

IAP Service Provider/  
Transport Operator  
Agreement

[Insert name of IAP Service Provider]

and

[Insert name of Transport Operator]

and

**Transport Certification Australia Limited**

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<b>Date</b>	The [ ] day of [ ] 2008.
<b>Parties</b>	<p>1. <b>[Insert name of IAP Service Provider (ABN ##)]</b> of [Insert address of IAP Service Provider] ("<b>IAP Service Provider</b>");</p> <p>2. <b>[Insert name of Transport Operator] (ABN ##)</b> of [Insert address of Transport Operator] ("<b>TO</b>"); and</p> <p>3. <b>Transport Certification Australia Limited</b> ABN 83 113 379 936 of Level 12, 535 Bourke Street Melbourne Victoria 3000 ("<b>TCA</b>").</p>
<b>Recitals</b>	<p>A TCA is a company limited by guarantee, formed by the road traffic authorities of Australia's State, Territory and Federal Governments to implement and manage the Intelligent Access Program.</p> <p>B The IAP Service Provider is Certified by TCA and, having entered into the Certification Agreement with TCA, the IAP Service Provider may provide IAP Services.</p> <p>C The TO provides road transport services using heavy vehicles that may obtain conditional access to the road network under the IAP.</p> <p>D The IAP Service Provider has agreed to provide IAP Services to the TO to assist the TO to obtain conditional access to the road network under the IAP.</p>

**It is agreed** as follows.

## 1. Definitions and interpretation

### 1.1 Definitions

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

- (1) "**Adjustment Event**", "**Adjustment Note**", "**Consideration**", "**GST**", "**GST Group**", "**Input Tax Credit**", "**Invoice**", "**Tax Invoice**" and "**Taxable Supply**" have the meanings given by the GST Law.
- (2) "**Agreement**" means this Agreement between the IAP Service Provider, the TO and TCA, and the Schedule attached.
- (3) "**Business Day**" means a weekday on which banks are open in Melbourne, Victoria.

- (4) **“Certification”** means the conferring of the status of a person or entity as certified by TCA as an IAP service provider and entitled to provide IAP Services, and **Certified** shall have the corresponding meaning.
- (5) **“Certification Agreement”** means the TCA/IAP Service Provider Certification Agreement entered into between the IAP Service Provider and TCA.
- (6) **“Claim”** means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.
- (7) **“Commencement Date”** means the date of this Agreement.
- (8) **“Commercial Agreement”** has the meaning given to that term in clause 3(b).
- (9) **“Commercial Services”** means any telematics services or location based monitoring services, including associated communications services, that are provided to a Customer of the IAP Service Provider that are not IAP Services or IAP Type Services.
- (10) **“Confidential Information”** means the terms and conditions of this Agreement and all information provided under or in connection with this Agreement as well as any information relating to the business, affairs or any other technical information of TCA or the IAP Service Provider or the TO or any Jurisdiction, which:
- is disclosed to the IAP Service Provider or the TO by or on behalf of TCA or any Jurisdiction;
  - is otherwise acquired by the IAP Service Provider or the TO directly or indirectly from TCA or any Jurisdiction;
  - is disclosed by the IAP Service Provider, or the TO, to TCA or any Jurisdiction; or
  - otherwise arises as a result of the provision of IAP Services by the IAP Service Provider to the TO under this Agreement.
- whether the information is in oral, visual or written form or is recorded or embodied in any other medium.
- (11) **“Corporations Act”** means the *Corporations Act 2001* (Cth).
- (12) **“Customer”** means any person, including a transport operator, who receives Commercial Services from the IAP Service Provider.
- (13) **“GST Amount”** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.
- (14) **“GST Law”** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (15) **“Intelligent Access Condition” (IAC)** means the document by which a specified transport operator, and its IAP Vehicle(s), are able to participate in a particular IAP Application, on condition that its IAP Vehicle(s) comply with certain conditions (IAP

Condition see definition number (20) below) which are specified in the IAC and/or any ancillary document. TCA may change the form of the IAC from time to time.

- (16) **“Intelligent Access Program” (IAP)** means the voluntary program, administered by TCA, which provides to the operators of heavy vehicles access, or improved access, to the Australian road network in return for the monitoring, by vehicle telematics solutions, of their vehicle(s)’ compliance with specific access conditions.
- (17) **“IAP Application”** means a road access scheme, permit, concession, exemption, gazettal or notice which includes an IAP compliance solution.
- (18) **“IAP auditor”** means a person approved as an IAP auditor by TCA to carry out IAP audits.
- (19) **“IAP audit”** means any audit work undertaken by TCA or a person authorised by TCA (including an IAP auditor), in assessing the capacity of the IAP Service Provider to continue to be certified and perform its obligations as an IAP Service Provider.
- (20) **“IAP Condition”** means the conditions determined by a Jurisdiction which must be complied with, by the IAP Vehicle(s).
- (21) **“IAP Information”** means information that has been generated or collected for any purpose relating to the IAP.
- (22) **“IAP Law”** means any
- a. Commonwealth, State, Territory, or local government legislation or law including regulations, by-laws and other subordinate legislation; and
  - b. guidelines of the Commonwealth, State, Territory, or local government, or Government Agencies
- directly applicable to the IAP with which TCA and/or the IAP Service Provider and/or the TO is required to comply.
- (23) **“IAP Services”** means all the services the IAP Service Provider must provide and all obligations the IAP Service Provider must observe, as set out in this Agreement and the Certification Agreement, but excluding, for the avoidance of doubt, the Commercial Agreement referred to in clause 3(b) of this Agreement.
- (24) **“IAP Vehicle”** means a vehicle that is subject to an IAP Condition and is equipped for monitoring under the IAP using an IVU, SDID and/or TID (as applicable).
- (25) **“In-Vehicle Unit” (IVU)** means a unit, provided by the IAP Service Provider to the TO, which, having been type-approved by TCA, is installed in a vehicle in respect of which the TO is to receive IAP Services from the IAP Service Provider, and which:
- a. collects, monitors and stores global positioning system data, and other IAP Information, required to be collected under the IAP; and
  - b. transfers that information to the IAP Service Provider.
- (26) **“Jurisdiction”** means an agency or agencies empowered to issue an IAC.

- (27) **“Non-Compliance Report” (NCR)** means a report forwarded to a Jurisdiction by an IAP service provider in respect of a non-compliance by an IAP Vehicle with an IAP Condition, or a possible malfunction or Tampering.
- (28) **“Participants Report”** means a report forwarded to a Jurisdiction by an IAP service provider, aggregating the number of NCRs for each IAP Vehicle in respect of the specified period as referred to in the Report.
- (29) **“Personnel”** means a party's employees, officers, directors and agents.
- (30) **“Personal Information”** has the same meaning given to it by the IAP Law.
- (31) **“Privacy Laws”** means the *Privacy Act 1988* (Cth) and any applicable Commonwealth, State or Territory privacy law.
- (32) **“Self Declaration Input Device” (SDID)** means a device used by a transport operator and/or its nominated representative to provide self-declared information into the IVU.
- (33) **“SDID Alternative”** means an IAP Service Provider facilitated alternative to the SDID for a transport operator and/or its nominated representative to provide self-declared information directly to the IAP Service Provider.
- (34) **“Tamper”, “Tampering”** has the meaning given to it by the IAP Law.
- (35) **“Tamper Report”** means a report forwarded to a Jurisdiction by an IAP service provider in respect of Tampering. There is no prescribed form for a Tamper Report.
- (36) **“Term”** means the period specified in clause 2.
- (37) **“Trailer Identification Device” (TID)** means a device which has been type-approved by TCA as capable of uniquely identifying a trailer.

## 1.2 Terms defined in other documents

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

## 1.3 Interpretation

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

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Agreement.

- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes any amendment, or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to dollars and \$ is to Australian currency.
- (m) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (n) A reference to a party is a reference to a party to this Agreement.

## 2. Term

The term of this Agreement will be from the Commencement Date until it is terminated pursuant to clause 10.

## 3. Relationship of the Parties

- (a) The IAP Service Provider and the TO each acknowledge that they have entered into this Agreement with TCA with the understanding that the purpose of the Agreement is to enable TCA to perform its function of managing the IAP, and to enable TCA to ensure that all other parties are aware of their responsibilities and obligations in relation to the IAP.
- (b) The commercial arrangements between the IAP Service Provider and the TO with respect to the supply of IAP Services shall be recorded by them independently of this Agreement in a written agreement (the "**Commercial Agreement**") which shall be made available to TCA upon request, for TCA's IAP audit function. The

Commercial Agreement may provide for the supply by the IAP Service Provider to the TO of Commercial Services, but the IAP Service Provider and the TO must each ensure that no provision in the Commercial Agreement is in conflict with any provision of this Agreement or with any provision of the Certification Agreement.

## 4. Obligations of the IAP Service Provider

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### 4.1 Provision of IAP Services

- (a) The IAP Service Provider must provide the IAP Services to the TO in accordance with the terms of this Agreement and (as between TCA and the IAP Service Provider) the Certification Agreement.
- (b) The IAP Service Provider must ensure that IAP Services provided are adequate for the purposes required by the TO under this Agreement, and for the purposes set out in this Agreement, and are provided in accordance with the standards and requirements prescribed in the Certification Agreement.
- (c) Without limiting clause 3(b), the IAP Service Provider must ensure that no provision of any Commercial Agreement or other arrangement between it and the TO is in conflict with any provision of this Agreement and/or with any provision of the Certification Agreement.

### 4.2 Receipt and use of IACs

- (a) It is acknowledged and agreed by the TO that the IAP Service Provider will receive IACs from the Jurisdiction(s) as well as from the TO.
- (b) On receipt of an IAC, the IAP Service Provider must confirm the validity of the IAC and that the information contained in the IAC is true and correct.
- (c) If an IAC presented by the TO is not valid or the information contained within the IAC is not true and correct, then the IAP Service Provider must return the IAC to the TO for re-submission.
- (d) The IAP Service Provider must maintain for a period of 4 years all IACs received from the Jurisdiction(s) and the TO.

### 4.3 Certification and Technical Obligations

- (a) The IAP Service Provider warrants to the TO that:
  - (i) as at the Commencement Date and for the duration of the Term, it is and will be certified by TCA as an IAP service provider according to the Certification Agreement;
  - (ii) it holds all permits, licences, authorisations and accreditations required for it to perform its obligations under this Agreement, and will perform those obligations in compliance with all relevant permits, licences, authorisations and accreditations and all applicable laws, standards, specifications and procedures; and

- (iii) it meets all requirements specified in the Certification Agreement and the IAP Law regarding:
  - (A) IAP Information (including Personal Information); and
  - (B) Confidential Information.
- (b) The IAP Service Provider must bear all costs of complying with its obligations under this Agreement.

#### 4.4 Authority to execute the Agreement

The IAP Service Provider represents and warrants to the TO and to TCA that:

- (a) the IAP Service Provider is duly authorised to enter into and execute this Agreement; and
- (b) as at the Commencement Date the company details of the IAP Service Provider set out in Schedule A are true and correct.

## 5. Obligations of the TO

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### 5.1 Tampering

- (a) The TO must not, and must ensure that its Personnel do not, do anything that constitutes Tampering and must not allow or cause any other person to do an act that constitutes Tampering.
- (b) The TO must not, and must ensure that its Personnel do not, allow, or cause, any person operating, repairing or maintaining IAP Vehicles equipped with an IVU, SDID or TID to do an act that constitutes Tampering.
- (c) The TO must not, and must ensure that its Personnel do not, use a SDID Alternative to do an act that constitutes Tampering.
- (d) If the TO becomes aware of any Tampering, then it must notify the IAP Service Provider as soon as practicable.

### 5.2 Malfunction or Unintentional Interference

- (a) The TO must notify the IAP Service Provider and the IAC-issuing Jurisdiction(s) as soon as practicable of any malfunction of, or unintentional interference with, an IVU, SDID, SDID Alternative or TID by any person resulting in disconnection of, damage to, or alteration of the operation of the IVU, SDID, SDID Alternative or TID.
- (b) If any malfunction or unintentional interference occurs with an IVU, SDID, SDID Alternative or TID, the TO must arrange for the IAP Service Provider to restore that IVU, SDID, SDID Alternative or TID as soon as practicable to the standards and specifications required by the IAP Service Provider.
- (c) The IAP Service Provider must notify the TO and the IAC-issuing Jurisdiction(s) of any action taken under clause 5.2(b) as soon as practicable after the action is taken.

- (d) The cost (if any) associated with the restoration of the IAP hardware installation, and who bears such cost (if any), shall be determined by the Commercial Agreement.

### 5.3 General Acknowledgement

The TO acknowledges and accepts that failure by it to comply with an IAP Condition and/or with this Agreement may result in the relevant IAC-issuing Jurisdiction(s) cancelling the relevant IAC and/or revising an IAP Condition.

### 5.4 Authority to execute the Agreement

The TO represents and warrants to the IAP Service Provider and to TCA that:

- (a) the TO is duly authorised to enter into and execute this Agreement; and
- (b) as at the Commencement Date, the company details of the TO set out in Schedule A are true and correct.

### 5.5 Compliance with the IAP Law

- (a) The TO must comply at all times with the IAP Law.
- (b) The TO acknowledges that it has obligations under the IAP Law to drivers of IAP Vehicles in relation to the collection of Personal Information.

## 6. IAP Monitoring and Reporting Obligations

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### 6.1 Monitoring of IAP Vehicles

- (a) The TO acknowledges that all of its IAP Vehicles which are subject to IACs under this Agreement must be monitored at all times by the IAP Service Provider.
- (b) The TO acknowledges that subject to the requirements of the IAC and/or IAP Application, the TO and/or its nominated representative is required to provide self-declared information by the SDID or SDID Alternative.

### 6.2 Record retention

The TO acknowledges that the IAP Service Provider must:

- (a) maintain accurate data, records and information relating to the IAP Services provided by it under this Agreement;
- (b) retain all data, records and information according to the terms of the Certification Agreement; and
- (c) in accordance with the IAP Law, provide the TO with access to inspect data, records and information maintained under this clause 6 upon reasonable notice.

### 6.3 Non-Compliance Reports (NCRs)

- (a) The TO acknowledges that, in accordance with the terms of the Certification Agreement and/or the IAP Law (as applicable), the IAP Service Provider is obliged to provide an NCR to the relevant IAC-issuing Jurisdiction(s) in the event of non-

compliance by an IAP Vehicle of the TO with any IAP Condition to which that IAP Vehicle is subject.

- (b) The TO acknowledges that, in accordance with the terms of the Certification Agreement and/or the IAP Law (as applicable), the IAP Service Provider is obliged to provide an NCR to all IAC-issuing Jurisdictions in the event of possible malfunction or Tampering affecting the monitoring of an IAP Vehicle of the TO.
- (c) The IAP Service Provider will provide an NCR to the relevant IAC-issuing Jurisdiction(s) only when an IAP Vehicle is being operated contrary to an IAP Condition to which it is subject, or possible malfunction or Tampering has occurred, and otherwise in accordance with clause 6.3(d) of this Agreement.
- (d) The IAP Service Provider undertakes to the TO that it will:
  - (i) provide an NCR to the relevant IAC-issuing Jurisdiction(s) strictly, and only, in accordance with the terms of the Certification Agreement and/or the IAP Law;
  - (ii) only use the information contained in an NCR for the purposes of reporting a non-compliance with an IAP Condition or possible malfunction or Tampering to the relevant IAC-issuing Jurisdiction(s);
  - (iii) ensure that NCRs are kept in a secure format and location;
  - (iv) provide TCA and Jurisdictions only with such information as it is required to provide in accordance with the terms of the Certification Agreement and/or the IAP Law; and
  - (v) not otherwise provide any NCR, or any information contained in or derived from any NCR, to any person, other than in accordance with this Agreement, the Certification Agreement and/or the IAP Law.
- (e) Notwithstanding the provisions of clauses 6.3(a) to 6.3(d) (inclusive) above, the IAP Service Provider may, but only if in accordance with IAP Law and at the request of the TO, supply to the TO, the IAP Information (including Personal Information) contained in any NCR issued by the IAP Service Provider in respect of the TO.

## 6.4 Participants Reports

The TO acknowledges that in accordance with the Certification Agreement, the IAP Service Provider must provide to the relevant IAC-issuing Jurisdiction(s) all of the information set out in the Participants Report.

## 6.5 Tamper reporting

- (a) The TO acknowledges that in accordance with the Certification Agreement and the IAP Law, the IAP Service Provider must report to the IAC-issuing Jurisdiction(s) any Tampering or suspected or attempted Tampering.
- (b) The TO acknowledges that, in accordance with the Certification Agreement and the IAP Law, the IAP Service Provider must not advise the TO of the reporting of any Tampering or suspected or attempted Tampering.

## 6.6 TO's consent to the provision of information, and acknowledgment of TCA's IAP audit function

- (a) The TO acknowledges and agrees that the IAP Service Provider:
  - (i) will provide a copy of this Agreement to the relevant IAC-issuing Jurisdiction(s) if requested;
  - (ii) is required to perform IAP monitoring and reporting obligations according to the Certification Agreement;
  - (iii) may disclose IAP Information (including Personal Information) to the Jurisdiction(s) or to TCA for compliance purposes;
  - (iv) will be subject to IAP audit to determine if the IAP Service Provider meets, and continues to meet, its obligations under the Certification Agreement. The IAP audit may be undertaken by:
    - (A) TCA or a person authorised by TCA; and/or
    - (B) an IAP auditor as engaged by TCA.
- (b) The TO acknowledges and agrees that:
  - (i) in the course of an IAP audit, TCA or a person authorised by TCA (including an IAP auditor) may collect, use or store IAP Information relating to the TO in accordance with the IAP Law;
  - (ii) if an IAP audit identifies any instance of failure by the IAP Service Provider to report (in an NCR), to a relevant IAC-issuing Jurisdiction(s), a non-compliance by an IAP Vehicle with an IAP Condition to which it is then subject or a possible malfunction or Tampering, then TCA is obliged to report that non-compliance to the relevant IAC-issuing Jurisdiction(s) when reporting the failure of the IAP Service Provider to report the non-compliance;
  - (iii) if an IAP audit identifies any instance of failure by the IAP Service Provider to report (in a Tamper Report), to the IAC-issuing Jurisdiction(s), any Tampering, then TCA is obliged to report that Tampering to the IAC-issuing Jurisdiction(s) when reporting to it the failure of the IAP Service Provider to report Tampering; and
  - (iv) each of TCA and the IAP Service Provider will be obliged to disclose IAP Information relating to the TO to a police officer or to an authorised officer of the Jurisdiction for law enforcement purposes, if a warrant to compel that disclosure has been issued by a court in accordance with the IAP Law.

## 6.7 Appearance as an expert witness

- (a) If legal proceedings arise in connection with the operations of the IAP and TCA, the IAP Service Provider may be required to appear as an expert witness and/or prepare expert witness reports in connection with the legal proceedings where reasonably required by TCA or a Jurisdiction.

- (b) The IAP Service Provider may not, and must use reasonable endeavours to ensure that its Personnel do not, appear as an expert witness on behalf of the TO in the event of legal proceedings related to non-compliance with an IAC.
- (c) The costs of making any such appearances or drafting any such reports will be met by the relevant IAC-issuing Jurisdiction involved in the legal proceedings or actions.
- (d) For the avoidance of doubt, this clause 6.7:
  - (i) is intended to make the IAP Service Provider available as an expert witness when required by TCA or a Jurisdiction for legal proceedings related to non-compliance with an IAC. In such proceedings, the IAP Service Provider may not appear as an expert witness on behalf of the TO, but will of course be available for cross-examination by the TO; and
  - (ii) does not preclude the TO calling the IAP Service Provider as a witness in court proceedings which are not legal proceedings related to non-compliance with an IAC.

## 7. Conflicts of Interest

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### 7.1 Conflicts of Interest

- (a) The TO must not:
  - (i) have any managerial, financial, commercial, personal or other interest in the IAP Service Provider or any other IAP service provider providing IAP services to another transport operator;
  - (ii) have any relationship with any IAP service provider involved in the IAP that causes or may cause an actual, potential or perceived conflict of interest or that may be reasonably perceived to affect an IAP service provider's willingness or capacity to report to the Jurisdictions; or
  - (iii) engage an IAP service provider to provide IAP services where that IAP service provider has any actual, potential or perceived managerial, financial, commercial, personal or other interest in the TO.
- (b) The IAP Service Provider must not:
  - (i) have any managerial, financial, commercial, personal or other relevant interest in the TO or any transport operator using the IAP services of another IAP service provider;
  - (ii) provide the IAP Services to the TO (or any other transport operator) if the TO (or any other transport operator) has any managerial, financial, commercial, personal or other relevant interest in the IAP Service Provider, or any other IAP service provider;
  - (iii) have any relationship with or interest in a transport operator that causes or may be reasonably perceived to cause a conflict of interest or that may be

- reasonably perceived to affect the IAP Service Provider's willingness or capacity to report to the relevant IAC-issuing Jurisdiction(s); or
- (iv) have any actual, potential or perceived conflict between its obligations as an IAP service provider and its other businesses, interests and activities.

## 7.2 Dealing with conflicts of interest

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

- (a) in the case of an actual conflict of interest:
  - (i) immediately notify TCA in writing;
  - (ii) take any measures as are necessary to cease its/their involvement in the matter giving rise to the conflict of interest, within ten (10) Business Days of written notice from TCA requiring the IAP Service Provider and/or the TO (as the case may be) to take such measures; and
  - (iii) promptly advise TCA in writing of the measures undertaken under clause 7.2(a)(ii).
- (b) in the case of a potential or perceived conflict:
  - (i) immediately notify TCA in writing;
  - (ii) if after receiving notification of the potential or perceived conflict of interest, in accordance with clause 7.2(b)(i), TCA reasonably believes that a potential or perceived conflict has the potential to cause an actual conflict of interest, take any measures as are necessary to cease its/their involvement in the matter giving rise to the potential for a conflict of interest, within ten (10) Business Days of written notice from TCA requiring the IAP Service Provider and/or the TO (as the case may be) to take such measures; and
  - (iii) promptly advise TCA in writing of the measures undertaken under clause 7.2(b)(ii).

## 8. Privacy and Confidential Information

### 8.1 No sale or provision of IAP Information

Except as otherwise permitted under this Agreement or the Certification Agreement, the IAP Service Provider must not sell, provide, transfer or copy any IAP Information (including Personal Information) relating to the TO, including aggregated data and reports, collected under the IAP to any individual organisation or group, or allow any individual, organisation or group to view any IAP Information (including Personal Information) relating to the TO, except with the written permission of the TO.

## 8.2 Privacy

- (a) The IAP Service Provider and the TO must each comply with all applicable Privacy Laws and the privacy sections of the IAP Law.
- (b) The TO acknowledges and agrees that notwithstanding clause 8.2(a), the IAP Service Provider and TCA must comply with the IAP Law relating to court-ordered disclosure of IAP Information.

## 8.3 Prohibition on the disclosure of Confidential Information

Each of the IAP Service Provider, the TO and TCA hereby undertakes to the others that it and its Personnel will not, without the written consent of the party whose Confidential Information it is, disclose Confidential Information to any person, except where authorised under this Agreement, the Certification Agreement or under the IAP Law.

## 8.4 Confidentiality continues

The obligation of confidentiality under this clause 8 is a continuing obligation and will survive the expiration or termination of this Agreement unless such Confidential Information has entered the public domain other than by reason of any breach by the IAP Service Provider, the TO, or TCA, or the Personnel of each party, of its obligations of confidentiality or any other obligation under this Agreement or the Certification Agreement.

## 9. Indemnity and insurance

### 9.1 Indemnity by the IAP Service Provider

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

- (a) any negligence by the TO, TCA, or the Jurisdictions or their respective Personnel;  
or
- (b) breach of this Agreement by the TO or TCA; or
- (c) tampering, negligence or misuse by the TO or the TO's Personnel or contractors, caused or contributed to the Claim, loss (including economic loss), liability, cost and expense.

### 9.2 Indemnity by the TO

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

- (a) any negligence by the IAP Service Provider, TCA, or the Jurisdictions or their respective Personnel; or
- (b) breach of this Agreement by the IAP Service Provider or TCA, caused or contributed to the Claim, loss (including economic loss), liability, cost and expense.

## 9.3 Insurance

- (a) The IAP Service Provider warrants that it has taken out and will maintain for the term of this Agreement all insurance policies as required under the Certification Agreement.
- (b) The IAP Service Provider must notify the TO and TCA of any cancellation of its insurance required under this clause 9.3.

## 10. Termination

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### 10.1 Termination for breach

- (a) Each party to this Agreement may terminate this Agreement on fifteen (15) Business Days' notice, by giving written notice to that effect to the other, if:
  - (i) any other party to this Agreement is in material breach of this Agreement; or
  - (ii) the Commercial Agreement between the IAP Service Provider and the TO for the supply of IAP Services is terminated.
- (b) Without limiting clause 10.1(a), TCA may terminate this Agreement by giving the IAP Service Provider and the TO ten (10) Business Days' notice in writing if the IAP Service Provider and/or the TO (as applicable) fails to rectify any breach of this Agreement, which TCA has notified the IAP Service Provider and/or the TO (as applicable) of, within the period of time specified for rectification by TCA.

### 10.2 False and/or misleading information

For the avoidance of doubt, the provision of false and/or misleading information by the IAP Service Provider or the TO is a material breach for which TCA may terminate this Agreement in accordance with clause 10.1 or clause 10.3.

### 10.3 Termination without reason

Each party may without reason terminate this Agreement by giving not less than twenty (20) Business Days notice in writing to the other parties. The IAP Service Provider must continue to provide IAP Services in respect of the TO's IAP Vehicles, for the duration of the notice period.

### 10.4 Termination of Certification Agreement

This Agreement shall terminate automatically upon the termination of the Certification Agreement. TCA shall give to the IAP Service Provider and to each relevant IAC-issuing

Jurisdiction, prompt written notice of the termination of the Certification Agreement, and shall make such a termination public by means of its website.

## 10.5 Notice to Jurisdictions

If a party gives notice to terminate this Agreement, the IAP Service Provider must notify each relevant IAC-issuing Jurisdiction no less than ten (10) Business Days before the expiry of the period of notice of termination, of the notice of termination and the reasons for the termination.

## 10.6 Return of IAP Service Provider's equipment and Confidential Information

- (a) Within ten (10) Business Days of the termination of this Agreement, the TO must return to the IAP Service Provider:
- (i) subject to the provisions of the Commercial Agreement, all of the IAP Service Provider's equipment associated with the IAP, including the IVU, SDID, SDID Alternative (if applicable) and TID (where the IAP Service Provider owns such equipment); and
  - (ii) all Confidential Information of the IAP Service Provider, as is then held by the TO, and as is requested back from the TO by the IAP Service Provider.
- (b) The parties agree that, following the termination of this Agreement, the IAP Service Provider may retain Confidential Information to the extent required for it to meet its legal, or financial or IAP audit obligations.

## 10.7 Provision of IAP Services during period of notice of termination

Where a notice of termination is given by either party under clauses 10.1, 10.3 or 10.4, the IAP Service Provider must continue to provide IAP Services, to all IAP Vehicles, with which the TO has contracted with the IAP Service Provider for the supply of IAP Services, for the duration of the period of notice of termination.

## 10.8 Continuing clauses

Clauses 1, 6.2, 8, 9, 10.6, 10.8 and 12.5 will continue to apply after expiration or termination of this Agreement.

## 11. No assignment and No subcontracting

### 11.1 No Assignment

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

## 11.2 No Sub-contracting

Neither the IAP Service Provider nor the TO may sub-contract any of its obligations under this Agreement, unless the prior written approval of TCA is obtained.

## 12. Miscellaneous

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### 12.1 Further assurances

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

### 12.2 Entire Agreement

- (a) Subject to clause 12.2(b), this Agreement and the Commercial Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.
- (b) The Commercial Agreement only forms part of this Agreement as between the IAP Service Provider and the TO. For the avoidance of doubt, TCA is not a party to, nor bound by any provision of, the Commercial Agreement.

### 12.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Agreement and the provisions of the Certification Agreement then the provisions of the Certification Agreement will prevail to the extent of the inconsistency and the provisions of this Agreement will be construed accordingly.
- (b) To the extent of any conflict or inconsistency between this Agreement, the Certification Agreement, the Commercial Agreement; the order of precedence shall be as follows:
  - (i) first, the Certification Agreement;
  - (ii) second, this Agreement; and
  - (iii) third, the Commercial Agreement.

### 12.4 Amendment and Waiver

No amendment or variation of, or waiver of a right created under, this Agreement is valid or binding on a party unless made in writing executed by the party or parties to be bound.

### 12.5 Governing Law

This Agreement is governed by the law of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

## 12.6 Severability of Provisions

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

## 12.7 Counterparts

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

## 12.8 No effect on IAP Service Provider Certification

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

## 12.9 Notices

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

- (a) must be in writing;
- (b) must be signed by a person duly authorised by the sender;
- (c) must be delivered by hand, sent by registered mail or facsimile;
- (d) will be taken to be duly given or made:
  - (i) if delivered by hand, on the day of delivery if delivered before 5:00pm on a Business Day, otherwise on the next Business Day;
  - (ii) if sent by registered post, on the day of actual delivery if delivered before 5:00pm on a Business Day, otherwise on the next Business Day; and
  - (iii) if sent by facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error before 5:00pm on a Business Day, otherwise on the next Business Day.
- (e) for the purpose of this clause, a person ("the sender") may take the address and fax number of another person ("the recipient") to be:
  - (i) to [ insert name of IAP Service Provider]: [insert address]  
Attention: [ ]  
Fax No: [ ];
  - (ii) to [insert name of the TO]: [insert address]  
Attention: [ ]  
Fax No: [ ]

(iii) to TCA:

Level 12, 535 Bourke Street

MELBOURNE VIC 3000

Attention: The Chief Executive Officer

Fax No: 03 8601 4611

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## 13. GST

### 13.1 GST to be added to amounts payable

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

### 13.2 Tax Invoice and Adjustment Note

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

### 13.3 Liability net of GST

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

### 13.4 Revenue exclusive of GST

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

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**Schedule A**

**Party Details**

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**IAP Service Provider Details**

IAP Service Provider Name

ABN

ACN

Address

Phone

Fax

Email

**TO Details**

TO Name

ABN

ACN

Address

Phone

Fax

Email

**Executed as an Agreement**

Executed for and on behalf of **[Insert name of IAP Service Provider (insert ABN)]** by:

\_\_\_\_\_  
Authorised Representative

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Executed for and on behalf of **[Insert name of TO]** by:

\_\_\_\_\_  
Authorised Representative

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Executed for and on behalf of Transport Certification Australia Limited (ABN 83 113 379 936) by:

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Print name

\_\_\_\_\_