the parties, Representatives, the Chief Executive or nominees, are unable to resolve the Dispute in accordance with clause 15.3, the parties may appoint a third party (whom the parties agree is suitably qualified and sufficiently independent) to attempt to resolve the Dispute.
- (b) Where a third party is appointed to attempt to resolve a Dispute:
 - (i) the parties shall bear equally the costs of engaging and retaining the third party;
 - (ii) the parties must co-operate with the third party and engage in the dispute resolution processes in good faith;
 - (iii) if the parties and the third party agree in writing on a process for attempting to resolve the Dispute, the parties must comply with that process; and
 - (iv) if the parties and the third party have agreed in writing that the decision or determination of the third party shall be binding, the parties must comply with that decision or determination.

15.5 Performance of obligations

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

15.6 Interlocutory relief and right to terminate

Nothing in this clause 15 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.

16. Termination and Suspension

16.1 Termination by Provider

The Provider may terminate this Agreement by giving seven Business Days' notice in writing to the Secretary.

16.2 Vehicle Schemes

- (a) The Secretary may (in its absolute discretion):
- (i) terminate this Agreement with respect to a Vehicle Scheme at any time if it decides for any reason to cease operating, modify or replace the Scheme and no party will be entitled to make a Claim against the other party arising from or in connection with that termination (except in relation to any accrued rights and remedies of the parties which exist as immediately prior to that termination but only to the extent that those accrued rights and remedies are not specifically addressed or incorporated into any new agreement entered by the Secretary and the Provider referred to in clause 16.2(a)(i)); and
 - (ii) require the Provider to enter into a new agreement with the Secretary related to the Dealer Certification Scheme where it terminates this Agreement pursuant to clause 16.2(a) and the Provider must enter into that new agreement where it is requested to do so by the Secretary.

16.3 Termination for cause

Without limiting any other rights the Secretary may have under this Agreement or at Law, the Secretary may immediately terminate this Agreement in whole or in part immediately if:

- (a) the Provider or an Associate of the Provider fails to comply with an obligation under this Agreement or with any reasonable direction, instructions and mandatory standards and guidelines issued by the Secretary including failure to comply with the obligations under clause 4.2;
- (b) any fee or other amount required to be paid or any security required to be given by the Provider under this Agreement are not paid or given by the specified date;
- (c) a new Director is appointed to or a Director is replaced on the Board of Directors, a partner is appointed to the partnership committee or is replaced, a trustee is replaced and in each case the Secretary reasonably objects to that appointment;
- (d) the Provider, or a Director of the Provider, partner in Provider where the Provider is a partnership or trustee or beneficially of the trust where the Provider is a trust is charged with or found guilty of an offence of dishonesty;
- (e) where the Provider is a natural person, the Provider is prevented by any illness or physical or mental disability from performing its obligations under the Agreement;
- (f) the Provider or its Associate fails to process a transaction related to the Services (including registration or transfer of a Vehicle that is sold and/or delivered to a Customer) within the period set out in the Regulations or the Business Rules two or

more times or one time if in the Secretary's opinion that failure was serious or deliberate;

- (g) the Provider or its Associate fails to collect and pay to the Secretary the relevant and correct amount of any amount which the Provider or its Associates is obliged to collect on behalf of the Secretary including Customer Payments, Regulated Fees (including motor vehicle duty and transport accident charges (each as identified in the Duties Act) and any other Transport Accident Commission fees and rates) when due and payable two or more times (or one time if in the Secretary's opinion that failure was serious or deliberate), or fails on two or more occasions (or one occasion if in the Secretary's opinion that failure was serious or deliberate) to take reasonable care to ensure that the Provider and/or its Associates comply with their obligations to pay those amounts to the Secretary when due and payable;
- (h) the Provider or its Associate has had its LMCT licence cancelled or suspended or has had an agreement or licence cancelled, suspended or terminated by the Secretary or DTP in connection with any other vehicle safety scheme;
- (i) the Provider or its Associate has had an authorisation or agreement under the Dealer Certification Scheme, or any other Vehicle Scheme or similar scheme operated or administered by the Secretary or DTP cancelled, suspended or terminated;
- (j) an Adverse Event occurs in respect of the Provider; or
- (k) the Provider ceases, or indicates that it is about to cease, carrying on its business.

16.4 Termination for convenience

The Secretary may terminate this Agreement in whole or in part without cause on 60 Business Days written notice to the Provider. No party will be entitled to make a Claim against the other party arising from or in connection with that termination (except in relation to any accrued rights and remedies of the parties which exist as immediately prior to that termination).

16.5 Notice of termination

When the Secretary terminates the Agreement in whole or in part it must give the Provider notice in writing stating:

- (a) where the Agreement is terminated in whole, the date on and from which the Agreement is terminated; and
- (b) where the Agreement is terminated in part, the parts of the Agreement terminated and the date from which those parts are terminated.

16.6 Suspension

The Secretary may suspend any part or the whole of this Agreement at any time in its absolute discretion by providing notice to the Provider to that effect setting out details of the suspension including the period of the suspension.

16.7 Effect of suspension and termination

During any period of suspension, and following termination, of this Agreement:

- (a) the Provider must:
 - (i) not perform any of the Services (or if the Agreement is suspended or terminated in part, any Services related to that part);
 - (ii) not hold out to any person that it is able to perform such Services during the period of suspension;

- (iii) not solicit or accept Customer Payments in respect of such Services;
 - (iv) if directed by the Secretary, return to the Secretary any forms, documents, number plates or labels in the Provider's or Provider's Representative's possession; and
 - (v) immediately forward to the Secretary any Customer Payments received and pay to the Secretary any other amounts which were payable in connection with this Agreement up to the date of termination or suspension; and
- (b) the Secretary will remove the Provider's name and details from any list of providers which the Secretary makes available to members of the public who may require services under the Dealer Certification Scheme.

16.8 Duration of suspension

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

16.9 Termination or suspension in part

Where the Agreement may be terminated or suspended in part under this clause 16, the termination or suspension may be in respect of one or more of Services, Specified Vehicles or Specified Transactions, in which case the Agreement shall continue in effect as if the relevant Services, Specified Vehicles and/or Specified Transactions were omitted from the Scheme Schedule.

16.10 Survival

The following clauses will continue during any period of suspension and survive the termination (for whatever reason) of this Agreement:

- (a) clause 4.10 (Record keeping);
- (b) clause 8 (Audit and review);
- (c) clause 9 (Intellectual Property);
- (d) clause 10 (Confidentiality);
- (e) clause 11 (Privacy and Data Protection);
- (f) clause 13 (Warranties);
- (g) clause 14 (Indemnity);
- (h) clause 15 (Dispute Resolution); and
- (i) clause 16.9 (Termination and Suspension).

16.11 No liability

The Secretary is not liable to the Provider, or any person claiming through the Provider, for any loss caused by or arising out of:

- (a) the suspension or termination of this Agreement in whole or in part other than any accrued rights and liabilities which exist under this Agreement as at the date of termination; or
- (b) the revocation or variation of a Delegation.

17. Representatives and Nominated Administrators

17.1 Appointment of representatives

- (a) The Representative of the Provider shall be:
 - (i) where the Provider is a natural person, the Provider; and
 - (ii) where the Provider is a body corporate, partnership or trust—the person named as the Provider's Representative in Schedule 1 or other person substituted in accordance with clause 17.4.
- (b) The Secretary's Representative is the persons named as such in Schedule 1 or other persons substituted in accordance with clause 17.4.
- (c) Each Party shall ensure that its Representative:
 - (i) has the authority to deal on its behalf with the other party or its Representative in respect of the Agreement and the Services; and
 - (ii) is ordinarily available to be contacted during normal business hours.

17.2 Appointment of Nominated Administrators

- (a) The Provider shall nominate a person to be the Nominated Administrator for each Specified Premises, to be responsible for:
 - (i) administration of this Agreement and liaison with the Secretary;
 - (ii) day to day delivery of the Services; and
 - (iii) supervision of other Associates involved in provision of the Services—
at the relevant Specified Premises.
- (b) The Provider's Nominated Administrator(s) shall be the person(s) named as such in Schedule 2 with respect to Specified Premises, or other persons substituted in accordance with clause 17.4.
- (c) A Nominated Administrator must be:
 - (i) the Provider (where the Provider is a natural person) or an Associate of the Provider;
 - (ii) a person who usually works at the Specified Premises for which he or she is nominated; and
 - (iii) a person who is reasonably acceptable to the Secretary.

17.3 Parties responsible for their Representatives

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

17.4 Substitution of Representatives and Nominated Administrators

A party may at any time substitute a person as its Representative, or in the case of the Provider, a Nominated Administrator, provided that it:

- (a) in the case of the Provider, it first consults with the Secretary; and

- (b) gives notice to the other Party setting out the substituted Representative or Nominated Administrator's name and contact details.

18. Notices

18.1 Giving notices

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:

- (a) Delivered or posted to the party's Representative at the address set out in Schedule 1; and
 - (b) Emailed to the party's Representative at the email address set out in Schedule 1,
- in each case as updated pursuant to clause 18.2.

18.2 Change of address for notices

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

18.3 Time notice is given

Any notice or communication is to be treated as given at the following time:

- (a) if it is delivered, when it is left at the relevant address.
- (b) if it is sent by post, 3 (or, in the case of a notice or communication posted to or from another country, 9) Business Days after it is posted.
- (c) 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.

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.

19. Miscellaneous

19.1 Agency

- (a) Except as provided in clause 19.1(b), this Agreement does not create a partnership, agency, fiduciary relationship or any other relationship, except the relationship of independent contracting parties, between the parties.
- (b) If the Provider is to collect Prescribed Fees in connection with the Services, the Secretary appoints the Provider as its agent for the sole purpose of collecting Prescribed Fees and to issue receipts for those Customers.

19.2 Approvals and consents

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.

Where this Agreement refers to a matter being to the 'satisfaction' of the Secretary, this means to the satisfaction of the Secretary in its absolute discretion.

19.3 Assignments and transfers

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

19.4 Compliance with Laws

In performing its obligations under this Agreement, the Provider must, and must ensure that Associates, agents and Delegates, comply with the provisions of all Laws.

19.5 Costs

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.

19.6 Entire agreement

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.

19.7 Effect of legislative change

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.

19.8 Execution of separate documents

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.

19.9 Further acts

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.

19.10 Governing law and jurisdiction

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.

19.11 Joint and individual liability and benefits

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.

19.12 Severability

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.

19.13 Waivers

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 Provider. Waiver by the Secretary is only effective if it is in writing.

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.

19.14 Remedies cumulative

Each right, power and remedy in connection with this Agreement are in addition to other rights, powers and remedies arising from or in connection with this Agreement, any other agreement or by Law, in each case independently of this Agreement.

20. Definitions

In this Agreement, unless expressed or implied to the contrary:

Administrative Fee has the meaning given in clause 5.6.

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, a circulating asset within the meaning of that term in the PPSA ceases to be a circulating asset, 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.

Agreement means this agreement and without limitation includes the Schedules and any attachment to a Schedule.

Associate means an officer of the Provider or a person employed or engaged by the Provider in connection with this Agreement or the Services, and includes Delegates, secondees to, and contractors and agents of, the Provider (and includes the subcontractor of any contractor).

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.

Business Rules means:

- (a) the requirements set out in the Regulations; and
- (b) any forms, instructions and Dealer Bulletins provided to the Provider by the Secretary from time to time,

and including the DCS Rules.

Claim means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made under any agreement or otherwise at Law, including for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief or remedy.

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

Confidential Information means any information provided by the Secretary to the Provider or any of its Associates, or otherwise obtained by the Provider or any of its Associates in connection with this Agreement or the Services, and without limitation includes:

- (a) information to which Part 7B of the Road Safety Act applies, or is otherwise required by Law to be kept confidential; and
- (b) 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; but
- (c) 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 Provider can prove was independently acquired or developed by it without breaching the terms of this Agreement.

Confidentiality Deed means a deed in the form set out in Schedule 3 or otherwise acceptable to the Secretary.

Customer means a person who requests or obtains the provision of a Service by the Provider.

Customer Payments means the amounts payable by a Customer for the provision of a Service, including Prescribed Fees and Regulated Fees.

Cyber Attack means suspected, potential or actual unauthorised access to the Scheme Personal Information or to a Provider computer system, including access by external malicious actors or malicious / accidental actors internal to the Provider to any database, email system, server, data storage device or mobile device where the Scheme Personal Information may be stored or accessed, and includes a ransomware attack.

Data Breach has the meaning given in clause 11.1.

Data Incident has the meaning given in clause 11.1.

DCS Rules has the meaning given to that term in the Scheme Schedule.

Dealer Bulletins means bulletins issued by the Secretary to Providers from time to time.

Dealer Certification Scheme means the Vehicle Scheme in relation to which the Provider is authorised under this Agreement to provide Services.

Delegate means a person to whom the Secretary has delegated functions and powers for the purpose of providing Services.

Delegated Function means a power, duty or function of the Secretary under the Regulations which is delegated in accordance with clause 3.

Delegation means an instrument by which the Secretary delegates any functions, powers or duties required to provide the Services to a Delegate.

Discloser Risk Framework means the DTP Risk Management Framework (February 2023) or any document replacing that framework.

DTP means the Department of Transport and Planning.

Duties Act means the *Duties Act 2000* (Vic).

Fee means any fee payable to the Secretary pursuant to this Agreement and includes the Administrative Fees, Prescribed Fees and Regulated Fees.

Fit and Proper Person means a fit and proper person to provide the Service considering character, diligence, honesty, integrity, judgement, knowledge, skills and experience. Without limitation, the following matters may result in a person failing to meet the Fit and Proper criteria and must be reported to the Secretary:

- (a) any charge where a finding of guilt or conviction has been recorded within the last ten (10) years relating to any one or more of the following matters:
 - (i) any offence which indicates poor judgement of character or dishonesty;
 - (ii) theft or an offence involving deception or fraud;
 - (iii) an act of violence or threat of violence;
 - (iv) any vehicle related crime;
 - (v) firearms related matters;
 - (vi) crimes associated with drugs;
 - (vii) failing to notify police while being the driver of a vehicle which was involved in an accident which resulted in the injury of persons or damage to property; or
 - (viii) an offence involving the risk of injury to the public.
- (b) any substantiated allegations of behaviour less than 5 years old having a character of fraud, dishonesty, violence, assault or threatening behaviour.

Genuine Operational Need refers to using the Scheme Personal Information to perform a function consistent with the Purpose.

Good Industry Practice has the meaning given in clause 11.1.

GVM means gross vehicle mass which is the total weight of a vehicle including any fuel, fluids, passengers and cargo.

Handle has the meaning given in clause 11.1.

HCF Certified means a facility or service certified under the Commonwealth government's Hosting Certification Framework, as amended or replaced:
<https://www.hostingcertification.gov.au/certified-service-providers>.

HV and **heavy vehicles** means vehicles over 4.5 tonne GVM including trailers.

Incidental Use (in relation to an Associate) is briefly sighting the Scheme Personal Information as part of other duties and not to perform a function central to the Purpose (such as where an Associate undertaking mail delivery or IT administration sights the Scheme Personal Information in passing), and includes audit and legal activities and infringement processing.

Intellectual Property Rights means all copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including services marks) and registered designs, trade secrets and know-how and all other intellectual or intangible property.

Law includes:

- (a) statutes, regulations, by-laws, proclamations, ordinances, local laws, orders and other legislative instruments of each of the Commonwealth, the State or a governmental authority;
- (b) all lawful directions of public authorities; and
- (c) conditions and requirements of licences, permits, consents and other authorisations given under Law.

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).

LV and light vehicles means vehicles up to and including 4.5 tonne GVM.

LVT mean Licensed Vehicle Tester, being a person licensed to inspect and examine vehicles for the purpose of issuing Certificates of Roadworthiness under Part 6 of the Regulations.

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

myVicRoads Terms and Conditions means those terms and conditions of that name currently available at <https://www.vicroads.vic.gov.au/website-terms/individual-terms-and-conditions> as updated from time to time on the VicRoads website.

Nominated Administrator in respect of Specified Premises means the representative of the Provider as specified in Item 5 of the Scheme Schedule or substituted in accordance with clause 17.4 in respect of the Specified Premises.

Nominated User means Associates which will access Scheme Personal Information.

Online Access Terms means the terms and conditions governing the use of and access to an Online System set out in Schedule 4.

OAIC means Office of the Australian Information Commissioner.

Online Access means access to an Online System.

Online System means an electronic database, web-portal or other system in or through which the Secretary permits or requires the Provider to access or provide information or conduct transactions.

OVIC means Office of the Victorian Information Commissioner.

Personal Data means data from which an individual's identity is apparent or can reasonably be ascertained and includes de-identified data if it is at risk of being re-identified in the context of the Purpose.

Personal Information has the meaning given in clause 11.1.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Premises means premises at or from which a Service must be provided under a Vehicle Scheme in accordance with this Agreement.

Prescribed Fees has the meaning given in Item 10 of 0.

Prior Agreement has the meaning given in clause 1.2(a).

Privacy Commissioner has the meaning given in clause 11.1.

Privacy Law has the meaning given in clause 11.1.

Provider means the person or body specified in Item 2 of Schedule 1 in relation to a Vehicle Scheme specified in Item 1 of Schedule 1.

Purpose means to provide the Services and comply with the Provider's obligations in connection with this Agreement.

Register means an electronic register of the Provider's Nominated Persons (in Excel format or equivalent).

Regulated Fee has the meaning given in clause 5.6.

Regulations means the regulations made pursuant to section 95 of the Road Safety Act.

Regulator Incident Notification Form means either the Incident Notification Form published on OVIC's website, as updated from time to time (<https://ovic.vic.gov.au/resource/ovic-incident-notification-form/>) or if the Provider is bound by the *Privacy Act 1988* (Cth), it may choose to use the Notifiable Data Breach Form published by OAIC instead.

Representative in relation to a Party means the person who is the Party's representative in accordance with clause 16.

Road Safety Act means the *Road Safety Act 1986* (Vic).

Scheme Schedule means Schedule 2 to this Agreement which sets out additional terms and conditions that apply to the Dealer Certification Scheme.

Scheme Personal Information has the meaning given in clause 11.1.

Secretary, in relation to something which the Secretary may do after 1 January 2020 which was done by VicRoads before that date, includes VicRoads.

Secretary's Representative means the person specified as the Secretary's Representative in Item 4 of Schedule 1 or as substituted by the Secretary in accordance with clause 17.4.

Security Controls means the processes set out in clauses 11.10 to 11.14.

Security Incident means:

- (a) any suspected, potential or actual unauthorised access, modification, use, disclosure, loss of or interference with Scheme Personal Information by the Provider or its Associate or an officer, employee or contractor of an Associate; or
- (b) any suspected, actual or potential misuse or theft of, or potential Cyber Attack against, the Scheme Personal Information accessed or stored by the Provider or its Associate or an officer, employee or contractor of an Associate (and includes any reasonable third-party complaint of such an occurrence), and any event affecting the integrity, security, confidentiality or availability of the Scheme Personal Information (including a ransomware attack).

Security Incident Assessment means the process set out in clauses 11.16(b) to 11.16(j).

Security Incident Notification means a notification of a Security Incident to be given by Recipient to Discloser in accordance with the Security Incident Response.

Security Incident Response means the process set out in clause 11.16.

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

Security Representative means a suitably qualified employee of the Provider with responsibility in relation to this Agreement for compliance with Security Controls and managing Security Incidents.

Service means a service which the Provider is authorised to provide under a Vehicle Scheme, as specified in Item 2 of the Scheme Schedule.

Specified Premises means the Premises referred to in Item 5 of the Scheme Schedule and identified in Column 3 to Attachment 1 of the Scheme Schedule and where a Provider only conducts its business using an online sales and delivery model, the Premises identified must include an both address at which the office administrative functions for the business are carried out and also the address of a suitable vehicle storage facility for any Specified Vehicles.

Specified Vehicles means the vehicles or type or class of vehicle in relation to which a Service may be provided under a Vehicle Scheme, as specified in Item 3 of the Scheme Schedule.

Specified Transactions means the transactions or type of transaction with respect to which a Service may be provided under a Vehicle Scheme, as specified in Item 4 of the Scheme Schedule.

Standards for Registration means the standards set out in Schedule 1 of the *Road Safety (Vehicles) Regulations 2021 (Vic)*.

Supplied material means resources and access to resources supplied by the Secretary in as specified in Item 6 of the Scheme Schedule and any other things supplied by the Secretary to the Provider or an Associate of the Provider for the purpose of this Agreement.

TA means a vehicle without motive power designed and/or constructed to be drawn behind a motor vehicle with a gross trailer mass not exceeding 4.5 tonnes.

Term means the term of this Agreement as set out in clause 1.

Training means any online Associate training notified to the Provider by the Secretary from time to time in connection with the Provider's information protection obligations pursuant to this Agreement.

User ID means a user access code issued to the Provider or an Associate by or with the consent of the Secretary to enable Online Access.

Vehicle includes:

- (a) a motor vehicle;
- (b) a trailer; and
- (c) where performance of Services relates to vessels under the *Marine Safety Act 2010*, a vessel.

Vehicle Scheme means a scheme operated by the Secretary for the purpose of authorising persons to provide services and perform functions in relation to the inspection, modification, certification, testing and/or registration of Vehicles.

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.

21. Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to A\$, \$A, dollar or \$ is to Australian currency;

- (d) a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule or attachment or annexure to, this document, and a reference to the Agreement includes any schedule or attachment or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to time is to Melbourne, Australia time;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local department or agency or other entity;
- (h) a reference to a Law includes regulations, by-laws, proclamations, ordinances, local laws, orders and other legislative instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement or any part of it;
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (l) headings are for ease of reference only and do not affect interpretation.

Execution and date

Executed

Date: / / 20

Provider (Company)

Executed by
 in accordance with section 127
 of the Corporations Act 2001 (Cth):

.....
 Signature of Director

.....
 Signature of Company Secretary / Director

.....
 Name of Director (print)

.....
 Name of Company Secretary / Director (print)

OR

Provider (Sole trader / individual)

Signed by the Provider

.....
 Signature of Provider

.....
 Signature of witness

.....
 Name of Provider (print)

.....
 Name of witness (print)

Secretary

Signed by the delegate of the Secretary to the
 Department of Transport for and on behalf of
 the Crown in right of the State of Victoria

.....
 Signature of delegate

.....
 Name of witness (print)

.....
 Name and position of delegate (print)

.....
 Signature of witness

Schedule 1 - General particulars

Item 1	Vehicle Scheme or Scheme(s)	<input checked="" type="checkbox"/> Dealer Certification Scheme <input type="checkbox"/> Other (specify)															
Item 2	Provider details	<input type="checkbox"/> Company Trading Name: _____ Company Name: _____ ACN: _____ ABN: _____ <input type="checkbox"/> Individual Sole Trader name: _____ Address: _____ Suburb / Town: _____ Postcode: _____ Email: _____ Contact phone no: _____ Website: _____ Provider Type: <table style="margin-left: 20px;"> <tr><td><input type="checkbox"/></td><td>A</td></tr> <tr><td><input type="checkbox"/></td><td>B</td></tr> <tr><td><input type="checkbox"/></td><td>C</td></tr> <tr><td><input type="checkbox"/></td><td>D</td></tr> <tr><td><input type="checkbox"/></td><td>E</td></tr> <tr><td><input type="checkbox"/></td><td>F</td></tr> <tr><td><input type="checkbox"/></td><td>G</td></tr> </table> AFSACS No: (if applicable) _____ VASS No: (if applicable) _____ LVT No: (if applicable) _____ LMCT No: (if applicable) _____		<input type="checkbox"/>	A	<input type="checkbox"/>	B	<input type="checkbox"/>	C	<input type="checkbox"/>	D	<input type="checkbox"/>	E	<input type="checkbox"/>	F	<input type="checkbox"/>	G
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<input type="checkbox"/>	F																
<input type="checkbox"/>	G																
Item 3	Provider's Representative	Name: _____ Address: _____ Email: _____ Telephone: _____															
Item 4	Secretary's Representative	Name and position: Nicole Davis Scheme Manager (Dealers) Address: 110 Maroondah Hwy Ringwood VIC 3134 Email: dealers@roads.vic.gov.au Telephone: 1300 555 153															

Schedule 2 - Scheme Schedule - Dealer Certification Scheme

<p>Item 1</p>	<p>Definition of terms in this Schedule</p>	<p>DCS means the Dealer Certification Scheme.</p> <p>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 online help centre on the VicRoads web site and DCS bulletins.</p> <p>High Risk Vehicle means:</p> <ul style="list-style-type: none"> • 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 (RAWS) 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; • 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 Provider, deemed to be a High Risk Vehicle. <p>Provider Type A means a LMCT which is a wholesale or retail supplier of brand new vehicles.</p> <p>Provider Type B means a LMCT which is a manufacturer or importer of brand new vehicles.</p> <p>Provider Type C means a Registered Automotive Workshop (RAWs) approval holder.</p> <p>Provider Type D means a manufacturer or dealer of caravans or trailers that is not a LMCT.</p> <p>Provider Type E means a manufacturer or dealer of vessels (boats) that is not a LMCT.</p> <p>Provider Type F means a LMCT which registers or transfers vehicles on behalf of 3rd parties. A fleet operator, logistics</p>
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		<p>company and/or pre-delivery company that is engaged to register vehicles supplied by a LMCT.</p> <p>Provider Type G means a LMCT which is a used car dealer that processes the transfer of registered vehicles.</p> <p>Provider's Usual Trading Stock includes:</p> <ul style="list-style-type: none"> • a vehicle traded under a distribution, franchise or similar agreement between a Provider which is a vehicle retailer and the manufacturer or importer which is not the retailer of the vehicle; • a vehicle that has been acquired by the Provider, or is otherwise in the possession of the Provider, for the purposes of resale; • where the Provider is a manufacturer or importer, a vehicle manufactured or imported by the Provider; • where the Provider is a fleet manager, a vehicle in a fleet that is managed by the Provider. <p>Standards for registration means the standards set out in Schedule 1 of the <i>Road Safety (Vehicles) Regulations 2021</i>.</p>
Item 2	Services	The Service specified in column 1 of Attachment 2 for the relevant Provider Type specified in Item 2 of Schedule 1.
Item 3	Specified Vehicles	The Service specified in column 2 of Attachment 2 for the relevant Provider Type specified in Item 2 of Schedule 1.
Item 4	Specified Transactions	The Service specified in column 3 of Attachment 2 for the relevant Provider Type specified in Item 2 of Schedule 1.
Item 5	Specified Premises and Nominated Administrator for each Specified Premises	<p>The Provider is authorised to provide the Services at each of the Premises set out in Column 3 of Attachment 1.</p> <p>The Nominated Administrator for each Premises is the person specified in column 4 of Attachment 1 with respect to that Premises.</p>
Item 6	Resources, access etc	<ul style="list-style-type: none"> • access to myVicRoads partner account • access to the VicRoads online bookshop for partners • number plates • access to the online system for ordering number plates • stationery • registration labels for vessels • prepaid envelopes to submit paperwork for processing or scanning • dealer online authority to register forms • registration concession forms • certificate of approved operations • The help centre on the VicRoads web site • offline dealer registration summary forms • offline dealer transfer summary forms

		<ul style="list-style-type: none"> • offline dealer registration forms • dealer application for manual transfer of registration • dealer application to cancel registration forms • certificates of registration
Item 7	Training	<ul style="list-style-type: none"> • All Delegates must successfully complete the following training: any training upon approval to commence operating under this Scheme identified by the Secretary from time to time; and • any other training identified by the Secretary pursuant to clause 4.6(b).
Item 8	Accreditation	<p>The Provider must maintain the following accreditation throughout the term:</p> <p>Not applicable</p>
Item 9	Delegates	The Provider and Associates of the Provider to whom functions have been delegated for the purpose of this Agreement.
Item 10	Prescribed Fees	Means fees and charges payable in connection with the registration of Vehicles which are not Regulated Fees or Administrative Fees.
Item 11	Customer Payments	Only Prescribed Fees, Regulated Fees and other Fees permitted under clause 5.4 are permitted to be Customer Payments.
Item 12	Secretary Payments	Not applicable
Item 13	Administrative Fees	See clause 5 of the Agreement
Item 14	Record keeping	<p>The Provider must retain the following records and other documentation related to the provision of the Services, (or ensure that they are retained in a location notified in writing to the Secretary), for 7 years (including following termination of the Agreement):</p> <ul style="list-style-type: none"> • all records required to be obtained under the DCS processes included in the online help centre on the VicRoads web site; • all records relating to the provision of the Services that are required to be retained under any Law; and • any other records the Secretary reasonably requires the Provider to retain. <p>Upon request by the Secretary, the Provider must promptly make any records or other documentation required to be kept under clause 4.9 available to the Secretary.</p>
Item 15	Special conditions	<ol style="list-style-type: none"> 1. The Provider must comply with all conditions specified in column 4 of Attachment 2 for the relevant Provider Type specified in Item 2 of Schedule 1. 2. A service designated as “Delegated Services” in Attachment 2 must only be performed by a Delegate. 3. The Provider must ensure that the following procedures are carried out in accordance with the DCS Rules and any other requirements specified by the Secretary.

		<ul style="list-style-type: none"> • pre-registration inspections; • checking the Register of Approved Vehicles (RAV) or vehicle import approval documentation to confirm compliance with the Standards for Registration; • verification of the identity and eligibility of a person in whose name a Vehicle is to be registered; • completion and submission of documentation (via online or manually); • assigning of registration numbers and the issuing of number plates; • affixing plates and labels, • issuing certificates of registration; and • calculation, collection and remission of Customer Payments. <p>4. The Provider must meet and comply with the Eligibility Criteria throughout the term and must immediately notify the Secretary if the Provider ceases to do so.</p> <p>5. The Provider must provide to the Secretary such reports as are required to be provided under the DCS Rules and such other information or reports concerning the Services as the Secretary reasonably requires. The Provider must provide such reports or information at the time and in the manner specified by the DCS Rules or the Secretary.</p> <p>6. The Provider 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 Secretary, and must have in place documented procedures to demonstrate compliance with that process.</p> <p>7. The Provider must not allow a person to whom it supplies or delivers a vehicle to take possession of a Vehicle unless:</p> <ul style="list-style-type: none"> • all the requirements for registration of the Vehicle have been completed; and • except where the Provider is permitted to register Vehicles without using an Online System - all Customer Payments have been remitted to the Secretary.
Item 16	Insurance	<p>The Provider must have the relevant insurances specified below in accordance with their Provider Type:</p> <p><i>Provider Type A, B, C, D, E and F</i></p> <ul style="list-style-type: none"> • Public liability insurance for an amount not less than \$10,000,000 or lesser amount agreed between the Secretary and the Provider (per occurrence) • Property: Provider Property must be insured for the replacement cost of the Provider Property. • Worker’s Compensation: As required by Law

Attachment 1 - Provider Premises and Nominated Administrators

Column 1 Premises Code	Column 2 Customer Number	Column 3 Trading Name and the Address for each Specified Premises	Column 4 Nominated Administrator (Name and Position)	Column 5 Contact Details (Phone and email)
P1				
P2				
P3				
P4				
P5				
P6				

Column 1 Premises Code	Column 2 Customer Number	Column 3 Trading Name and the Address for each Specified Premises	Column 4 Nominated Administrator (Name and Position)	Column 5 Contact Details (Phone and email)
P7				
P8				
P9				
P10				
P11				
P12				

Attachment 2 - Services, Vehicles, Transactions and Conditions

PROVIDER TYPE A - LMCTs (new vehicle wholesale or retail supplier of brand new vehicles including fleet operators, logistics and pre-delivery companies)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Registration of vehicles			
<ul style="list-style-type: none"> • registering vehicles* • registration for less than one year* • verifying eligibility and identity of applicants • pre-registration inspection • checking vehicle details on the Register of Approved Vehicles (RAV) • applying the correct registration rate, TAC charge, and concession (where applicable) • inspecting and recording GCM & GVM* • obtaining a VASS certificate for modified vehicles when applicable • recording garage address if different from residential address • setting conditions of registration* • check RWC • assessing fees* • receiving customer payments • assigning registration number* • issuing and affixing number plates and affixing labels • issuing certificates of registration* • selling registration number rights <p>(*Delegated Services which can only be performed by the Provider or a Delegate)</p>	<p>Authorised to register new vehicles and used vehicles (other than High Risk Vehicles) supplied from the Provider's Usual Trading stock that are:</p> <ul style="list-style-type: none"> • Standard production light vehicles (other than motorcycles) • Standard production motorcycles • Standard production heavy motor vehicles • Light trailers • Heavy trailers • Caravans • Low volume cab/chassis builds • Agricultural Equipment • Plant equipment 	<p>Registration in the name of any of the following:</p> <ul style="list-style-type: none"> • the Provider • an employee of the Provider • a person who purchases or leases the vehicle from the Provider • a person to whom the Provider delivers the vehicle on behalf of a LMCT where the LMCT is the manufacturer or importer of the vehicle or has supplied the vehicle to that person • another person who is a LMCT. 	<p>New registration must be by myVicRoads partner account for:</p> <ul style="list-style-type: none"> • Standard production vehicles, • Trailers, • Low volume cab chassis builds, and • Motorcycles. <p>Registration must be manual transaction (Fuji Film) for previously registered vehicles. Independent pre-registration inspection required for:</p> <ul style="list-style-type: none"> • heavy trailers, • cab-chassis, and • previously registered heavy vehicles that have been modified. <p>Separate entity to applicant Provider must hold delegation to register in the name of the Provider.</p> <p>Non LMCT pre-delivery companies can only provide the Services for brand new vehicles on behalf of an LMCT.</p>

PROVIDER TYPE A - LMCTs (new vehicle wholesale or retail supplier of brand new vehicles including fleet operators, logistics and pre-delivery companies)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Transfer of registration			
<ul style="list-style-type: none"> transfer of registration* verifying eligibility and identity of applicants check RWC assessing fees* receiving customer payments selling registration number rights assigning registration numbers* issuing and affixing number plates issuing certificates of registration* <p>(*Delegated Services which can only be performed by the Provider or a Delegate)</p>	<p>Authorised to transfer new, used and demonstrator vehicles supplied from the Provider's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> Standard production light vehicles (other than motorcycles) Standard production motorcycles Standard production heavy motor vehicles Light trailers Heavy trailers Caravans Low volume cab/chassis builds Agricultural Equipment Plant equipment 	<p>Registration transfer into the name of:</p> <ul style="list-style-type: none"> the Provider an employee of the Provider a person who purchases or leases the vehicle from the Provider another person who is a LMCT. 	<p>Transfer of registration must be by myVicRoads partner account.</p> <p>Independent pre-registration inspection required for heavy trailers and cab-chassis.</p> <p>Separate entity to applicant Provider must hold delegation to transfer registration into the name of the Provider.</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"> Agricultural equipment, and Plant equipment

PROVIDER TYPE B - MANUFACTURERS & IMPORTERS OF BRAND NEW VEHICLES			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Registration of vehicles			
<ul style="list-style-type: none"> registering vehicles* registration for less than one year* verifying eligibility and identity of applicants pre-registration inspection checking vehicle details on the Register of Approved Vehicles (RAV) applying the correct registration rate, TAC charge, and concession (where applicable) inspecting and recording GCM & GVM* obtaining a VASS certificate for modified vehicles when applicable recording garage address if different from residential address setting conditions of registration* check RWC assessing fees* receiving customer payments assigning registration number* issuing and affixing number plates and affixing labels issuing certificates of registration* selling registration number rights <p>(*Delegated Services which can only be performed by the Provider or a Delegate)</p>	<p>Authorised to register new vehicles and used vehicles (other than High Risk Vehicles) supplied from the Provider's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> Standard production light vehicles (other than motorcycles) Standard production motorcycles Standard production heavy motor vehicles Light trailers Heavy trailers Caravans Low volume cab/chassis builds Agricultural Equipment Plant equipment. 	<p>Registration in the name of:</p> <ul style="list-style-type: none"> the Provider. an employee of the Provider. a person who purchases or leases the vehicle from the Provider another person who is a Licensed Motor Car Trader. 	<p>New registration must be by myVicRoads partner account.</p> <p>Previously registered vehicles:</p> <ul style="list-style-type: none"> must be registered by manual transaction (Fuji Film), and require independent pre-inspection. <p>Separate entity to applicant Provider must hold delegation to register in the name of the Provider.</p>

PROVIDER TYPE B - MANUFACTURERS & IMPORTERS OF BRAND NEW VEHICLES			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Transfer of registration			
<ul style="list-style-type: none"> transfer of registration* verifying eligibility and identity of applicants check RWC, VASS and import approval conditions assessing fees* receiving customer payments selling registration number rights assigning registration number* issuing certificates of registration* assigning number plates (*Delegated Services which can only be performed by the Provider or a Delegate)	Authorised to transfer new, used and demonstrator vehicles supplied from the Provider's Usual Trading Stock that are: <ul style="list-style-type: none"> Standard production light vehicles (other than motorcycles) Standard production motorcycles Standard production heavy motor vehicles Light trailers Heavy trailers Caravans Low volume cab/chassis builds Agricultural Equipment Plant equipment 	Registration transfer in name of: <ul style="list-style-type: none"> the Provider. an employee of the Provider. a person who purchases or leases the vehicle from the Provider. another person who is a Licensed Motor Car Trader. 	Transfer of registration must be by myVicRoads partner account. Separate entity to applicant Provider must hold delegation to transfer registration into the name of the Provider.

PROVIDER TYPE C - Registered Automotive Workshop (RAWS) approval holder			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Registration of vehicles			
<ul style="list-style-type: none"> registering vehicles transfer of registration* verifying eligibility and identity of applicants pre-registration inspection checking vehicle details on the Register of Approved Vehicles (RAV) applying the correct registration rate, TAC charge, and concession (where applicable) setting conditions of registration* obtaining a VASS certificate for modified vehicles when applicable recording garage address if different from residential address check RWC assessing fees* receiving customer payments assigning registration number* issuing and affixing number plates and affixing labels issuing certificates of registration* (*Delegated Services which can only be performed by the Provider or a Delegate)	Authorised to register new, used and demonstrator vehicles supplied from the Provider's Usual Trading Stock that are: <ul style="list-style-type: none"> RAWS light vehicles (other than motorcycles) RAWS motorcycles RAWS heavy motor vehicles 	Registration in the name of: <ul style="list-style-type: none"> the Provider. an employee of the Provider. a person who purchases or leases the vehicle from the Provider. another person who is a Licensed Motor Car Trader. 	Registration must be by manual transaction (Fuji Film). Separate entity to applicant Provider must hold delegation to register in the name of the Provider. Independent pre-registration inspection required. Additional audit and reporting requirements as determined by the Department.

PROVIDER TYPE D – Trailer/Caravan dealers & manufacturers (non LMCT)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Registration of vehicles			
<ul style="list-style-type: none"> • registering vehicles* • registration for less than one year* • verifying eligibility and identity of applicants • pre-registration inspection • checking vehicle details on the Register of Approved Vehicles (RAV) • applying the correct registration rate, TAC charge, and concession (where applicable) • inspecting and recording GCM & GVM* • obtaining a VASS certificate for modified vehicles when applicable • recording garage address if different from residential address • setting conditions of registration* • check RWC • assessing fees* • receiving customer payments • selling registration number rights • assigning registration number* • issuing and affixing number plates • issuing certificates of registration* • selling registration number rights <p>(*Delegated Services which can only be performed by the Provider or a Delegate)</p>	<p>Authorised to register new and used vehicles (other than High Risk Vehicles) supplied from the Provider's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> • Light trailers • Heavy trailers • Caravans 	<p>Registration in the name of:</p> <ul style="list-style-type: none"> • the Provider. • an employee of the Provider. • a person who purchases or leases the vehicle from the Provider. • another person who is a Licensed Motor Car Trader. 	<p>New registration must be by myVicRoads partner account.</p> <p>Registration must be manual transaction (Fuji Film) for previously registered vehicles.</p> <p>Independent pre-registration inspection required for:</p> <ul style="list-style-type: none"> • heavy trailers, and • previously registered modified vehicles. <p>Separate entity to applicant Provider must hold delegation to register in the name of the Provider.</p>

PROVIDER TYPE D – Trailer/Caravan dealers & manufacturers (non LMCT)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Transfer of registration			
<ul style="list-style-type: none"> transfer of registration* verifying eligibility and identity of clients pre-registration inspection check RWC assessing fees* assigning registration number* issuing and affixing number plates issuing certificates of registration* receiving customer payments (*Delegated Services which can only be performed by the Provider or a Delegate)	Authorised to transfer new, used and demonstrator vehicles supplied from the Provider's Usual Trading Stock that are: <ul style="list-style-type: none"> Light trailers Heavy trailers Caravans 	Registration transfer into the name of: <ul style="list-style-type: none"> the Provider. an employee of the Provider. a person who purchases or leases the vehicle from the Provider. another person who is a Licensed Motor Car Trader. 	Transfer of registration must be by myVicRoads partner account. Independent pre-registration inspection required for heavy trailers. Separate entity to applicant Provider must hold delegation to transfer registration into the name of the Provider.

PROVIDER TYPE E – Vessel / Boat Providers & Manufacturers (non LMCT)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Registration of vehicles			
<ul style="list-style-type: none"> • registering vehicles* • registration for less than one year* • verifying eligibility and identity of applicants • pre-registration inspection • applying the correct registration rate • recording garage address if different from residential address • setting conditions of registration* • assessing fees* • receiving customer payments • assigning registration number* • issuing and affixing number plates and affixing labels • issuing certificates of registration* (*Delegated Services which can only be performed by the Provider or a Delegate)	Authorised to register new and used vehicles (other than High Risk Vehicles) supplied from the Provider's Usual Trading Stock that are: <ul style="list-style-type: none"> • Vessels 	Registration in the name of: <ul style="list-style-type: none"> • the Provider. • an employee of the Provider. • a person who purchases or leases the vehicle from the Provider. • another person who is a Licensed Motor Car Trader. 	Registration must be manual transaction (Fuji Film) for new and previously registered vessels. Independent pre-registration inspection required for: <ul style="list-style-type: none"> • heavy trailers, and • previously registered modified vehicles. Separate entity to applicant Provider must hold delegation to register in the name of the Provider.

PROVIDER TYPE F - other LMCTs (registrations and transfer of vehicles on behalf of 3 rd parties including fleet operators, logistics and pre-delivery companies).			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Registration of vehicles			
<ul style="list-style-type: none"> registering vehicles* registration for less than one year* verifying eligibility and identity pre-registration inspection checking vehicle details on the Register of Approved Vehicles (RAV) applying the correct registration rate, TAC charge, and concession (where applicable) setting conditions of registration* obtaining a VASS certificate for modified vehicles when applicable recording garage address if different from residential address check RWC assessing fees* receiving customer payments assigning registration number* selling registration number rights issuing and affixing number plates issuing certificates of registration* servicing online sales channel Providers who do not have a physical address or dealerships <p>(*Delegated Services which can only be performed by the Provider or a Delegate)</p>	<p>Authorised to register new vehicles and used vehicles (other than High Risk Vehicles) that are:</p> <ul style="list-style-type: none"> Standard production light vehicles (other than motorcycles) Standard production motorcycles Standard production heavy motor vehicles Light trailers Heavy trailers Low volume cab/chassis builds Agricultural Equipment Plant equipment 	<p>Registration in the name of</p> <ul style="list-style-type: none"> Third party a person who purchases or leases the vehicle from the online Provider a person to whom the Provider delivers the vehicle on behalf of a online LMCT Provider where the LMCT is the manufacturer or importer or pre-delivery of the vehicle or has supplied the vehicle to that person another person who is a LMCT. 	<p>New registration must be by myVicRoads partner account for:</p> <ul style="list-style-type: none"> Standard production vehicles, Light trailers, Low volume cab chassis builds, and Motorcycles. <p>Registration must be manual transaction (Fuji Film) for previously registered vehicles. Independent pre-registration inspection required for:</p> <ul style="list-style-type: none"> heavy trailers, standard heavy motor vehicles, cab-chassis, and previously registered heavy vehicles that have been modified. <p>Independent pre-registration inspection required for all vehicles.</p> <p>Additional audit and reporting requirements as determined by Department.</p>

PROVIDER TYPE F - other LMCTs (registrations and transfer of vehicles on behalf of 3 rd parties including fleet operators, logistics and pre-delivery companies).			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Transfer of registration			
<ul style="list-style-type: none"> transfer of registration* verifying eligibility and identity of applicants pre-registration inspection check RWC assessing fees* assigning registration number* receiving customer payments issuing and affixing number plates issuing certificates of registration* (*Delegated Services which can only be performed by the Provider or a Delegate)	Authorised to transfer new, used and demonstrator vehicles that are: <ul style="list-style-type: none"> Standard production light vehicles (other than motorcycles) Standard production motorcycles Standard production heavy motor vehicles Light trailers Heavy trailers Low volume cab/chassis builds Agricultural Equipment Plant equipment. 	Registration transfer in the name of <ul style="list-style-type: none"> Third party a person who purchases or leases the vehicle from the online Provider a person to whom the Provider delivers the vehicle on behalf of a LMCT online Provider where the LMCT is the manufacturer or importer of the vehicle or has supplied the vehicle to that person another person who is a LMCT. 	Transfer of registration must be by myVicRoads partner account. Additional audit and reporting requirements as determined by Department. Transfer of registration must be manual (Fuji Film) for agricultural and plant equipment

PROVIDER TYPE G LMCTs (used car dealers that processes the transfer of registered vehicles)			
Column 1: SERVICES	Column 2: VEHICLES	Column 3: TRANSACTIONS	Column 4: CONDITIONS
Transfer of registration			
<ul style="list-style-type: none"> transfer of registration* verifying eligibility and identity of applicants check RWC assessing fees* receiving customer payments selling registration number rights assigning registration numbers* issuing and affixing number plates issuing certificates of registration* <p>(*Delegated Services which can only be performed by the Provider or a Delegate)</p>	<p>Authorised to transfer new, used and demonstrator vehicles supplied from the Provider's Usual Trading Stock that are:</p> <ul style="list-style-type: none"> Standard production light vehicles (other than motorcycles) Standard production motorcycles Standard production heavy motor vehicles Light trailers Heavy trailers Caravans Low volume cab/chassis builds Agricultural Equipment Plant equipment 	<p>Registration transfer into the name of:</p> <ul style="list-style-type: none"> the Provider. an employee of the Provider. a person who purchases or leases the vehicle from the Provider. 	<p>Transfer of registration must be by myVicRoads partner account.</p> <p>Independent pre-registration inspection required for heavy trailers and cab-chassis.</p> <p>Separate entity to applicant Provider must hold delegation to transfer registration into the name of the Provider.</p> <p>Transfer of registration must be manual (Fuji Film) transaction for:</p> <ul style="list-style-type: none"> Agricultural equipment, 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* (Vic) 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, I will ensure that I am able to access the Protected 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 Protected Information.

Signature: _____ Date: ____ / ____ / 20__

Name: _____

Position: _____

Organisation: _____

Witness Signature: _____ Date: ____ / ____ / 20__

Witness Name: _____

Witness Position: _____

Schedule 4 - Online Access Terms

1. The Provider must ensure that all its Associates with Online Access are listed as Nominated Users in its Register.
2. The Provider must comply, and ensure that each of its Nominated Users with Online Access complies, with any instructions, directions, policies, procedures and standards the Secretary requires in relation to the use of an Online System, including without limitation relating to:
 - (a) appropriate equipment or software to use the Online System;
 - (b) security;
 - (c) protection of Scheme Personal Information or intellectual property of the Secretary;
 - (d) verification, protection or security of a Nominated User's identity and any User ID; and/or
 - (e) use of the Online System.
3. The Provider must ensure that each Nominated User with Online Access:
 - (a) is aware of his or her User ID;
 - (b) keeps his or her User ID confidential;
 - (c) only uses his or her own User ID to use the Online System;
 - (d) is only able to use the Online System via the User ID;
 - (e) logs out of the Online System each time they cease using it;
 - (f) is aware not to leave their computer unattended when logged on to the Online System;
 - (g) is aware of appropriate use of the Scheme Personal Information, including the requirement not to access Scheme Personal Information relating to themselves, family members or friends;
 - (h) does not take screenshots of the Online System, except in accordance with Provider business practices;
 - (i) does not use any personal mobile device to access or use the Online System or store any Scheme Personal Information;
 - (j) complies with all instructions from the Secretary; and
 - (k) otherwise complies with these Online Access Terms.
4. The Provider must ensure that the Online System is protected at all times from unauthorised access, loss, use or misuse, damage or destruction by any person.
5. The Provider must not copy any part of the Secretary's database to, or store any part of that database on, its own server (this does not include search extracts or search reports).
6. The Provider must not modify, copy, reverse engineer or scrape the whole or any part of the Online System.
7. The Secretary reserves the right to perform (either directly or through a third party) a cybersecurity audit in relation to the Provider's Online Access, including security / penetration / vulnerability / denial of service testing using a methodology of the Secretary's choice, at the Secretary's expense. On request, the Provider agrees to provide the Secretary with the results of any prior audits or security / penetration / vulnerability / denial of service testing it has undertaken in relation to relevant systems.