



Transport
**Roads & Maritime
Services**

DVRS

DEALER VEHICLE REGISTRATION SCHEME - AGREEMENT -

(Version: July 2015)

DVRS AGREEMENT – SIGNATURE PAGE

Executed as an agreement:

SIGNED by **ROADS AND MARITIME SERVICES:**

Witness' Signature

Print Witness' Name

Authorised Delegate's Signature

Name & Title/Position

Date

A. Standard Execution - Participant is a normal company:

SIGNED by

[insert company name]

..... in accordance with s.127 of the Corporations Act

Signature of *2nd Director/*Company Secretary [** delete whichever title doesn't apply*]

Print Name

Signature of 1st Director

Print Name

Date

B. Special Execution - Participant is a special "sole director" company:

SIGNED by

[insert company name]

..... in accordance with s.127 of the Corporations Act by its sole Director and Company Secretary who hereby states that he/she occupies both those two offices and that there is no other person holding the position of director or secretary

Witness' Signature

Print Witness' Name

Signature of Officer who is both sole Director and sole Company Secretary

Print Name

Date

DVRS AGREEMENT – SIGNATURE PAGE

C. Where the Participant is a sole trader:

SIGNED by

[insert name of sole proprietor of business]

.....

in the presence of:

Witness' Signature

Print Witness' Name

Signature of Sole Trader Proprietor

Name

Date

D. Where the Participant is a Partnership:

SIGNED for and on behalf of

.....

[insert partnership name]

.....
by its authorised representative who is
authorised to sign on behalf of the
partnership

Witness' Signature

Print Witness' Name

Representative's Signature

Name

Date

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DVRS AGREEMENT

Background

Roads and Maritime Services (RMS) has established a scheme known as the Dealer Vehicle Registration Scheme (DVRS).

- Under that scheme RMS authorises Participants to perform the registration related Services referred to in clause 3.
- In accordance with the Business Rules RMS requires that Participants are required to be either:
 - Dealers situated within NSW or within 50 km of the NSW border engaged in the sale, distribution and management of New Vehicles or Second-Hand Vehicles (or both) and who hold a NSW Dealer Licence or interstate equivalent, or
 - NSW based manufacturers or retailers of new trailers weighing less than 250kg.
 - NSW based entities who are engaged in the distribution or management of new motor vehicles

In consideration for RMS admitting the Dealer to DVRS the Dealer agrees to observe the terms and conditions of use set out in this Agreement.

Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means the terms and conditions of this agreement including the schedules to this agreement.

Anniversary Date means each anniversary of the Commencement Date.

Application Form means the application form submitted by the Participant to RMS for authorisation to provide the Services.

Authorised Services Officer means a Services Officer who has been authorised by RMS under clause 10(a).

AUVIS means an Authorised Unregistered Vehicle Inspection Station being a station authorised by RMS to establish the identity and roadworthiness of unregistered vehicles.

Business Day means any day other than a Saturday, Sunday, public or bank holiday in New South Wales.

Business Rules means the 'DVRS Business Rules' provided by RMS to the Participant and includes any amendments or supplements to, or replacements of those Business Rules which RMS may make from time to time.

Commencement Date means the commencement date listed in **Item 6** of schedule 1.

Compliance Plate means a plate fitted by a manufacturer to a vehicle to identify the vehicle and which shows, among other things:

- (a) the make and model of the vehicle;
- (b) the date of manufacture; and
- (c) the Vehicle Identification Number.

Confidential Information means any information disclosed by RMS (whether the information is oral or in writing) or obtained or created by the Participant pursuant to or in connection with this Agreement or an Existing Agreement or from information provided by RMS or by a customer to RMS, including DRIVES, Systems Information, Personal Information and information concerning the practices, business dealings or affairs of RMS or its customers.

Consumer Guarantee means a consumer guarantee applicable to this Agreement under the Australian Consumer Law (being Schedule 2 to the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the Australian Consumer Law (New South Wales) or any other state as applicable).

Controlling Registry means the registry listed in **Item 2** of schedule 1 or such other registry as notified by RMS from time to time.

Dealer or Dealer Participant means a Participant who has been classified as such by RMS (being either:

- a) carries on business in NSW and holds a Dealer Licence or
- b) carries on business in another State or Territory but within 50 km of the NSW border and holds the equivalent of a Dealer licence under the laws of that other State or Territory).

Dealer Licence means a licence issued under the *Motor Dealers and Repairers Act 2013* that allows motor vehicle dealers to buy, sell and exchange vehicles.

Dealer Online User Manual means the DOL User Manual available online at <http://www.rms.nsw.gov.au/documents/business-industry/motor-dealers/dealer-online-manual.pdf> as updated by RMS from time to time.

Distributor or Distributor Participant means a Participant who RMS has classified as such (not being a Dealer or Trailer Participant) who provides distribution or other management services for new vehicles (eg storage) which RMS has approved as being eligible for admission to DVRS .

DOL System means RMS's scheme under the Dealer Vehicle Registration Scheme whereby a User electronically submits registration information to RMS online via RMS website and DRIVES, and includes the Dealer Online User Manual and all directions regulating the operation of the DOL System and the parties' participation in it.

DOL System Information means any and all data and information (in whatever form such information may exist), relating to motor vehicle registrations in New South Wales and drivers licensed in New South Wales which is owned by RMS or held by RMS in the DOL System or entered, received, stored, generated or processed as part of the Services, including any:

- (a) database in which such data or information is contained;
- (b) documentation or records relating to such data or information;
- (c) products, material, documentation or records resulting from the use or manipulation of such information;
- (d) copies of any of the above; and
- (e) user IDs or passwords for access to the DOL System.

DRIVES is the Driver and Vehicle Information System operated by RMS and containing information relating to motor vehicle registrations and drivers licensed in New South Wales.

Equipment means the computer terminal and related equipment used by the Participant for entering transactions or placing orders as the case may be via the Systems and providing the Services in accordance with this Agreement.

Fees means:

- (a) registration fees in amounts as directed by RMS from time to time;
- (b) motor vehicle taxes in amounts as directed by RMS from time to time;
- (c) number plate fees in amounts as directed by RMS from time to time;
- (d) for Heavy Vehicles, inspection fees in amounts as directed by RMS from time to time;
- (e) stamp duty in amounts as directed by RMS from time to time; and
- (f) any other fees, taxes, duties or any other amounts which RMS directs the Participant to collect from time to time.

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, Minister, commission, authority, tribunal, agency or entity in any part of the world.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meaning as in the GST Act.

GVM means the gross vehicle mass recommended by the vehicle manufacturer for safe operation of the vehicle.

Heavy Vehicle means a vehicle with a GVM of more than 4.5 tonnes.

Inspection Report means an inspection report (or "blue slip") issued by an **AUVIS**.

Intellectual Property Rights means all intellectual property rights or other proprietary rights including copyright, design rights, registered designs, rights in databases, trademarks (registered or unregistered) and rights to apply for registration of any of the foregoing anywhere in the world.

Law means any law, regulation, government policy or ministerial direction.

Loss means any costs, actions, demands, suits, claims, expenses (including legal costs or expenses), proceedings, damages, loss (whether direct, indirect or consequential) or loss of profits suffered or incurred by a party.

Motor Dealer's Guide to Vehicle Registration means RMS Motor Dealer's Guide to Vehicle Registration available online at <http://www.rms.nsw.gov.au/documents/business-industry/motor-dealers/motor-dealers-guide.pdf> as updated by RMS from time to time.

New Vehicle means a registrable vehicle as defined in the *Road Transport Act 2013* (NSW) which:

- (a) is newly manufactured;
- (b) has not been used as a vehicle other than as necessary for manufacture and pre-delivery service;
- (c) has not previously been registered in NSW or elsewhere; and
- (d) has a Compliance Plate fitted.

Ordering System means any system nominated by RMS from time to time for use by to Participants to enable them to order number plates online or electronically as an agent of RMS.

Ordering System Information means any and all data and information (in whatever form such information may exist), relating to the ordering of number plates via the Ordering System which is entered, received, stored, generated or processed as part of the Services, including any:

- (a) database in which such data or information is contained;
- (b) documentation or records relating to such data or information;
- (c) products, material, documentation or records resulting from the use or manipulation of such information;
- (d) copies of any of the above; and
- (e) user IDs or passwords for access to the Ordering System.

Other Nominated Registry means the registry listed in **Item 3** of schedule 1.

Participant means the person or entity whose details are provided in Item 1 of schedule 1.

Participant's Representative is the person whose details are set out in Item 9 of schedule 1 or as otherwise notified to RMS under clause 6(a).

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Personnel means employees, officers, secondees, contractors and agents of the Participant.

Premises means the premises listed in **Item 4** of schedule 1.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth), any applicable codes of conduct or directions issued under the *Privacy and Personal Information Protection Act 1998* (NSW) or the *Privacy Act 1988* (Cth), and all other applicable Laws relating to Personal Information.

Purpose means:

- (a) submitting vehicle information to RMS and receiving information from RMS as contemplated by this Agreement; and
- (b) ordering number plates on behalf of RMS as contemplated by this Agreement.

RMS means Roads and Maritime Services ABN 76 236 371 088, of 101 Miller Street, North Sydney NSW 2060.

RMS Materials means any materials and documentation provided by RMS to the Participant to perform Services (including any materials and documentation relating to the Systems, the Systems Information or provided under any Existing Agreement) other than any number plates or registration labels provided or ordered under clause 14 or the Existing Agreement.

Second-Hand Vehicle means a registrable vehicle as defined in the *Road Transport Act 2013* (NSW) which:

- (a) has previously been registered; and
- (b) has a Compliance Plate fitted.

Security Administrator is the person nominated by the Participant and authorised by RMS as the person responsible for administering the Systems on behalf of the Participant.

Services has the meaning given in **Schedule 6**.

Services Officers means employees of the Participant (including, for the avoidance of doubt, the Participant's Representative and the Security Administrator and Users under the Systems) or subcontractors approved by RMS under clause 5(b) who perform the Services.

Software means the computer software used by the Participant for entering transactions via the Systems and providing the Services in accordance with this Agreement.

Statement of Business Ethics means RMS Statement of Business Ethics published by RMS on its website at www.rms.nsw.gov.au, including as amended from time to time). A copy of the version current at February 2015 is attached for convenience in Schedule 5.

System Operator is the person or entity responsible for providing or operating the Ordering System, as nominated by RMS from time to time. The System Operator may be:

- (a) RMS; or
- (b) any person or entity manufacturing number plates under an agreement with RMS; or
- (c) a third party service provider to RMS or to the manufacturer of the number plates,

Systems means the DOL System and the Ordering System.

Systems Access means authorisation to use the DOL System and/or the Ordering System in accordance with this Agreement.

Systems Information means the DOL System Information and the Ordering System Information.

Tax Invoice has the meaning given to it in GST Law.

Trailer Participant means a Participant who RMS has classified as such (not being a Dealer or Distributor Participant) based in NSW who manufactures or sells new trailers not weighing more than 250kg.

Use includes access, amend, update, add to, reproduce, process or otherwise deal with.

User is a person nominated by the Participant and authorised by RMS to access either of the Systems.

vehicle: unless the context does not admit, references to vehicles include new trailers under 250 kg but only in relation to Trailer Participants.

Vehicle Identification Number means a structured combination of characters assigned to a vehicle by the manufacturer for identification purposes in accordance with the Australian Design Rules.

1.2 Interpretation

- (a) The clause headings and subheadings in this Agreement do not form part of this Agreement and will not be used in its interpretation.
- (b) In this Agreement:
 - (1) a reference to a party includes its employees, officers, contractors and subcontractors;
 - (2) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Governmental Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (3) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;

- (4) a reference to a party includes that party's successors and assigns;
 - (5) a reference to an agreement other than this Agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing; and
 - (6) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind.
- (c) "Includes" or "for example" or similar expressions are not words of limitation.

1.3 Priority of documents

If there is any inconsistency between this Agreement, the Business Rules or any RMS Materials, they will, to the extent of any inconsistency, take effect in the following descending order of priority:

- (a) this Agreement;
- (b) the Business Rules;
- (c) the Motor Dealer's Guide to Vehicle Registration; and
- (d) RMS Materials, with the most recent RMS Materials taking precedence.

2 Termination of Any Existing Agreement

- (a) The parties acknowledge that any existing or previous agreement concerning the same subject matter terminates automatically on the Commencement Date without need for any further action.
- (b) Termination of the Existing Agreement is without prejudice to accrued rights or liabilities of either party under the Existing Agreement.

3 Authorisation

3.1 Authorisation

RMS authorises the Participant to perform the Services as a delegate of RMS pursuant to section 50 of the *Transport Administration Act 1988* (NSW) and Regulation 87(1)(e) of the *Transport Administration (General) Regulation 2013* on the terms and conditions set out in this Agreement.

3.2 Acceptance of authorisation

In consideration of RMS authorising the Participant to perform the Services, the Participant agrees to comply with the terms and conditions set out in this Agreement.

4 Scope of Participant's authority

- (a) The Participant must not act outside the scope of the authority conferred by this Agreement.
- (b) The Participant must not bind RMS in any way or hold itself out as having any authority to do so except to the extent authorised by this Agreement. Except as specifically permitted by this Agreement or the Business Rules, the Participant is not

authorised to assume or create any obligations on behalf of RMS and the Participant must not incur any liability on behalf of RMS or in any way pledge or purport to pledge RMS's credit.

- (c) The authority of the Participant to act as delegate of RMS is limited to lawful acts.
- (d) The Participant must not do anything which might adversely affect the reputation of RMS.

5 Performance of Services

- (a) The Participant must perform Services:
 - (1) diligently, accurately, competently, ethically, and honestly;
 - (2) to the standard of skill and care expected of a Participant experienced in the provision of the type of services specified in this Agreement;
 - (3) in a timely and expeditious manner so as to meet any specific requirements made known to the Participant by RMS from time to time;
 - (4) in accordance with this Agreement;
 - (5) in accordance with the Motor Dealer's Guide to Vehicle Registration;
 - (6) in accordance with the Business Rules;
 - (7) in accordance with RMS Materials;
 - (8) in accordance with the Statement of Business Ethics;
 - (9) in accordance with any other guidelines or directions issued by RMS; and
 - (10) in compliance with all Laws.
- (b) The Participant must not subcontract the whole or any part of the performance of the Services without the prior written approval of RMS. An approval given by RMS permitting the Participant to subcontract any part of the Services may only be given by RMS's Manager, Operational Policy, or another person notified by RMS to the Participant from time to time and if given, does not relieve the Participant from its obligations and liabilities under this Agreement.
- (c) The Participant must review RMS website, and any RMS extranet to which the Participant is given access, regularly for updates to the Motor Dealer's Guide to Vehicle Registration, the Business Rules, and Statement of Business Ethics or any other guidelines or directions issued by RMS from time to time.

6 Notification of changes and breaches

The Participant must notify RMS:

- (a) of any change to the Participant's Representative at least five Business Days before the change is implemented;
- (b) promptly, of any breach of this Agreement by the Participant and advise of the action taken to remedy the breach;
- (c) immediately, if it becomes aware of any inaccuracy, incompleteness or change in the information in the Application Form or schedule 1;
- (d) immediately, if it becomes aware of any suspected, alleged or actual corrupt or fraudulent conduct (including fraud by customers or Services Officers);

- (e) immediately,
 - (1) if any persons who between them beneficially own, at the date of this Agreement, more than 50% of the ordinary shares or other voting or economic interests in the Participant, cease to hold or control more than 50% of such ordinary shares or other voting or economic interests; or
 - (2) if the Participant is a partnership, of any change in the composition of the partnership; and
 - (f) immediately, if it ceases to meet the eligibility criteria set out in the Business Rules; and
 - (g) promptly of the name of all Authorised Services Officers who cease to provide the Services for the Participant.
-

7 Financial accounting

7.1 Fees

- (a) The Participant acknowledges that Fees are received solely for and on behalf of RMS.
- (b) The Participant must:
 - (1) receive Fees as agent for RMS;
 - (2) hold Fees received on trust for RMS;
 - (3) separately account for Fees received for RMS; and
 - (4) remit Fees received for RMS to RMS in accordance with the requirements of the Business Rules, **Item 8** of schedule 1 and clause 7.3.

7.2 Costs

- (a) The Participant is responsible for all costs incurred by it in performing its obligations under this Agreement.
- (b) RMS is responsible for any costs incurred by it in producing and providing to the Participant registration labels (if applicable), number plates and other RMS Materials provided by RMS to the Participant under this Agreement, including any charges owing to any contractor to RMS who manufactures registration labels or number plates (including number plates ordered by the Participant as agent of RMS in accordance with this Agreement).

7.3 Receipt of Fees

The Participant must issue a stamped Tax Invoice in accordance with GST Law to any person from whom payment is accepted on behalf of RMS.

7.4 Errors and discrepancies

If RMS detects any error or discrepancy in any of the documentation forwarded to it by the Participant under clause 7.1(b)(4), it will notify the Participant, and the Participant must correct any such errors or discrepancies within one Business Day.

8 Control management

8.1 Full and accurate records

- (a) The Participant must create and maintain full and accurate records of the Services performed, including:
 - (1) vehicle registration details, including details of transfer and renewal of vehicle registration;
 - (2) customer details;
 - (3) inspection details;
 - (4) number plates ordered via the Ordering System (including relevant invoices and other records);
 - (5) number plates issued; and
 - (6) vehicle disposal details.
- (b) Without limiting clause 8.1(d), the Participant must maintain all records that:
 - (1) are reasonably required for the purposes of an audit or inspection referred to in clause 8.2; or
 - (2) are required by any relevant Law of which the Participant is or should be aware.
- (c) The Participant must ensure that all records maintained under clauses 8.1(a) and 8.1(b) are maintained in its custody and control and in an accessible and secure form and for the period that either the Participant or RMS is required by Law to retain them.
- (d) The Participant must provide RMS with the records referred to in clauses 8.1(a) and 8.1(b) at RMS's request.

8.2 RMS audits

- (a) The Participant must, on at least 24 hours notice, provide RMS (or RMS's representative) free and unfettered access during the Participant's usual business hours to:
 - (1) the resources, Authorised Services Officers, Premises and facilities used by the Participant in connection with the supply of Services; and
 - (2) financial and operational records and other documentation relating to the provision of Services in the possession, custody or control of the Participant (including all records relating to Systems Access),
 - (3) for the purpose of RMS assessing the Participant's compliance with any Laws, any audit requirements or its obligations under this Agreement.
- (b) RMS or its representative may inspect and take copies of any such records.
- (c) If the Participant is not legally able to provide RMS with access to all of its the Premises and facilities because of restrictions imposed by Law, a representative of the Participant must, within the time notified by RMS, meet with RMS and provide RMS with satisfactory evidence of the Participant's compliance with its obligations under this Agreement.

- (d) The Participant must co-operate fully, and must ensure that all Authorised Services Officers co-operate fully, in any inspection including by answering all reasonable requisitions of RMS or its representative.
- (e) If an inspection reveals that the Participant is not complying with any relevant Law, any audit requirement or otherwise with this Agreement, the Participant must promptly take such action as is necessary to remedy the non-compliance.

8.3 Independent audits

- (a) The Participant must conduct annual audits (using an independent auditor) for the purposes of auditing compliance with its obligations under this Agreement.
- (b) On the date specified in Item 7 of schedule 1 each year during the term of this Agreement, the Participant must provide to RMS a certification by the auditor referred to in clause 8.3(a) as to the following:
 - (1) that the Participant and any subcontractors approved under clause 5(b) have complied with all of the Participant's obligations under this Agreement; or
 - (2) if the Participant or any subcontractor approved under clause 5(b) has failed to comply with all of the Participant's obligations under this Agreement:
 - (A) details of any such failure;
 - (B) details of the steps undertaken by the Participant to rectify and prevent the recurrence of any such failure; and
 - (C) that the Participant and any subcontractor approved under clause 5(b) has complied with the remainder of the Participant's obligations under this Agreement.
- (c) The Participant must ensure its independent auditor retains sufficient records so as to be able to justify its audit and certification if required.
- (d) Each party must bear its own costs associated with audits under clauses 8.2 and 8.3.

8.4 Lodging, and accuracy of, data

- (a) The Participant must:
 - (1) ensure that all forms and/or other documents required under the Motor Dealer's Guide to Vehicle Registration and the Business Rules are correctly completed; and
 - (2) forward the forms and/or other documents to RMS in accordance with **Item 8** of schedule 1 and the Business Rules.
- (b) The Participant must notify RMS within one Business Day of it becoming aware of any inaccuracy in forms, documents or other data it has supplied to RMS.
- (c) If the Participant supplies incorrect forms, documents or other data then the Participant must correct the forms, documents or other data at its own expense, within one Business Day or such longer period as directed by RMS.
- (d) It is an essential condition of this Agreement that all forms and other documents be completed by the Participant with at least 95% accuracy rates at all times and 100% accuracy in respect of customer identification.
- (e) Where the Participant fails to meet an accuracy rate as required by this clause then RMS may in its discretion follow the "Participant Errors – Action Plan Process" in **schedule 4**.

- (f) This clause 8.4 does not limit any right which RMS has under any other clause including clauses 7, 18, or 21.

9 Systems Access

9.1 Systems Access

- (a) The Participant may apply to RMS using the forms provided by RMS for authorisation to use either or both of the DOL System and/or the Ordering System for the provision of Services. The Participant must not access either System until approval is granted by RMS.
- (b) RMS has an absolute discretion to require the Participant to use either or both of the Systems. If requested by RMS, or required by the Business Rules, the Participant must apply for access to the relevant System(s) using the relevant application form(s) provided by RMS.
- (c) Without limiting the operation of clause 18.1, the Participant acknowledges that if the Participant does not obtain the relevant System(s) Access within a reasonable time following RMS's request under clause 9.1(b) then RMS may wish to terminate this Agreement under clause 18.1.
- (d) The Participant's access to the System(s) will commence on the date determined by RMS.
- (e) If the Participant is given approval to access either or both of the Systems, without limiting any other provisions of this Agreement, the Participant must comply with this clause 9.

9.2 Responsibility for use by Security Administrator and Users

The Participant must ensure that its Security Administrator(s) and User(s) comply with this Agreement and do not cause the Participant to be in breach of this Agreement.

9.3 Equipment and Software

- (a) The Participant is solely responsible, at its cost, for providing and maintaining the Equipment and Software with access to the World Wide Web required for entering transactions via the DOL System, ordering, receipting and recording number plate condition via the Ordering System and providing the Services. The Participant must comply with the licence terms and any other conditions applicable to use of the Software.
- (b) Provision of any items other than RMS Materials by RMS is at RMS's sole and absolute discretion. RMS accepts no responsibility for the provision of any hardware, software, equipment or processes used by the Participant in connection with either of the Systems.
- (c) Title to RMS Materials and any other items provided by RMS will remain vested in RMS.
- (d) RMS is not responsible for any costs or expenses incurred by a Participant in using the Systems including any telecommunications fees, ISP charges or software licence fees.

9.4 Use of the Systems

- (a) The Participant must not use the DOL System for any purpose other than submitting vehicle information to RMS and receiving information from RMS as contemplated by this Agreement.
- (b) The Participant must not use the Ordering System for any purpose other than ordering, receipting and recording number plate condition, as agent of RMS in accordance with clause 14.
- (c) The Participant must ensure that no person uses the Systems other than as permitted in this clause 9.4.
- (d) The Participant must comply with any guidelines or directions issued by RMS from time to time in relation to the Systems and must ensure that each Security Administrator and User is familiar with and complies with the guidelines, directions or documents provided by RMS.
- (e) For the avoidance of doubt, the Participant must submit all paperwork to RMS in hard copy as required by this Agreement, irrespective of whether or not it submits information to RMS on-line via the DOL System.
- (f) The Participant must nominate a suitably qualified person to act as its Security Administrator and must also nominate at least one suitably qualified person as a User. For an individual to be authorised as a Security Administrator or a User, the Participant must arrange for that person to complete and sign the relevant form and deliver it to RMS.
- (g) The Participant must ensure that the Participant's Security Administrator takes day-to-day operational responsibility for ensuring the Participant's and Participant's Users' compliance with the guidelines referred to in clause 9.4(d).
- (h) RMS retains the right in its absolute discretion to authorise or reject any person nominated by the Participant to fill either a User or Security Administrator role.
- (i) The Participant must notify RMS:
 - (1) as soon as possible prior to any change in the details provided in respect of any Security Administrator or User on a Security Administration/User Authorisation Form; and
 - (2) promptly of the name of all Security Administrators or Users who cease to provide the Services for the Participant.
- (j) The Participant must ensure that all Security Administrators and Users:
 - (1) are provided with a copy of the Statement of Business Ethics; and
 - (2) carry out the Services in accordance with the Statement of Business Ethics.
- (k) The nomination and appointment of a Security Administrator or User by the Participant with the authorisation of RMS does not in any way limit or affect the obligations of the Participant under this Agreement.

9.5 Use of the Ordering System

- (a) The Participant acknowledges that the Ordering System is provided or operated by the System Operator.
- (b) Without limiting clause 9.4, in accessing and using the Ordering System the Participant must comply with:
 - (1) any technical, operational or security requirements of the System Operator; and

- (2) the terms of any agreement between RMS and the System Operator (if relevant), as advised by RMS to the Participant from time to time.

9.6 User IDs and passwords

- (a) In relation to each of the Systems, the System Operator will provide a unique identification number (user ID) and a password for each User to enable the User to access the System. Each user ID will be recorded by the System Operator for security and audit reasons against all information submitted by each User.
- (b) The Participant must ensure that each User and Security Administrator ensures that:
 - (1) password(s) are kept secure and separate from user IDs;
 - (2) password(s) are not used by or available to any person other than the individual User to which it is assigned; and
 - (3) each User logs out of the System when vacating the dedicated terminal to ensure no other person is able to provide a transaction under that user ID.
- (c) The Participant must also:
 - (1) except as required by Law prohibit the storage, reproduction or creation of any database of any Systems Information whether in electronic or any other form;
 - (2) prohibit any other activity which may compromise the security and integrity of a System or any Systems Information; and
 - (3) inform Users of their potential personal liability for penalties under any Laws.
- (d) If a Participant knows or suspects that a person who is not authorised to access a System knows or may know a User's password or that a User knows the password of another User, the Participant must:
 - (1) instruct the User to immediately change their Password (to the extent that they are able to); and
 - (2) advise RMS of such occurrence or suspicion.

9.7 Systems Information

The Participant must ensure that all information submitted to the Systems:

- (a) is complete, correct and accurate;
- (b) does not infringe the Intellectual Property Rights of any person; and
- (c) complies with:
 - (1) all applicable Laws; and
 - (2) any applicable RMS guidelines or directions which are notified to the Participant.

9.8 Confidentiality: Protecting the Systems and Systems Information

- (a) Without limiting clause 19 of this Agreement, the Participant must not permit Use of a System or any Systems Information by, or disclose any Systems Information to, any person other than:
 - (1) its Personnel who are authorised in writing by RMS prior to the disclosure; or

- (2) persons to whom the Participant is required by Law to disclose Systems Information, if the Participant notifies RMS before the disclosure or, if that is not possible, immediately afterwards.
- (b) Without limiting clause 9.8(a) or clause 20 of this Agreement, the Participant must ensure that any Personnel who Use a System or any Systems Information or to whom it discloses any Systems Information:
 - (1) is a person who has a need to know for the Purpose; and
 - (2) is a person who has signed a document imposing confidentiality and privacy obligations substantially similar but in any event no less onerous than those imposed under this Agreement.
- (c) The Participant must, upon request, provide RMS with a copy of documents executed under clause 9.8(b)(2).
- (d) The Participant must:
 - (1) immediately notify the Controlling Registry if it becomes aware of any suspected or actual unauthorised Use, disclosure or disposal of a System or any Systems Information;
 - (2) immediately take all steps (including those requested by RMS) at its own expense, which are necessary to:
 - (A) prevent any suspected or actual unauthorised Use, disclosure, or disposal of a System or Systems Information by its Personnel; or
 - (B) enforce the rights of the Participant or RMS in respect of any breach by the Participant's Personnel of their obligations in respect of a System or any Systems Information;
 - (3) ensure that the Systems and the Systems Information are safeguarded at all times from corruption, interference or loss, and against unauthorised Use, disclosure, disposal or other misuse; and
 - (4) not store, reproduce or create any database of any Systems Information, whether in electronic or other form except as required for the Purpose or by Law.

9.9 [Clause not used]

9.10 Termination of Systems Access

- (a) The Participant's access to the Systems will terminate if any one or more of the following occurs:
 - (1) automatically in respect of both Systems, if this Agreement terminates for any reason;
 - (2) in respect of a System if the Participant commits a material breach of this clause 9 in relation to that System and fails to remedy that breach within 7 days, after receipt of a notice of termination from RMS;
 - (3) 7 days after RMS issues a notice of termination to the Participant; or
 - (4) 7 days after the Participant issues a notice of termination to RMS,(and the parties acknowledge that a notice of termination under clauses 9.10(a)(3) and 9.10(a)(4) may be issued for convenience without cause and may be issued in respect of either or both Systems).

- (b) Termination of the Participant's access to a System under this clause 9.10 does not of itself terminate this Agreement which shall continue to apply to the Participant.
- (c) If the Participant's access to a System terminates for any reason, the authorisation of each Security Administrator and User employed or engaged by that Participant will terminate automatically in respect of that System. The Participant must ensure that no Security Administrator or User uses or attempts to use that System after the date of termination.

9.11 Consequences and effect of termination

- (a) The Participant must, within 5 days after the date of termination of the Participant's access to a System:
 - (1) deliver to RMS all items, materials and documents issued to the Participant by RMS in connection with the Participant's access to that System; and
 - (2) pay to RMS all money then due and payable to RMS in connection with the System.
- (b) Termination of the Participant's access to a System is without prejudice to any accrued rights or remedies of the parties.

9.12 Termination of Security Administrator's or Users' Systems Access

RMS may at any time terminate the Security Administrator's or a User's Systems Access for either or both Systems if the Security Administrator or User fail to comply with this Agreement or cause the Participant to be in breach of this Agreement.

10 Engagement and management of Authorised Services Officers

- (a) The Participant may from time to time apply to RMS for a Services Officer to be authorised to perform the Services. The Participant must ensure that only Authorised Services Officers perform the Services.
- (b) For an individual to be authorised as an Authorised Services Officer, the Participant must ensure that the individual completes the Authorised Services Officer authorisation form or such other form as RMS may require from time to time.
- (c) RMS may in its absolute discretion authorise or reject any person nominated by the Participant as an Authorised Services Officer.
- (d) RMS may, in its absolute discretion, terminate any authorisation of an Authorised Services Officer immediately at any time, by giving notice to the Participant.
- (e) The Participant must:
 - (1) ensure that all Authorised Services Officers are appropriately qualified and experienced to provide Services in accordance with this Agreement, including for the avoidance of doubt, in accordance with the Motor Dealer's Guide to Vehicle Registration and the Business Rules;
 - (2) ensure that all Authorised Services Officers perform the Services in accordance with this Agreement; and
 - (3) ensure that all Authorised Services Officers:
 - (A) are provided with a copy of the Statement of Business Ethics; and
 - (B) carry out the Services in accordance with the Statement of Business Ethics.

- (f) RMS's authorisation of an Authorised Services Officer does not in any way limit or affect the obligations of the Participant under this Agreement. For the avoidance of doubt, a failure by an Authorised Services Officer to perform the Services in accordance with this Agreement is a breach of this Agreement by the Participant.
- (g) If requested to do so, the Participant must provide to RMS:
 - (1) accurate information about the identity, qualifications, job history and character of each of the Authorised Services Officers; and
 - (2) a list of any of the Authorised Services Officers, showing the full name, address and signature of each individual.
- (h) The Participant must comply with any guidelines issued by RMS from time to time in relation to the conduct of background, security or other checks on Authorised Services Officers or persons with proposed Systems Access or access to Confidential Information. The Participant acknowledges that these directions or guidelines may require the Participant to conduct such investigations as RMS may reasonably request in relation to any Authorised Services Officers or persons with proposed Systems Access or access to Confidential Information.
- (i) The Participant must obtain from any Authorised Services Officer or person with proposed Systems Access or access to Confidential Information any consent that is necessary to enable either the Participant or RMS to:
 - (1) comply with clause 10(h);
 - (2) conduct any investigations required by RMS under any direction or guidelines; and
 - (3) to exchange information as contemplated in the relevant direction or guideline.
- (j) If the Participant is unable to obtain that consent, then, unless RMS agrees otherwise, that person must not perform the Services or be given access to the Systems or Confidential Information.
- (k) An investigation by RMS will not:
 - (1) constitute waiver of any breach of this Agreement; or
 - (2) affect the Participant's obligations and its sole responsibilities regarding provision of the Services in accordance with this Agreement.

11 Premises

The Participant must not provide the Services, Use the Systems or Confidential Information at any location other than the Premises

- (a) except to the extent necessary to perform its obligations under this Agreement at the Controlling Registry or Other Nominated Registry.
- (b) If the Participant wishes to change the location of the Premises, the Participant must provide RMS with 20 Business Days prior notice.

12 Conflict of interest

The Participant must ensure that an Authorised Services Officer does not perform Services in relation to vehicles owned by that Authorised Services Officer.

13 Intellectual property rights

- (a) The Participant acknowledges that this Agreement does not transfer to it any Intellectual Property Rights whatsoever, including any Intellectual Property Rights in RMS Materials, any number plates, any registration labels provided by RMS, the Systems or the Systems Information.
- (b) If the Participant becomes aware of any actual or suspected infringement of RMS's Intellectual Property Rights it must immediately notify RMS and must provide all reasonable assistance requested by RMS in relation to any action RMS takes.
- (c) The Participant absolutely and unconditionally:
 - (1) assigns to RMS all present and future copyright it has in any Confidential Information and any Systems Information immediately on its creation; and
 - (2) agrees, absolutely and unconditionally, to assign to RMS all other Intellectual Property Rights in any Confidential Information and any Systems Information without the need for any further assurance.

14 Number plates, labels and RMS Materials

- (a) RMS will provide number plates and registration labels (if applicable) to the Participant in accordance with RMS procedures.
- (b) If the Participant is authorised to access the Ordering System by RMS, then the Participant must:
 - (1) order number plates via the Ordering System as agent of RMS in accordance with this Agreement and the Motor Dealer's Guide to Vehicle Registration;
 - (2) assess on behalf of RMS whether number plates received are the correct plates, intact, in good condition and otherwise in accordance with the requirements advised by RMS from time to time; and
 - (3) promptly report and return any number plates which do not meet the requirements of clause 14(b)(2).
- (c) The Participant must use number plates and registration labels only for the provision of Services and in accordance with this Agreement.
- (d) The Participant must store all number plates and registration labels in an area which:
 - (1) is locked; and
 - (2) is accessible only by Authorised Services Officers.
- (e) The Participant must issue all number plates received under this Agreement by:
 - (1) affixing the number plates to the relevant vehicle; or
 - (2) issuing the number plates to the registered operator of the relevant vehicle; or
 - (3) returning them to RMS,
in accordance with the Motor Dealer's Guide to Vehicle Registration and RMS Materials.

- (f) RMS may provide the Participant with RMS Materials required for the provision of the Services. The Participant must use RMS Materials only for the provision of Services and in accordance with this Agreement.
- (g) Title to RMS Materials and to any number plates or registration labels provided by RMS or any number plates ordered via the Ordering System will remain vested in RMS.
- (h) The Participant must immediately notify any loss of RMS Materials, number plates or registration labels to RMS.

15 Liability

15.1 Liability of RMS

- (a) The Participant:
 - (1) acknowledges that RMS does not represent or warrant the accuracy, completeness or fitness of:
 - (A) RMS Materials; or
 - (B) any information or advice provided by or for RMS in connection with RMS Materials or this Agreement; and
 - (C) (where the Participant has Systems Access):
 - (i) the Systems, the Systems Information;
 - (ii) any information or advice provided by or for RMS in connection with the Systems or the Systems Information;
 - (iii) that RMS will provide access to the Systems at any particular time or that it will be able to continue to do so;
 - (iv) that the Participant or Users will be able to connect to or Use the Systems; or
 - (v) that the Systems, the Systems Information, or RMS Materials will be or will remain error free;
 - (2) must make its own assessment of RMS Materials (and the Systems and Systems Information where the Participant has Systems Access).
- (b) Subject to clause 15.1(c), RMS excludes all liability (in contract, tort including negligence, under statute or otherwise arising), to the Participant in respect of any Loss arising out of or relating to the performance of the Services or RMS Materials or any act or omission of RMS in relation to this Agreement.
- (c) Except as set out in this paragraph (c), nothing in this Agreement excludes, restricts or modifies the application of, or liability in respect of, any Consumer Guarantee that applies to this Agreement. The liability of RMS for any liability, loss, cost, expense or damage suffered or incurred by a Participant because of a failure of RMS to comply with a Consumer Guarantee that applies to this Agreement is limited to RMS (at its election):
 - (1) where the failure is in respect of goods:
 - (A) replacing the goods or supplying equivalent goods;
 - (B) repairing the goods;

- (C) paying the cost of replacing the goods or of acquiring equivalent goods; or
- (D) paying the cost of having the goods repaired; or
- (2) where the failure is in respect of services:
 - (A) supplying the services again; or
 - (B) (paying the cost of having the services supplied again,

except where it is not 'fair or reasonable' (as contemplated under section 64A of the Australian Consumer Law) for RMS to do so.
- (d) Without limiting clause 15.1(b), RMS will have no liability to the Participant (in contract, tort including negligence, under statute or otherwise arising) in respect of any Loss which is indirect or consequential including any loss of profits, loss of revenue, loss of business, loss of reputation, loss of data integrity or loss of anticipated savings.
- (e) Except as otherwise expressly stated in this Agreement, all terms, conditions, warranties, undertakings, inducements or representation whether express or implied, statutory or otherwise relating to the Services, RMS Materials, this Agreement, and (where the Participant has Systems Access, the Systems) are excluded to the fullest extent permissible at law.

15.2 Remedies

The parties agree that:

- (a) monetary damages for a breach of this Agreement by the Participant will be insufficient to compensate RMS for such a breach; and
- (b) in addition to any other remedy available at law, RMS is entitled to injunctive relief to prevent a breach of and to compel specific performance of the terms of this Agreement.

15.3 Participant's indemnity

- (a) The Participant must indemnify and keep indemnified RMS and the State of New South Wales against all Loss (on a full indemnity basis and whether incurred by, or awarded against, RMS or the State of New South Wales) that RMS or the State of New South Wales may sustain or incur as a result, whether directly or indirectly arising out of or in relation to:
 - (1) loss of, loss of use of or damage to the number plates, registration labels or RMS Materials while located on the Premises or being used for purposes of providing the Services;
 - (2) personal injury (including death) or illness to any person arising out of or relating to anything done or omitted to be done by Participant in the provision of the Services;
 - (3) any claim for breach of confidence or privacy or misuse of Personal Information arising out of or in connection with this Agreement or provision or non provision of the Services by the Participant or (where the Participant has Systems Access) arising out of or in connection with the Use of the Systems or the Systems Information by the Participant;
 - (4) such share (as determined by RMS) of any compensation which RMS may decide to pay a person for Loss suffered by that person as a result of any

breach of clause 20 by the Participant, for which RMS would have been liable under Privacy Laws if such breach had been that of RMS, provided that RMS will give the Participant 14 days' notice of any proposed payment (which will include an explanation of how that liability or expense was assessed and the Participant's proposed share of that liability) and the Participant must make the payment to RMS within that 14 days;

- (5) any fraud or other unlawful activity committed by any Services Officers or Personnel;
 - (6) any discrepancy between the amount collected by the Participant from customers on behalf of RMS and the amount remitted by the Participant to RMS under clause 7;
 - (7) all charges for administration and legal costs incurred by RMS in recovering Fees from the Participant;
 - (8) any difference between the fees the Participant collects from a customer and the Fees due to RMS; and
 - (9) any act or omission of the Participant arising out of or relating to this Agreement or the provision of the Services.
- (b) The Participant's liability to indemnify RMS is reduced proportionally to the extent that a malicious or negligent act or omission of RMS or RMS's employees or agents (other than the Participant) or a breach of this Agreement by RMS has contributed to the injury or Loss.

15.4 Participant's warranty

The Participant represents and warrants that as at the execution of this Agreement, the execution and delivery by it of this Agreement was properly authorised.

16 Insurance

- (a) The Participant must effect and maintain all insurances referred to in **schedule 2** on such terms, for such amounts and for such periods as set out in **schedule 2**.
- (b) The Participant must provide certificates of currencies to RMS of the insurances required under clause 16(a) on execution of this Agreement and at any time at the request of RMS. The certificates of currency must comply with the requirements of **Schedule 3**.
- (c) If the Participant claims that it is exempt at law from holding Workers Compensation Insurance then the Participant must provide RMS with such assurance as RMS may require (for example a Statutory Declaration) declaring the Participant as exempt.
- (d) The Participant must notify RMS within 2 Business Days of:
 - (1) the cancellation of any of the policies of insurance required under clause 16(a); or
 - (2) the variation in the sum insured or coverage of such insurance policies.

17 Term

- (a) This Agreement commences on the date stated in **Item 6** (which the Participants authorises RMS to complete) and if no date is stated then on the latter of the date that it is executed by RMS and the Participant.
- (b) The Participant's authorisation to perform Services as set out in this Agreement commences on the Commencement Date.
- (c) This Agreement and the right to perform Services will remain in force until this Agreement is terminated in accordance with clause 18.

18 Termination

18.1 Termination without cause by either party

This Agreement may be terminated at any time without cause by either party giving 7 day's written notice to the other.

18.2 Termination by RMS

RMS may terminate this Agreement immediately at any time by giving notice to the Participant if:

- (a) the Participant fails at any time to meet the eligibility criteria set out in the Business Rules;
- (b) the Participant, in the reasonable opinion of RMS, fails to perform Services to a satisfactory standard and that failure has not been remedied to the reasonable satisfaction of RMS within 7 days of RMS giving the Participant notice of that failure;
- (c) the Participant or any of its Service Officers refuse to comply with any lawful directions given to them by RMS;
- (d) the Participant commits a breach of any of the provisions of this Agreement and:
 - (1) in the reasonable opinion of RMS, the breach is incapable of being remedied; or
 - (2) in the reasonable opinion of RMS, the breach is capable of being remedied, and the Participant fails to remedy the breach to the reasonable satisfaction of RMS within 7 days of receiving notice from RMS of that breach;
- (e) the Participant has received more than 3 notices issued under clause 18.2(d)(2) in a 12 month period;
- (f) without reasonable cause, the Participant suspends the carrying out of Services;
- (g) the Participant attempts to assign (by way of security or otherwise) any right or interest under this Agreement;
- (h) the Participant becomes insolvent, within the meaning of Section 95A of the Corporations Act 2001 (Cth);
- (i) a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Act 2001 (Cth)) or similar official is appointed, or steps are taken for such appointment, over any of the equipment or undertakings of the Participant;
- (j) the Participant ceases or threatens to cease to carry on business;

- (k) an application or order is made for the liquidation of the Participant or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Participant otherwise than for the purpose of an amalgamation or reconstruction;
- (l) any of the directors, partners or employees of the Participant involved in the provision of Services are found guilty of any offence involving fraud or dishonesty, or any other offence (except for a traffic offence) which is punishable by imprisonment (whether or not that person is imprisoned); or
- (m) the Participant, or a director or employee of the Participant are found liable for a civil penalty under the Trade Practices Act, 1974 (Cth), or similar legislation.

18.3 Notice

The Participant must notify RMS immediately upon becoming aware of the occurrence of any of the circumstances in clauses 18.2(h) to 18.2(m).

18.4 Effect of termination

- (a) Subject to clause 18.4(b), termination of this Agreement is without prejudice to any accrued rights or remedies of the parties.
- (b) The Participant is not entitled to claim any compensation or damages from RMS in relation to the termination of this Agreement.

18.5 Consequences of termination

On termination of this Agreement the Participant must:

- (a) (at RMS's discretion):
 - (1) promptly return to RMS; or
 - (2) allow to be recovered by RMS,all RMS Materials, number plates and registration labels in its possession or control;
- (b) cease to use RMS Materials, number plates and registration labels;
- (c) comply with clause 19.2; and
- (d) cease to perform the Services.

19 Confidentiality requirements

19.1 Protection of Confidential Information

- (a) The Participant must not, without the prior written consent of RMS, at any time advertise, publish or release to the public any Confidential Information or issue any statement or communication or make any representation directly or indirectly in connection with Confidential Information or this Agreement to any person not a party to this Agreement other than:
 - (1) as necessary for the Purpose or (where the Participant has Systems Access, as necessary to make use of the Systems and the Systems Information in accordance with this Agreement);
 - (2) with respect to any information (excluding Personal Information) already within the public domain through no fault of the Participant; or
 - (3) as required by applicable Law.

- (b) Without limiting clause 19.1(a), the Participant must:
 - (1) keep the Confidential Information confidential;
 - (2) not disclose or permit the disclosure of the Confidential Information to any unauthorised person;
 - (3) take all steps and do all things necessary, prudent or desirable to safeguard the confidentiality of the Confidential Information in any collection, use or storage of such information; and
 - (4) comply with all directions of RMS relating to the Confidential Information.

19.2 Media releases and enquiries

- (a) Without limiting clause 19.1, the Participant must seek RMS's written approval to any press release or advertisement or other release for publication concerning this Agreement, RMS Materials, and, where the Participant has Systems Access, the Participant's authorisation to Use the Systems, and the Systems Information.
- (b) The Participant must refer any media enquiries concerning this Agreement RMS Materials, and, where the Participant has Systems Access, the Participant's authorisation to Use the Systems, and the Systems Information to RMS's Manager, Strategy and Engagement.

19.3 Return or destruction of Confidential Information

- (a) Immediately on request by RMS at any time during this Agreement and on termination, the Participant must either:
 - (1) return the Confidential Information (including all copies containing or relating to Confidential Information) to RMS in the manner specified by RMS; or
 - (2) dispose of the Confidential Information in the manner approved in writing by RMS and cease to use that Confidential Information,as directed by RMS and provide RMS with a statutory declaration that Participant has complied with the requirements of this clause 19.3(a).
- (b) Notwithstanding clauses 19.3(a) or 19.3(c) where RMS agrees in writing, the Participant may:
 - (1) retain such Confidential Information as has been integrated with information held by the Participant; or
 - (2) retain other Confidential Information for the Purpose or purposes approved by RMS,provided that the Participant ensures the ongoing security and confidentiality of that integrated information in accordance with this Agreement.
- (c) Subject to clauses 19.3(a) and 19.3(b), if the Participant no longer requires use of Confidential Information in its possession or control, Participant must notify RMS and request that RMS issue a request under 19.3(a).

20 Privacy obligations

The Participant:

- (a) acknowledges that it and RMS are required to comply with Privacy Laws, and any guidelines issued by RMS in relation to the collection, Use, storage and disclosure of Personal Information;
- (b) must not do any act or engage in any practice:
 - (1) that would breach any of its obligations; or
 - (2) which if done or engaged in by RMS, would breach any of RMS's obligations under any Privacy Law;
- (c) must ensure that it Uses, accesses, retains and discloses any Personal Information, obtained either directly or indirectly as a consequence of this Agreement only as authorised in this Agreement;
- (d) must Use, store and disclose Personal Information obtained either directly or indirectly as a consequence of this Agreement, only for the purpose for which such information was acquired;
- (e) must store Personal Information obtained either directly or indirectly as a consequence of this Agreement:
 - (1) securely;
 - (2) in a way that the information is protected from unauthorised access, Use or disclosure; and
 - (3) only in an area that is locked and only accessible by Authorised Services Officers;
- (f) must dispose of Personal Information obtained either directly or indirectly as a consequence of this Agreement securely by shredding;
- (g) must notify the Controlling Registry immediately upon:
 - (1) becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 20, by the Participant or any Personnel;
 - (2) receiving a complaint relating to privacy; or
 - (3) receiving a request from an individual for access to, alteration, amendment or correction of Personal Information used by the Participant in connection with this Agreement;
- (h) must comply with all reasonable directions of RMS in relation to the care, protection of, access to, and disposal of, Personal Information held in connection with this Agreement; and
- (i) must ensure that any other Agreement with any agent contractor or subcontractor who may be handling Personal Information, contains the same or equivalent obligations to this clause 20 which are enforceable by the Participant against the agent, contractor or the subcontractor, as applicable.

21 Dispute resolution

- (a) If a dispute or difference arises out of, or in connection with, this Agreement then prior to commencing any litigation:
 - (1) the parties agree to use all reasonable endeavours to resolve the dispute speedily by good faith negotiation between RMS Business Manager, the Controlling Registry or such other person as notified by RMS to the

- Participant from time to time, and the Participants representative (First Stage Discussions);
- (2) if the dispute has not been resolved within 20 Business Days after commencement of First Stage Discussions, RMS Business Manager, the Controlling Registry or such other person as notified by RMS to the Participant from time to time, and the Participant's principal officer must promptly hold good faith discussions to attempt to resolve the dispute (Second Level Discussions); and
 - (3) subject to clause 21(b), each party must continue to perform its obligations under this Agreement despite the existence of a dispute or the operation of this dispute resolution process.
- (b) Nothing in this clause 21 prevents RMS terminating this Agreement under clauses 18.1 or 18.2 or seeking an urgent injunction to restrain any breach or potential breach of this Agreement by the Participant.

22 Administrative matters

22.1 Notices

- (a) Any notice given under this Agreement must be in writing and delivered in person or by registered post to:
- (1) in the case of the Participant: the Participant Representative at the address for service of notices set out in Item 10 of schedule 1; and
 - (2) in the case of RMS: at the address for service of notices set out in Item 10 of schedule 1,
- or to such other address as a party notifies to the other party as its address for notices.
- (b) Any notice will be deemed to have been served:
- (1) where the notice is delivered in person, on the date it is delivered; or
 - (2) where the notice is posted, on the third Business Day after the notice has been posted.

22.2 Variation to Agreement

- (a) The Participant agrees that RMS may vary the terms and conditions of, or replace, this Agreement from time to time, by giving no less than 7 days notice to the Participant, and that any such variation or replacement will be binding on both parties.
- (b) The Participant may (in accordance with clause 22.1) request that RMS vary this Agreement. RMS may in its absolute discretion agree or refuse the request. No variation is effective unless RMS has agreed in writing.

22.3 Assignment of rights and obligations

The Participant may not assign or otherwise transfer any or all of its rights or obligations under this Agreement.

22.4 Governing law

This Agreement will be governed by and construed in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of New South Wales.

22.5 Non-waiver of rights

No delay, neglect or forbearance by either party in enforcing any provision of this Agreement will be deemed to be a waiver of or in any way prejudice any rights of that party.

22.6 Limits to relationship

Nothing in this Agreement will create, or be deemed to create, a partnership or fiduciary or other relationship between the parties, other than the relationship expressly created by this Agreement. Except to the extent expressly authorised by RMS, the Participant has no authority to make any representation on behalf of RMS and must not hold itself out as having any authority to do so.

22.7 Severability of Agreement

If any aspect of this Agreement is found to be invalid, illegal or unenforceable it will not affect the validity of any other part of this Agreement. In such case this Agreement will be construed and enforced as if it did not contain the invalid, illegal or unenforceable provision or part thereof.

22.8 Entire agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all previous agreements and understandings between the parties with respect to the subject matter.

22.9 Approvals and consent

Subject to any express provision to the contrary, a party may conditionally or unconditionally give or withhold any consent contemplated by this Agreement and is not obliged to give its reasons for doing so. Any consent must be in writing.

22.10 RMS powers

Nothing in this Agreement restricts or limits the discretion or obligations of RMS in enforcing and administering the *Road Transport Act 2013* and Regulation.

22.11 Administrative law

The parties acknowledge as follows:

- this Agreement is a commercial service agreement between the parties;
- no licence or right has been issued to the Participant by RMS, nor does the Participant have a legitimate expectation of any licence or right;
- other than in respect of any legislative delegation, the rules of contract law apply and the rules of administrative law (including those of principles of natural justice) are not applicable to this Agreement or its termination.

Schedule 1 - Agreement Details

ITEM 1. PARTICIPANT DETAILS (CLAUSE 1.1 & SCH 6)

Legal

Name: _____

Address: _____

ACN: _____ ABN: _____

Dealer Participant	Trailer Participant	Distributor Participant
Dealer Licence No: _____ State/Territory Where Issued: _____	<input type="checkbox"/> Participant manufactures or retails new trailers weighing less than 250kg	<input type="checkbox"/> Distributors who engages in the distribution or management of new motor vehicles
Dealer is licensed by law to buy, sell and exchange: <input type="checkbox"/> New Vehicles only <input type="checkbox"/> Second-Hand Vehicles only <input type="checkbox"/> Both New Vehicles and Second-Hand Vehicles		

ITEM 2. CONTROLLING REGISTRY (1.1)

[name & address of Service Centre / Registry]

ITEM 3. OTHER NOMINATED REGISTRY (1.1)

ITEM 4. PREMISES (1.1)

Trading Name	Address	Contact Details
Notes: <ul style="list-style-type: none"> • each of the named businesses below must be owned by the Participant • For Trailer and Distributor Participants the premises must be within NSW • For Dealer Participants the premises must be within NSW or within 50km of the NSW border • the Participant may request that the Premises be updated at any time under clause 22.2(b) 		

Participant: _____

Note: the Participant must immediately notify RMS of any change to its address for service

RMS: Registry Manager

[insert name and address of Controlling Registry]

ITEM 11. SPECIAL CONDITIONS (SCH 6)

[insert any additional limitations or if none insert "nil"]

Schedule 2 – Insurance

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE
i	Public and Products Liability or Broadform Liability	<p>\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences.</p> <p>The total aggregate liability during any one period of insurance for all claims arising out of the Participant's products shall not exceed \$20 million.</p>	For the term of this Agreement.
ii	Workers Compensation	As per the Workers Compensation Act 1987 and Workplace Injury Management and Workers Compensation Act 1998	For the term of this Agreement.

NOTES:

1. **Approved Insurer:** All policies must be with an Approved insurer. An Approved Insurer means:
 - (a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters;

Note that where the insurance risk is insured by a insurer not listed in Note 1(a) or 1(b) then the Participant may arrange for its insurer to obtain a 'fronting' policy issued by an Approved Insurer (this is a kind of re-insurance policy issued under a "fronting arrangement" between the two insurers).
2. **Jurisdiction & Laws:** Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. **Workers Compensation Exemption:** if a Participant pays \$7500 or less in annual wages, does not employ an apprentice or trainee and is not a member of a group for premium purposes, then that Participant **may** be an "Exempt Employer" and not required to effect Workers Compensation Insurance. The exemption applies both to companies and non-companies. Participants claiming Exempt Employer status must provide a **Statutory Declaration** to RMS advising of their exempt status otherwise RMS cannot waive the requirement for the Participant to demonstrate a policy is in place. For more information on this exemption see <http://www.workcover.nsw.gov.au/insurance/workers-compensation-insurance-for-your-business/do-i-need-insurance>.

Schedule 3 – Certificates of Currency

Certificates of currency must be issued by the Insurer and must include the following:

- The type of cover
- The amount of cover
- The period of cover
- The name of the insurer
- Confirmation that the insurance is subject to the jurisdiction of the courts of an Australian state or territory
- Confirmation that the policy is subject to the laws of NSW or another Australian jurisdiction.

Schedule 4 – Participant Errors – Action Plan Process

Clause 8.4(e)

Without prejudice to RMS's right to terminate this Agreement, RMS may initiate the following process where there is any ongoing or repeated failure of the Participant to comply with the Participant's obligation to meet the accuracy rates specified in clause 8.4(e):

- An action plan to resolve the issue is to be negotiated by the Manager of the Controlling Motor Registry and Participant's Representative, the action plan is to be implemented and monitored.
- If issue is not resolved after 20 business days the Registry Manager and Participant's Representative are to revise the action plan.
- If after 20 business days there is in no significant improvement in accuracy rates by the Participant, the Manager of the Controlling Motor Registry may either:
 - initiate the Dispute Resolution procedure under clause 21 or
 - RMS issue a termination notice under clause 18.2(b).

Schedule 5 – Statement of Business Ethics



Statement of business ethics

Required in dealings between Roads and Maritime Services and the private sector

Chief Executive's message

Dealings between Roads and Maritime Services (RMS) and the private sector, including purchasing goods and services, joint ventures and the complete contracting out of activities must be undertaken with transparency and integrity.

To facilitate this RMS and private sector employees must always be aware of the ethical standards the public demands when RMS money is used either directly or indirectly.

This statement sets out the appropriate standards for doing business with RMS. It provides guidelines on what to expect from RMS and explains the mutual obligations, roles and constraints of all parties. These ethical standards are not an additional requirement but an integral part of sound commercial practices.

All individuals and organisations that deal with RMS must adopt these standards of ethical behaviour. The standards comply with NSW Government guidelines for procurement, contracting and market testing.

The likely reward for maintaining ethical business dealings is enhanced public confidence and repeat business.

If you need more information about these guidelines or any ethical issue, please contact RMS Ethics Information Line on 1800 043 642.

Peter Duncan
Chief Executive

Business ethics for RMS and the private sector

The role of all parties

The NSW Government now relies on the private sector to perform many tasks it once carried out. This means that RMS employees are involved in purchasing goods and services from the private sector.

RMS expects both its permanent and contract employees to behave ethically and comply with its Code of Conduct and Ethics.

RMS also relies on industry and its employees to maintain similar standards of ethical conduct in their dealings with RMS.

A common understanding between RMS and the private sector on ethical issues will help us develop a productive and mutually beneficial working relationship.

RMS business principles

Three key principles form the basis of RMS business agreements.

- Obtain the best possible value for public money.
- Impartiality through all stages and processes.
- Fairness.

These principles enable suppliers to promote their interests effectively but avoid unproductive and potentially questionable activities.

All potential providers of goods and services are subject to the same ethical operating environment and must comply with these guidelines.

Value for money

Value for money is determined by considering the impact of factors such as quality, reliability, timeliness, service, initial and ongoing costs.

It does not mean 'lowest price'. However, the lowest price might offer the best value if it meets other essential criteria such as quality and reliability.

Impartiality

Impartiality means trying to be objective and even-handed. For example, an impartial person will try to objectively establish the criteria for determining best value for money and then assess each bid against these criteria.

Being impartial includes taking account of practicalities. For example, the principle of impartiality does not entail publicly advertising for bids for items of low monetary value or inviting bids from firms that have performed poorly in the past.

Fairness

Fairness overlaps with impartiality in the sense of being even-handed. In some circumstances fairness can also entail taking into account the effects of actions on others. For example, it would be unfair to call tenders when there is no serious intent to award a contract, even if a satisfactory or exceptional offer was received.

Fairness does not mean pleasing everyone. If people are adversely affected by a decision, it is unfortunate but not necessarily unfair.

RMS requires its employees and contract staff to:

- Comply with RMS and government policies and procedures.
- Show fairness in their treatment of all individuals or organisations that supply goods or services to RMS.
- Encourage fair and open competition while seeking value for money.
- Try to minimise costs to suppliers participating in the procurement process.
- Protect commercial-in-confidence information.
- Deal honestly with suppliers and pay accounts on time.
- Always be accountable and act in the public interest.
- Avoid situations where private interests conflict with public duty.
- Not solicit or accept financial or other benefits from a supplier for performing official duties.
- Respond to reasonable requests for advice and information without delay.

Tenderers, suppliers, consultants and contractors are expected to:

- Respect the conditions and requirements stated in documents supplied by RMS.
- Present information concisely.
- Comply with any codes of tendering and practice that apply.
- Respect the obligation of RMS staff to comply with government procurement policies.
- Not act fraudulently or secretly.
- Prevent the unauthorised release of privileged or confidential information, such as commercial-in-confidence information.

- Not discuss RMS dealings with the media, without consulting RMS first.
- Respond to reasonable requests for advice and information.
- Not offer RMS employees or contract staff any financial or other inducements which may lead to, or be seen as leading to, gaining an unfair advantage in dealings with RMS.
- Comply with RMS post separation employment guidelines.

Some practical guidelines

Communications between parties

To avoid misunderstandings it is important to use written correspondence (letter, fax or email) for communications involving a business related decision. Telephone communications in this regard should be followed up with written confirmation of any decisions or commitments made.

Unless good reasons exist not to, all meetings should be either on RMS premises or on-site. A written record of commitments given at meetings must be made and endorsed by all parties.

Confidentiality

Information which is marked confidential, or which a reasonable person would expect to be confidential, should be treated as such. The information could be in various formats such as hardcopy documents or electronically stored.

Intellectual property rights must be negotiated. No individual or organisation is entitled to acquire any intellectual property rights because they are employed by or have a contract with RMS.

Entertainment

Suppliers should not pay for any form of entertainment for RMS employees. Likewise, RMS employees are generally not entitled to use government funds to pay for entertainment.

Lunches etc.

RMS employees are expected to pay for all their own meals.

RMS discourages external parties from providing RMS employees with benefits such as social lunches.

Employee participation is permitted only if a clear underlying business purpose exists and the value and frequency of such functions is not excessive.

Gifts

Gifts should not be given to RMS staff or its agencies and there should be no expectation that any gifts will be provided.

Travel and accommodation

RMS meets all business travel and accommodation costs for its employees. Any variation to this policy must first be agreed with RMS, not the individual employee affected, and approved by a senior employee. Public liability and insurance requirements must also be considered.

Contracting former RMS employees

Former employees are generally not employed as contractors for at least 12 months after they have left RMS.

Any organisation intending to use a current or former RMS employee for contract work with RMS should first discuss this with RMS.

This policy protects RMS, the individual and the organisation from any potential charge of impropriety or conflict of interest.

RMS – Ethics Information Line

Contact the Ethics Information Line for:

- Advice on any related issues.
- If you are concerned that a breach of the law or unethical conduct may have occurred. This could include fraud, corrupt conduct, maladministration, or serious or substantial waste.

1800 043 642 (free call)



For further enquiries:



www.rms.nsw.gov.au



1800 043 642 (free call)

Schedule 6 – Services

The Services (together with relevant scenarios and conditions to which they are subject) for particular Participants are:

Participant Type	Subject or Scenario	Services	Conditions
Dealers	New Vehicles lawfully in the Dealer's possession or control	all work, materials and services necessary or desirable to be performed or provided in connection with vehicle: <ul style="list-style-type: none"> inspection certification registration transfer of registration renewal of registration, and advising of vehicle disposal. 	<ul style="list-style-type: none"> the Dealer is permitted to sell New Vehicles pursuant to its Dealer Licence; the Dealer has represented that it is permitted to sell New Vehicles in Item 1 of schedule 1 or by notice to RMS; the vehicle must be a type of vehicle listed in Item 5 of Schedule 1; and any special conditions in Item 11 of Schedule 1
Dealers	Second-Hand Vehicles lawfully in the Dealer's possession or control	all work, materials and services necessary or desirable to be performed or provided in connection with: <ul style="list-style-type: none"> registration transfer of registration renewal of registration, and advising of vehicle disposal. 	<ul style="list-style-type: none"> the Dealer is permitted to sell Second-Hand Vehicles pursuant to its Dealer Licence; the Dealer has represented that it is permitted to sell Second-Hand Vehicles in Item 1 of schedule 1 or by notice to RMS; the Dealer has obtained a current Inspection Report and submitted it electronically to RMS before registering the vehicle; and any special conditions in Item 11 Schedule 1
Trailer Participants	New Trailers lawfully in their possession or control	all work, materials and services necessary or desirable to be performed or provided in connection with: <ul style="list-style-type: none"> inspection, certification and registration 	<ul style="list-style-type: none"> The trailer must be new and weigh less than 250kg; the trailer must be a type of vehicle listed in Item 5 of Schedule 1; and any special conditions in Item 11 of Schedule 1
Distributor Participants	New Vehicles lawfully in the Distributor's possession or control	all work, materials and services necessary or desirable to be performed or provided in connection with: <ul style="list-style-type: none"> inspection, certification and registration 	<ul style="list-style-type: none"> The vehicle must be new: and any special conditions in Item 11 of Schedule 1
All Participants	where a Participant has access to the Ordering System	<ul style="list-style-type: none"> ordering number plates via the Ordering System, 	<ul style="list-style-type: none"> any special conditions in Item 11 of Schedule 1
All	where Participant	<ul style="list-style-type: none"> use DOL system applicable to 	<ul style="list-style-type: none"> any special conditions in Item 11 of

Participants	has access to Dealer Online	Participant Type and services	Schedule 1
All Participants		<ul style="list-style-type: none"> all other functions described in the Business Rules and the Motor Dealer's Guide to Vehicle Registration 	<ul style="list-style-type: none"> any special conditions in Item 11 of Schedule 1