

Vehicle Services Scheme Agreement

Alternative Fuel Systems Assessment and Certification Scheme

Secretary to the Department of Transport
(Secretary)

(Provider)

Version: October 2020

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Agreement

Date **1 January 2021**

Parties **Secretary to the Department of Transport** 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 1986* 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 one or more Applicable Vehicle Schemes in consideration for the Provider agreeing to perform the Services subject to and in accordance with this Agreement.

Operative provisions

1. Term

1.1 Expiry

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

1.2 Renewal

The Secretary may extend or renew this Agreement or enter into a new agreement, or not, and may do so on the same or on such amended terms, as the Secretary thinks fit.

1.3 Invitation to apply for extension or renewal

If invited to do so by the Secretary, the Provider may apply for extension or renewal of this Agreement by giving written notice to the Secretary by the date specified in the Secretary's invitation. Such application must include any supporting information required by the Secretary.

1.4 Holding over

If this Agreement expires and a new agreement is not entered into, the dealings between the parties may, unless otherwise specified in item 5 of Schedule 1, continue on a day to day basis or for a period specified by Secretary (holding over period) and will continue to be governed by the terms of this Agreement. Either party may, in its absolute discretion, immediately terminate any holding over period by giving seven Business Days' notice in writing to the other party.

2. Variation by the Secretary

2.1 Power to vary Agreement

The Secretary may, by giving 20 Business Days' notice, vary this Agreement from time to time (including by adding or removing a Scheme Schedule or varying the description or scope of the Services to be provided under a Scheme Schedule) if the Secretary considers it necessary to do so to give effect to:

- (a) any change of Law or government policy;
- (b) any change to or revocation of a delegation; and
- (c) 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 registration of vehicles.

2.2 No fetter

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

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 to the Provider, and to any Associates specified as Delegates in Item 9 of the applicable Scheme Schedule, such functions, powers and duties (if any) as it considers necessary for the provision of the Services.
- (c) The Secretary may at any time and at the Secretary's sole discretion, and without giving reasons, revoke or vary a Delegation.
- (d) The Provider must not, and must ensure that its Associates who are Delegates do not;
 - (i) exercise any Delegated Function except in accordance the conditions and limitations specified in the Delegation and this Agreement; or
 - (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 applicable 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; and
- (c) in an efficient and professional manner.

4.3 Fitness and suitability

The Provider must be, and must ensure that its Associates are, persons who:

- (a) are Fit and Proper Persons;
- (b) have not been charged or found guilty of a criminal offence;
- (c) are not persons in relation to whom an Adverse Event has incurred; and
- (d) have not had authorisation under an Applicable Vehicle Scheme, or any other Vehicle Scheme or similar scheme operated or administered by the Secretary, suspended or cancelled.

4.4 Compliance with laws and requirements

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

- (a) the Act and Regulations;
- (b) the conditions of any licence or authorisation from the Secretary held by the Provider;
- (c) other laws applying to the provision of the Services and the Provider's business;
- (d) this Agreement;
- (e) written directions, instructions and mandatory standards and guidelines issued by Secretary in relation to the Services;
- (f) relevant government policies that relate to the provision of the Services; and
- (g) requirements for licences, permits, consents or authorisations to be held or complied with for the conduct of the Provider's business.

4.5 Premises

The Provider must ensure that the Services are provided at:

- (a) the Specified Premises described in Item 5 of the applicable Scheme Schedule (if any); and
- (b) if no Premises are specified in Item 5 of the applicable Scheme Schedule, Premises or other places that are of a type and in a condition which will enable inspections, assessments or other activities conducted in performing Services to be conducted safely.

4.6 Accreditation and training

- (a) The Provider must, and must ensure that its Associates:
 - (i) undertake the training (if any) specified in Item 7 of the applicable Scheme Schedule; and
 - (ii) obtain and maintain the accreditation (if any) specified in Item 8 of the applicable Scheme Schedule; and
 - (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.
- (b) 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 Secretary, that the Provider and its Associates have undertaken any training and hold any accreditation required under paragraph (a) of this clause.

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 DOT.
- (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 of:
 - (i) any change in its business name, its directors or partners, or the structure of its business, ownership or composition of partnership;
 - (ii) any breach of this Agreement by the Provider (in which case notification must set out the details of the breach and include advice as to the action taken to remedy the breach).

- (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);
 - (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 of being requested to do so (or such longer time as is agreed) such information or reports concerning any aspect of the Services 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) The Provider must keep all records and other documentation relating to the provision of the Services for a period of 7 years following expiry or termination of the Agreement 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 applicable 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

- (a) If any Regulated Fee is payable by a Customer with respect to any Service:
 - (i) the Provider must charge the Customer the Regulated 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 payable in respect of the Service; and
 - (iii) where the Regulated 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 is paid.

5.2 Remittance of fees etc

- (a) The Provider receives all Regulated Fees on the Secretary's behalf and shall hold all such Fees on trust solely for the benefit of the Secretary.
- (b) Subject to sub-clause (c), the Provider must remit all Regulated Fees 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 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 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 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 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 Regulated 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 Regulated 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 Regulated 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 is payable in respect of the Service – of the amount of that fee; and
 - (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; and
 - (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 applicable Scheme Schedule - of an amount that does not exceed the reasonable costs of providing the Service to the Customer.
- (b) Sub-clause (a) of this clause 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 applicable Scheme Schedule.

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

5.6 Definitions

In this clause 5 and the applicable Scheme Schedule:

Administrative Fees means fees payable by the Provider to the Secretary under section 97A of the 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 Applicable Vehicle Scheme) and may include:

- (a) fees payable generally in respect of the Applicable Vehicle Scheme ('Administrative (Scheme) Fee'); or
- (b) fees payable in respect of particular transactions conducted by the Provider under the Applicable Vehicle 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. Supply of resources, access etc.

6.1 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 applicable 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); and
- (d) reasonable notice of any change of law or of any standard, manual or guideline referred to in paragraph (c);
- (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.

6.2 Licence

The Secretary grants the Provider a non-exclusive, non-transferable licence to use any form, document or item made available under clause 6.1 solely for the purpose of providing the Services,

6.3 Provider obligations

- (a) If the Secretary supplies the Provider with forms, documents or other items, or access to forms or documents under clause 6.1 (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 the expiry or 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.

7. Audit and review

7.1 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.

7.2 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 7.1. 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.

7.3 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 7.1, 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 of the action taken to do so.

7.4 Periodic reviews

- (a) The Secretary may conduct periodic reviews 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.

8. Intellectual Property

8.1 Pre-existing IP

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

8.2 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.

8.3 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.

8.4 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 any of the Provider's Pre-existing IP for the purposes of performing functions under the Act and Regulations in connection with this Agreement.

8.5 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 or demand made, or action, suit or proceeding threatened or brought against it, arising from the infringement or alleged infringement of any Intellectual Property Rights in connection with this Agreement.

8.6 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.

8.7 DOT logo and signage

- (a) Subject to paragraph (b), the Provider must not use or display any DOT 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.

9. Confidentiality

9.1 Obligations of confidence

- (a) If the Provider receives Confidential Information, the Provider must, subject to the terms of this Agreement:
 - (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 signs a Confidentiality Deed in the form set out in Schedule 3 or otherwise acceptable to the Secretary 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 Agreement;
 - (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
 - (iv) the disclosure is required by a court or any governmental or administrative authority;
 - (v) the disclosure is required by or under law or regulation.

9.2 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 9;
- (b) the Online Terms and Conditions (if applicable); and
- (c) all applicable Privacy Laws.

9.3 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.

9.4 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.

9.5 Return of Confidential Information

The Provider must immediately on demand, or at the expiry or 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.

10. Privacy and Data Protection

10.1 Definitions:

In this clause 10, 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 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 1986 (Vic)*;
- (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.

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

Scheme Personal Information means any Personal Information which is Handled by or on behalf of the Provider in connection with an applicable Vehicle Scheme.

10.2 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.

10.3 Information Privacy Principles

- (d) 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**).
- (e) 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.

10.4 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 10, 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.

10.5 Part 7B of the Road Safety Act 1986

The Provider acknowledges that it may be a "relevant person" for the purposes of Part 7B of the *Road Safety Act 1986* (Vic), 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 section.

10.6 Handling Scheme Personal Information

Without limiting clause 10.3, 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 applicable Vehicle 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.

10.7 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).

10.8 Data security practices and processes

The Provider must implement practices and processes to ensure compliance with its obligations under this clause 10 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.

10.9 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 option, 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;
- (b) on expiry or termination of this Agreement; or
- (c) on demand by Secretary.

11. Insurance

11.1 Policies

Subject to clause 11.4, the Provider must take out and maintain for the Applicable Vehicle Schemes:

- (a) insurance policies (if any) of the type specified in Item 16 of the applicable 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.

11.2 Insurer and terms

With respect to every insurance policy required under clause 11.1:

- (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.
- (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 of a written request by the Secretary to do so.

11.3 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 11.1.

11.4 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 11.1.

12. Warranties

12.1 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.

12.2 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's Associates when performing 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.

12.3 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.

13. Indemnity

The Provider will be fully liable for and continually indemnify the Secretary, the State of Victoria and their respective Associates 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; or
- (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, injury loss or damage to the Provider, or any Associate, visitor, invitee or licensee of the Provider;
- (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;
- (f) any deliberate unlawful act of the Provider or its Associates.

14. Dispute Resolution

14.1 Parties must follow dispute resolution procedures

No party may bring any legal action or proceedings in relation to any dispute or disagreement concerning this Agreement, the performance of the Services or the rights or

obligations of the parties under this Agreement (**Dispute**) until the dispute resolution procedures set out in this clause 14 have been followed.

14.2 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.

14.3 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 given under the preceding sub-clause:
 - (i) the Provider's Representative and the Secretary's Representative must meet within 10 Business Days of the notice and endeavour to resolve the Dispute;
 - (ii) if such meeting does not take place or if after 15 Business Days of the meeting the Dispute remains unresolved, either party may refer the Dispute for resolution by 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 preceding paragraph, the Secretary and Chief Executive of the Provider or their nominees must meet within five Business Days of the Dispute being referred to them and endeavour to resolve the Dispute; and
 - (iv) if such meeting does not take place or if after 10 Business Days of the meeting the Dispute remains unresolved, either party may pursue its rights at Law.

14.4 Third party dispute resolution

- (a) If the parties, Representatives, the Chief Executive or nominees, are unable to resolve the Dispute in accordance with clause 14.3, 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.

14.5 Performance of obligations

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

14.6 Interlocutory relief and right to terminate

Nothing in this clause 14 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.

15. Termination and Suspension

15.1 Termination by Provider

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

15.2 Vehicle Schemes

The Secretary may terminate this Agreement with respect to a Vehicle Scheme at any time if it decides for any reason to cease operating the Scheme.

15.3 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 of the Secretary;
- (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 the Board of Directors of the Provider and the Secretary reasonably objects to that appointment;
- (d) the Provider, or a director of the Provider, 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) an Adverse Event occurs in respect of the Provider; or
- (g) the Provider ceases, or indicates that it is about to cease, carrying on its business.

15.4 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.

15.5 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.

15.6 Suspension

Where the Secretary believes that grounds for termination of this Agreement or part of the Agreement exist, the Secretary must give written notice to the Provider:

- (a) suspending the Agreement or part of the Agreement from the date of the notice;
- (b) stating the grounds for termination that it believes exist; and
- (c) stating that unless any failure that constitutes grounds for termination is remedied within 10 Business Days, the Agreement or part of the Agreement will be terminated 10 Business Days after the date of the notice.

Unless the notice of suspension is withdrawn, the termination takes effect Agreement 10 Business Days after the notice was given.

15.7 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
- (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 an Applicable Vehicle Scheme.

15.8 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.

15.9 Termination or suspension in part

Where the Agreement may be terminated or suspended in part under this clause 15 the termination or suspension may be in respect of one or more of:

- (a) one or more Schemes - in which case the Agreement shall continue in effect as if the applicable Scheme Schedule were omitted; or
- (b) Specified Services, Specified Vehicles or Specified Transactions - in which case the Agreement shall continue in effect as if the relevant Specified Services, Specified Vehicles and/or Specified Transactions were omitted from the applicable Scheme Schedule.

15.10 Survival

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

- (a) Clauses 4.10 (Record keeping);
- (b) Clause 7 (Audit and review);
- (c) clause 8 (Intellectual Property);
- (d) clause 9 (Confidentiality);
- (e) clause 10 (Privacy and Data Protection);
- (f) clause 12 (Warranties);
- (g) clause 13 (Indemnity);
- (h) clause 14 (Dispute Resolution); and
- (i) clause 15.9 (Termination and Suspension).

15.11 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; or
- (b) the revocation or variation of a Delegation.

16. Representatives and nominated administrators

16.1 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 16.4.
- (b) The Secretary's Representative is the persons named as such in Schedule 1 or other persons substituted in accordance with clause 16.4.
- (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

16.2 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 Providers Nominated Administrator(s) shall be the person(s) named as such in Schedule 1 with respect to Specified Premises, or other persons substituted in accordance with clause 16.4
- (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.

16.3 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.

16.4 Substitution of Representatives

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.

17. Notices

17.1 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.
- (b) Emailed to the party's Representative at the email address set out in Schedule 1.

17.2 Change of address for notices

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

17.3 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, 2 (or, in the case of a notice or communication posted to another country, 9) Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number
- (d) 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.

18. Miscellaneous

18.1 Agency

- (a) Except as provided in paragraph (b) of this clause, 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.

18.2 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.

18.3 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.

18.4 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 Acts of the Parliament of the Commonwealth and of the Parliament of Victoria, and with the requirements of all ordinances, regulations, by-laws, local laws, orders and proclamations made or issued thereunder, and with the lawful directions of public authorities.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 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. Definitions

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

Act means the *Road Safety Act 1986*.

Agreement includes the Schedules and any attachment to a Schedule.

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

- (a) a meeting of a party's creditors being called or held;
- (b) a step being taken to make the party bankrupt or wind the party up;
- (c) the appointment of a controller or administrator as defined in section 9 of the Corporations Act;
- (d) the party entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;
- (e) the party being made subject to a deed of company arrangement; or
- (f) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the party or any of its assets; or
- (g) a floating charge becomes fixed, or a security becomes enforceable or is enforced in relation to any of the party's assets or undertakings; or
- (h) anything else happens that reasonably indicates that there is a significant risk that the party is or will become unable to pay debts as they fall due or remit monies held on behalf of the Secretary when required.

Applicable Vehicle Scheme means a Vehicle Scheme in relation to which the Provider is authorised under this Agreement to provide services.

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 secondees to, and contractors and agents of, the Provider.

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

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

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

Confidential Information means any information provided by the Secretary 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 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.

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

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

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 to the Provider or an Associate in accordance with clause 3.

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

DOT means the Department of Transport.

Eligibility Criteria means the qualifications and requirements that a person was required to satisfy to become a provider under the Scheme.

Expiry Date means the expiry date specified in Item 5 of Schedule 1 or a later date agreed in writing by the parties.

Fit and Proper Person means 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. Offences less than 10 years old for matters involving fraud, dishonesty, violence, assault or threatening behaviour; or
- b. Substantiated allegations of behaviour less than 5 years old having a character of fraud, dishonesty, violence, assault or threatening behaviour.

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 and other legislative instruments of the Commonwealth, the State or a governmental authority; and
- (b) 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).

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

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.

Nominated Administrator in respect of Specified Premises means the representative of the Provider as specified in Item 5 of the applicable Scheme Schedule or substituted in accordance with clause 16.4 in respect of the Specified Premises.

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.

Online Terms and Conditions means the terms and conditions governing the use of and access to an Online System.

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.

Regulations means the Vehicle Regulations made under the Roads Safety Act 1986.

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

Scheme Schedule means a schedule to this Agreement setting out terms and conditions that apply to a particular Vehicle Scheme.

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 16.4.

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

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

Specified Premises means Premises at or from which a Service may be provided under a Vehicle Scheme, as specified in Item 5 of the applicable Scheme Schedule.

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 applicable 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 5 of the applicable Scheme Schedule.

Standards for Registration has the meaning it has in the Regulations.

Supplied material means resources and access to resources supplied by the Secretary in as specified in Item 6 of the applicable 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.

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

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.

20. 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 statute, ordinance, code or other law includes regulations and other 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 *[insert Provider's name and ACN]* 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
[insert Provider's full name]

.....
...
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

1.	Scheme(s)	<input type="checkbox"/> Dealer Certification Scheme (Schedule 2A) <input type="checkbox"/> Vehicle Assessment Signatory Scheme (Schedule 2B) <input type="checkbox"/> Vehicle Defect Notice Clearance Scheme (Schedule 2C) <input checked="" type="checkbox"/> Alternative Fuel System Certification Scheme (Schedule 2D) <input type="checkbox"/> Pre-registration (e-Vic) inspections (Schedule 2E) <input type="checkbox"/> Other (specify)		
2.	Provider details	Trading Name:		ABN:
		Company Name:		ACN:
		OR		
		Sole Trader name:		
		Address:		
		Suburb / Town:		Postcode
		Email:		
		Contact phone no:		
		Website:		
		DCS No: (if applicable)		
		AFSACS No: (if applicable)		
		VASS Signatory No: (if applicable)		
		LVT No: (if applicable)		
		LMCT No: (if applicable):		
3.	Provider's representative	Name:		
		Email:		
		Telephone:		
4.	Secretary's representative	Name and position:	John Bouras	
		Email:	AFSACS@roads.vic.gov.au	
		Telephone:	1300 309 571	
5.	Expiry Date	31 December 2021		

Schedule 2D – Scheme Schedule – AFSAC Scheme

1.	Definition of terms in this Schedule	<p>AFSACS means the Alternative Fuel Systems Assessment and Certification Scheme</p> <p>Alternative Fuel Vehicle means a motor vehicle powered by LPG, CNG, LNG or hydrogen.</p> <p>Associate Technician means an individual employed, engaged or otherwise authorised by the Provider to assess and/or certify Alternative Fuel Vehicles.</p> <p>CNG means compressed natural gas.</p> <p>LNG means liquefied natural gas.</p> <p>LPG means liquefied petroleum gas.</p> <p>Sole trader means a natural person who carries on a business in relation to the maintenance, modification or repair of motor vehicles under a business name.</p> <p>Standards for Registration for an Alternative Fuel Vehicle means:</p> <ol style="list-style-type: none"> a. in the case of an LPG powered vehicle, the version of AS 1425 that was current at the time the system was installed in the vehicle; b. in the case of a CNG or LNG powered vehicle, the version of AS 2739 that was current at the time the system was installed in the vehicle; and c. the standards and requirements for Alternative Fuel Vehicles labels set out in Part 11 of Schedule 2 of the Regulations. <p>VSI 27 means Vehicle Standards Information Sheet 27 published by The Secretary, as amended from time to time.</p>
2.	Services	<p>The Provider is authorised to provide, during the Term, the following Services in relation to a motor vehicle which has been modified to be an Alternative Fuel Vehicle:</p> <ol style="list-style-type: none"> 1. assessing whether the modification or repair complies with applicable Standards for Registration; 2. where the vehicle is assessed as complying with the applicable Standards for Registration: <ol style="list-style-type: none"> a. certifying that compliance to the Secretary; and b. affixing a gas compliance plate to the vehicle;

		<p>3. if the vehicle is assessed as not complying with the applicable Standards for Registration:</p> <ul style="list-style-type: none"> c. notifying the Secretary of that non-compliance; and d. removing any gas Compliance Plate from the vehicle. 												
3.	Specified Vehicles	<p>The Provider is authorised to provide the Services in relation to:</p> <ol style="list-style-type: none"> 1. the following gas fuel systems: <ul style="list-style-type: none"> a. LPG b. LNG c. CNG 2. for the following vehicle types: <ul style="list-style-type: none"> a. light vehicles b. heavy vehicles. 												
4.	Specified Transactions	<p>The Provider is authorised to provide the Services for the purpose of the Secretary determining applications under the Regulations for:</p> <ul style="list-style-type: none"> • registration of an Alternative Fuel Vehicle; and • approval of a modification of the fuel system of an Alternative Fuel Vehicle. 												
5.	Specified Premises	<p>The Provider nominates the following Specified Premises to provide the Services:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Street address:</td> <td></td> </tr> <tr> <td>City / Town:</td> <td></td> </tr> <tr> <td>Postcode:</td> <td></td> </tr> <tr> <td>Name and contact details of nominated administrator</td> <td></td> </tr> <tr> <td>Basis on which Provider occupies the premises (e.g., proprietor, lessee):</td> <td></td> </tr> <tr> <td>Principal activity(s) conducted at the premises (e.g., fuel conversion, mechanical repair / servicing, crash repair, vehicle sales):</td> <td></td> </tr> </table>	Street address:		City / Town:		Postcode:		Name and contact details of nominated administrator		Basis on which Provider occupies the premises (e.g., proprietor, lessee):		Principal activity(s) conducted at the premises (e.g., fuel conversion, mechanical repair / servicing, crash repair, vehicle sales):	
Street address:														
City / Town:														
Postcode:														
Name and contact details of nominated administrator														
Basis on which Provider occupies the premises (e.g., proprietor, lessee):														
Principal activity(s) conducted at the premises (e.g., fuel conversion, mechanical repair / servicing, crash repair, vehicle sales):														
6.	Resources, access etc.	<p>Blank gas compliance plates will be supplied at a cost of \$53.25 (incl. GST) (refundable if the Plate is returned unused and undamaged to the Secretary).</p>												
7.	Qualifications and Training	<p>The Provider must ensure that:</p> <ol style="list-style-type: none"> 1. each Associated Technician who performs work on LPG fuel systems has successfully completed the following modules of the nationally accredited training AUR32012 Certificate III in Automotive Alternative Fuel Technology: <ol style="list-style-type: none"> 1. AURTTL3009 Install LPG Fuel Systems; 2. AURTTL3008 Diagnose and Repair LPG Fuel Systems; and 3. AURTTL3007 Service LPG Fuel Systems and/or 2. each Associated Technician who performs work on CNG fuel systems has successfully completed the following modules of the national 												

		<p>accredited training AUR32012 Certificate III Automotive Alternate Fuel Technology:</p> <ol style="list-style-type: none"> a. AURTTL3003 – Install CNG Fuel Systems b. AURTTL3002 – Diagnose and Repair CNG Fuel Systems; and c. AURTTL3001 – Service CNG Fuel Systems; and/or <p>3. each Associated Technician who performs work on LNG Fuel Systems has successfully completed the following modules of the nationally accredited training AUR32012 Certificate III Automotive Alternate Fuel Technology:</p> <ol style="list-style-type: none"> a. AURTTL3003 – Install CNG Fuel Systems b. AURTTL3002 – Diagnose and Repair CNG Fuel Systems; and c. AURTTL3001 – Service CNG Fuel Systems; and <p>4. each Associated Technician who performs work on Alternative Fuel Vehicles:</p> <ol style="list-style-type: none"> a. completes a Statement of Trade and Training Qualifications in the form set out in the Attachment to this Schedule and produces the completed form to the Secretary on request; and b. completes any other training that the Secretary reasonably requires to demonstrate that the Associate Technician is qualified to assess and certify Alternative Fuel Vehicles.
8.	Accreditation	<p>The Provider must ensure that each Associate Technician is a person who:</p> <ol style="list-style-type: none"> 1. was accredited by AAFRB to conduct gas conversions or repairs in Victoria on 31 December 2019; or 2. holds such other accreditation, certification or qualification as the Secretary reasonably requires to demonstrate that the Associate Technician is qualified to assess and certify Alternative Fuel Vehicles; and 3. only conducts conversions or repairs on gas fuel systems in accordance with their qualifications; 4. has completed the required information in Schedule 2; 5. has completed the required information in Schedule 3 and attached a copy of their qualifications; and 6. has obtained and provided a National Police Check that is not less than three months old from the date of execution of this Agreement.
9.	Delegates	Not applicable
10.	Regulated Fees	Not applicable
11.	Customer Payments	The Provider may charge Customers a reasonable amount to cover the Provider's cost of conducting assessments and affixing gas Compliance Plates.
12.	Secretary Payments	Not applicable
13.	Administrative Fees	<p>The Provider must pay the following fees for services provided by the Secretary in administering this Agreement:</p> <ol style="list-style-type: none"> 1. Annual Provider fee

		<ul style="list-style-type: none"> a. \$392.00 (Inc. GST) - payable on or before the Commencement Date; <p>2. Re-inspection fee</p> <ul style="list-style-type: none"> a. \$275.00 (Inc. GST) per vehicle where, following a complaint or as the result of an audit, The Secretary considers it necessary to undertake or procure a further inspection of a vehicle that has been inspected by the Provider – payable before the further inspection is conducted.
14.	Record keeping	<ul style="list-style-type: none"> 1. The Provider must maintain the following records in respect of each Associate Technician: <ul style="list-style-type: none"> a. the name, address and contact details of the Associate Technician; b. the contract or other document by which the Associate Technician is employed, engaged or otherwise authorised by the Provider to certify and assess Alternative Fuel Vehicles; c. where the Associate Technician held accreditation from AAFRB on 31 December 2019, the AAFRB Accreditation Number; d. certificates and/or other documents that demonstrate that the Associate Technician: <ul style="list-style-type: none"> i. has undertaken any training required by item 9 of this Schedule; and ii. holds any other accreditation, certification or qualification required by The Secretary under item 10 of this Schedule; 2. The Provider must maintain the following records in respect of each vehicle inspected at the Specified Premises: <ul style="list-style-type: none"> a. the make, model, year, VIN, engine number and registration number of the vehicle; b. the name and address of the owner or registered operator of the vehicle; c. the date on which the conversion or repair was assessed; d. the name of the Associate Technician who carried out the assessment; e. if the Provider did not carry out the conversion or repair, the name and contact details of the person who carried out the conversion or repair; and f. details of any equipment fitted to the vehicle as part of the conversion or repair (including a description of the equipment, name of manufacture and part number).
15.	Special conditions	<ul style="list-style-type: none"> 1. The Provider must obtain and provide a National Police Check that is not less than three months old from the date of execution of this Agreement. (National Police Check can be obtained through the Victoria Police web site: https://www.police.vic.gov.au/fingerprinting-and-national-police-records-check.) 2. The Provider must ensure that: <ul style="list-style-type: none"> a. the Specified Premises and all equipment used in provision of the Services comply with: <ul style="list-style-type: none"> i. AS 2746 (Working areas for gas fuelled vehicles) as in force from time; and

		<ul style="list-style-type: none"> ii. all other applicable standards and legal requirements, including requirements in relation to workplace safety and the storage and handling of dangerous goods. b. all Services are provided in accordance with all applicable legal requirements, including requirements in relation to workplace safety and the storage and handling of dangerous goods; c. "No Smoking - Flammable Gas" signs are displayed at all places where the Services are provided; d. an Associate Technician does not certify or attach a gas Compliance Plate to an Alternative Fuel Vehicle unless the Associated Technician has personally inspected the vehicle; and e. certificates and notifications are provided to the Secretary in digital form (unless the Secretary has permitted the Provider to use hard copy certificates and notifications), and in accordance with the Secretary's specifications. <p>3. The Provider must give the Secretary the name, address and contact details of each person who is an Associate Technician:</p> <ul style="list-style-type: none"> a. where the person is an Associate Technician on the Commencement Date, on or before that Commencement Date; and b. where the person becomes an Associate Technician after the Commencement Date, within 14 days of person first becoming an Associate Technician. <p>4. The Provider must notify the Secretary within 14 days of an Associate Technician ceasing to be employed, engaged or authorised to in relation to the Services.</p> <p>5. The Secretary may give, and the Provider must comply with, a direction that a person not be employed, engaged or authorised to assess and certify Alternative Fuel Vehicles. if the Secretary considers that the person:</p> <ul style="list-style-type: none"> a. is not qualified to assess or certify Alternative Fuel Vehicles; b. has not undertaken the training required by item 9 of this Schedule; and c. does not hold accreditation, certification or other qualification required under item 7 of this Schedule. <p>6. The provider must not provide the Services from a mobile workshop unless the vehicle is operated out of or based at Specified Premises and registered with Specified Premises as its garaged address.</p>
16.	Insurance	<p>The Provider must take out and maintain:</p> <ul style="list-style-type: none"> a. public liability insurance for \$20 million per occurrence plus professional indemnity for \$5 million per occurrence; <p>OR</p> <ul style="list-style-type: none"> b. public liability insurance for \$20 million per occurrence plus products liability insurance for \$20 million in aggregate c. All insurance policies must be held with a provider approved by the Australian Prudential Regulation Authority (APRA).

Attachment to Schedule 2D - Statement of Trade and Training Qualifications

This Schedule must be completed by each Associate Technician employed or contracted by the Approved Provider. You will also need to attach a copy of the Associate Technicians qualifications.

Trade qualifications and training completed for an Associate Technician.

I declare that I have the following **trade qualification**:

- | | |
|--|---|
| <input type="checkbox"/> Certificate of Completion of Apprenticeship – Automotive Specialist- Gas Vehicle. | <input type="checkbox"/> Australian trades recognition certificate – Motor Mechanic |
| <input type="checkbox"/> Motor Mechanic | <input type="checkbox"/> Heavy Stream Mechanic |
| <input type="checkbox"/> VACC Motor Mechanic | <input type="checkbox"/> Auto electrician |
| <input type="checkbox"/> Diesel Mechanic | <input type="checkbox"/> IAME Associate / Member |
| <input type="checkbox"/> Other (please specify) | |

Training Qualification (Tick the Box)

- TAFE Stream No 4200 EK – Liquid Petroleum Gas Tuning, Maintenance and Installation

Registered Training Organisation	
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Training Qualification (Tick the Box)

- AUR32012 Certificate III Automotive Alternate Fuel Technology

Registered Training Organisation	
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Modules completed (Tick the Box)

- AURTTL3001 – Service CNG Fuel Systems
- AURTTL3002 – Diagnose and Repair CNG Fuel Systems
- AURTTL3003 – Install CNG Fuel Systems
- AURTTL3004 – Service LNG Fuel Systems
- AURTTL3005 – Diagnose and Repair LNG Fuel Systems
- AURTTL3006 – Install LNG Fuel Systems
- AURTTL3007 – Service LPG Vehicle Systems
- AURTTL3008 – Diagnose and Repair LPG Fuel Systems
- AURTTL3009 – Install LPG Fuel Systems

Statement of Trade and Training Qualifications (continued)

List of training qualifications of an Associate Technician.

Training Qualification *(Tick the Box)*

AUR 30605, Certificate III in Automotive Specialist- Gas Vehicle

AUR 40205, Certificate IV in Automotive Technology

Registered Training Organisation	
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Modules completed *(Tick the Box)*

- AURT304231A Install LPG Fuel Systems
- AURT304266A Repair LPG Fuel Systems
- AURT304270A Service LPG Fuel Systems
- AURT304331A Install CNG Fuel Systems
- AURT304366A Repair CNG Fuel Systems
- AURT304370A Service CNG Fuel Systems
- AURT304431A Install LNG Fuel Systems
- AURT304466A Repair LNG Fuel Systems
- AURT304470A Service LNG Fuel Systems

Signature of Associate Technician	Date: / /
Name of Associate technician:	
AAFRB Accreditation Number	
Employer Name	
Employer AAFRB Registration Number	

Schedule 3 - Confidentiality Deed

1. This Deed deals with the use and disclosure of confidential information provided to or obtained by (**Provider**) and its employees and contractors in connection with Services provided under the Vehicle Services Scheme Agreement dated [## insert date of scheme agreement ##] (**Agreement**) between the Provider and the Secretary to the Department of Transport (**Secretary**).

2. In this Deed, '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 the Agreement, and without limitation includes:
 - (a) information to which Part 7B of the *Road Safety Act 1986*, that is 'personal information' within the meaning of the *Privacy and Data Protection Act 2014* or that is otherwise required by law to be kept confidential;
 - (b) confidential business information, documents, records, financial information, reports, intellectual property, product specifications, technical information and forecasts which relate to the Secretary; and
 - (c) the fact that confidential information may be or has been provided; and
 - (d) the terms of the Agreement—

but does not include information which—

 - (e) is in or becomes part of the public domain (other than through a breach of this Agreement or an obligation of confidence); or
 - (f) the Provider can prove was independently acquired or developed by it without breaching the terms of this Agreement.

3. I, [### insert name and address of person making the Deed] acknowledge and agree that:
 - (a) I am acquainted with the requirements of Part 7B of the *Road Safety Act 1986* concerning the use and disclosure of information obtained by the Secretary, and the penalty which applies for a breach of that section;
 - (b) I must not use or disclose confidential information except for the purposes of performing Services and carrying out the obligations of the Provider under the Agreement.

Dated this day of20...

Signed, sealed and delivered by the [## insert name of person making the Deed ##]:

.....
Signature

.....
(Signature of witness)

.....
(Name of witness)