ACCREDITATION AGREEMENT

FOR

HEAVY VEHICLE COMPETENCY BASED ASSESSMENT

Version 2.1
8 December 2015

PROVIDER’S NAME: _____________________________

____________________________

DATE SIGNED: _____________________________
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This agreement is between:

**Roads and Maritime Services** ABN 76 236 371 088, a New South Wales Government agency and corporation incorporated under section 46 of the *Transport Administration Act 1988* (NSW) of Level 9, 101 Miller Street, North Sydney, New South Wales (**RMS**) and

**Provider** (named in the Details)

## PART 1

### Background

A. Under regulation 49 of the *Road Transport (Driver Licensing) Regulation 2008* (NSW), RMS may approve a scheme under which a person’s competency may be assessed for the purpose of determining that person’s application for the issue or variation of a driver licence held or to be held by that person. RMS has approved such a scheme for the purpose of assessing Applicants for the issue, reissue or renewal of a Heavy Vehicle Licence.

B. As part of that scheme, RMS has developed the HVCBA Scheme Policies and Procedures by which to assess whether Applicants should be issued with a Heavy Vehicle Licence.

C. Provider is a Registered Training Organisation. Provider has applied to RMS to be accredited to conduct Assessments of Applicants for a Heavy Vehicle Licence, and to issue Certificates of Competence in respect of Applicants for a Heavy Vehicle Licence.

D. RMS agrees to accredit Provider to conduct Assessments of Applicants for a Heavy Vehicle Licence, and to recognise Certificates of Competence issued by Providers, in accordance with this agreement.

### This Agreement

This agreement consists of:

(a) this Part 1, including the Agreement Details in this Part 1;

(b) Part 2 (Terms and Conditions); and

(c) the Schedules and Attachments to this agreement.
## AGREEMENT DETAILS

<table>
<thead>
<tr>
<th>Item 1</th>
<th>Details of Provider</th>
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<tr>
<td></td>
<td><strong>Name</strong>:</td>
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<tr>
<td></td>
<td><strong>Trading As</strong>:</td>
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<td></td>
<td><strong>ACN</strong>:</td>
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<td></td>
<td><strong>ABN</strong>:</td>
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<td><strong>Address</strong>:</td>
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<td></td>
<td><strong>Phone</strong>:</td>
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<td></td>
<td><strong>Facsimile</strong>:</td>
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<tr>
<th>Item 2</th>
<th>Address for service of notices</th>
</tr>
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<tbody>
<tr>
<td></td>
<td><strong>RMS</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Address</strong>: Roads &amp; Maritime Services</td>
</tr>
<tr>
<td></td>
<td>Locked Bag 928</td>
</tr>
<tr>
<td></td>
<td>North Sydney NSW 2059</td>
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<tr>
<td></td>
<td><strong>Facsimile</strong>: (02) 8588 4142</td>
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<tr>
<td></td>
<td><strong>Contact Name &amp; Position</strong>: Manager Enrolment Training</td>
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<tr>
<th>Item 3</th>
<th>Commencement Date</th>
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<td></td>
<td><strong>Commencement Date</strong>:</td>
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<tr>
<th>Item 4</th>
<th>End Date</th>
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<td></td>
<td><strong>End Date</strong>: 1 December 2017</td>
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<p>| Item 5 | Provider Representative |</p>
<table>
<thead>
<tr>
<th>Item 6</th>
<th>Assessor/s</th>
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<tbody>
<tr>
<td>(if insufficient space, add additional page to document, signed and dated by the Provider)</td>
<td></td>
</tr>
<tr>
<td>Full Name and Address</td>
<td>RMS Driver Licence Number</td>
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<tr>
<td>Clause 4.2(d): Has RMS approved Assessments being conducted by the same Assessor who conducted an Applicant’s Assessment? (tick below)</td>
<td></td>
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<tr>
<td>Yes ☐ (attach copy of RMS approval)</td>
<td></td>
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<tr>
<td>No ☐</td>
<td></td>
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<tr>
<td>[Note: approval will only be granted by RMS in exceptional circumstances where a Provider is able to demonstrate to RMS that its business cannot viably operate if clause 4.2(d) applies. RMS reserves the right in its absolute discretion to grant or refuse approvals.]</td>
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<tr>
<th>Item 7</th>
<th>Premises at which Records to be kept (clause 9)</th>
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<tr>
<td>Premises located at:</td>
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<tr>
<th>Item 8</th>
<th>Insurances (Clause 13 and SCHEDULE A)</th>
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<tbody>
<tr>
<td>(a) Worker's compensation insurance for not less than the minimum required under applicable legislation (not applicable to self providers - refer to Schedule A for who constitutes a self provider);</td>
<td></td>
</tr>
<tr>
<td>(b) Public liability insurance for not less than $20,000,000 in respect of any single occurrence;</td>
<td></td>
</tr>
<tr>
<td>(c) Professional indemnity insurance for not less than $5,000,000 in respect of any single occurrence; and</td>
<td></td>
</tr>
<tr>
<td>(d) Motor Vehicle Comprehensive insurance in the same terms as required by Driving Instructors Act 1992 (even if that Act does not apply) as if references to persons receiving driving instruction were references to Applicants being Assessed and references to Driving Schools were references to the Provider and references to Driving Instructors were references to Assessors.</td>
<td></td>
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EXECUTED as an agreement.

Signed for and on behalf of ROADS AND MARITIME SERVICES by its Authorised Delegate in the presence of:

__________________________________________
Authorised Delegate (signature)

__________________________________________
Authorised Delegate (Name printed)

__________________________________________
Witness (signature)

__________________________________________
Witness (Name printed)

Date:

A. Where the Provider is a corporation:

SIGNED by [insert Company name and ACN]

in accordance with section 127 of the Corporations Act

__________________________________________   ________________________________
Secretary (or additional Director) signature   Director signature

__________________________________________   ________________________________
Name printed      Name printed

Date:

B. Where the Provider is a Partnership:

SIGNED for and on behalf of [insert Partnership name and ABN] by its authorised representative

__________________________________________   ________________________________
Witness signature      Representative signature

__________________________________________   ________________________________
Name printed      Name printed

Date:
C. Where the Provider is a "sole trader":

**SIGNED by [insert sole trader name]**

___________________________________   ________________________________
Witness signature      Sole trader signature

___________________________________   ________________________________
Name printed      Name printed

Date:
PART 2 (TERMS AND CONDITIONS)

1 DEFINITIONS AND INTERPRETATION

Clause 22 contains words and expressions that have special meanings in this agreement as well as provisions relating to the interpretation of this agreement.

2 ACCREDITATION OF PROVIDER

2.1 Accreditation

(a) On and from the Commencement Date, RMS accredits Provider on a non-exclusive basis to:
   (i) conduct Assessments of Applicants for a Heavy Vehicle Licence; and
   (ii) issue Certificates of Competence,
   on the terms of this agreement.

(b) Subject to the terms of this agreement, RMS agrees to recognise a Certificate of Competence issued by Provider in respect of Applicants by re-issuing, varying, suspending, cancelling or taking other relevant action in relation to Heavy Vehicle Licences in respect of Applicants to whom Provider issues a Certificate of Competence.

2.2 Registered Training Organisation qualifications

Provider must:

(a) obtain and maintain status as a Registered Training Organisation for the types of Heavy Vehicle driving instructor classes and Heavy Vehicle units of competency in relation to which Assessments are to be provided by the Provider to Applicants under this agreement; and

(b) ensure that either its chief executive officer (or equivalent), or a Senior Executive, or both hold a current Heavy Vehicle Licence at all times during the term of this agreement. “Senior Executive” means an employee of the Provider who reports directly to the chief executive office (or equivalent) of the Provider and has management responsibility for the Provider’s activities under this agreement.

2.3 Subcontracting Prohibited

Except as provided in clause 2.3(b), Provider must not subcontract its obligations under this agreement without the prior written consent of RMS, which consent may be withheld at RMS' absolute discretion. Without limiting the generality of this clause 2.3, Provider must not engage or appoint any other party to conduct Assessments under this agreement other than an Assessor that is employed by or contracted to Provider in accordance with clause 2.3(c). Breach by Provider of this clause 2.3 will give RMS a right to terminate this agreement under clause 15.2.

(a) Provider agrees that in giving its consent to any subcontracting under this agreement, RMS may impose such conditions as it thinks fit.

(b) Subject to clause 6, Provider may subcontract the conduct of Assessments of Applicants by Assessors to:
   (i) the Assessors specified in item 6 of the Agreement Details; and
   (ii) any Assessors appointed pursuant to clause 6.3,
   who are independent contractors.

(c) If Provider has obtained prior written consent from RMS under this clause 2.3 or clause 6.1(a)(i) and subcontracts any part of its obligations under this agreement, Provider will remain responsible to RMS under this agreement and will indemnify and keep
indemnified RMS in respect of all losses, damages, costs and expenses directly or indirectly incurred or suffered by RMS or any other person (including an Applicant) as a consequence of the conduct of any subcontractor.

(d) Whenever this agreement places an obligation on an Assessor, that includes an obligation on Provider to ensure that the Assessor complies with that obligation.

2.4 Relationship of the Parties

(a) RMS and Provider are independent contractors.

(b) Nothing in this agreement is to be treated as creating any relationship of employer or employee, principal and agent, partnership or joint venture between RMS and:

(i) Provider;
(ii) any of Provider’s subcontractors; or
(iii) any of Provider’s or Provider’s subcontractors’ Personnel.

(c) Provider must not act and does not have any authority to act as agent of or in any way bind or commit RMS to any obligation except to the limited extent expressly specified in this agreement.

2.5 Responsibility for Salary and Entitlements

(a) Provider acknowledges and agrees that:

(i) it is solely responsible for the payment of salary, wages, holiday pay, sick pay and all other employee benefits (including, superannuation contribution benefits) to and on behalf of all persons engaged by Provider in connection with this agreement, including Assessors, and for the making of tax instalment deductions in respect of the salary and wages (where relevant) of all such persons which may arise in connection with this agreement;
(ii) neither Provider nor any of its employees, contractors or agents, including Assessors, is entitled to payment of any such amounts from RMS; and
(iii) in the case of any of Provider’s Personnel (including Assessors engaged under contract), Provider is fully liable for their remuneration.

(b) If under any Laws RMS is considered an employer or principal employer and is obliged to make payments in respect of the amounts paid or benefits provided to or in relation to any employee or contractor of Provider, then Provider:

(i) must make all such payments on behalf of RMS; and
(ii) indemnifies RMS against all such payments made by RMS, including:

(A) any additional tax, levy, or other payment whatsoever, including any interest, penalty or late fee that may be payable in respect of the late or non-payment of such tax, levy or other payment; and
(B) remuneration, annual leave, sick leave, long service leave or other leave, or any other payment or entitlement to be paid or provided to such persons.

2.6 Obligations of Provider

(a) Provider must at all times:

(i) conduct all Assessments in accordance with the HVCBA Scheme Policies and Procedures;
(ii) administer the HVCBA Scheme in accordance with the HVCBA Scheme Policies and Procedures;
(iii) conduct all Assessments in accordance with all reasonable directions of RMS from time to time;
(iv) not engage in or accept an offer to engage in corrupt or dishonest conduct;
(v) not engage in conduct that may bring RMS into disrepute;
(vi) perform all of its obligations under this agreement in a diligent and professional manner and without any Conflicts of Interest; and
(vii) comply with all Laws.

(b) Notwithstanding any other provisions in this agreement and without limiting any other provisions in this agreement, Provider must at all times:

(i) comply, and remain compliant, with all requirements in the HVCBA Scheme Policies and Procedures; and

(ii) ensure that its Personnel (including Assessors) comply, and remain compliant, with this agreement, including all requirements in the HVCBA Scheme Policies and Procedures; and

(iii) monitor and manage non-performance of its Personnel in accordance with the HVCBA Scheme Policies and Procedures.

2.7 Electronic Surveillance

(a) Provider must monitor and record all Assessments via in-cabin video camera and GPS technology in accordance with the HVCBA Scheme Policies and Procedures and all relevant Laws (including the Surveillance Devices Act 2007 (NSW), the Workplace Surveillance Act 2005 (NSW) and Privacy Laws).

(b) Provider acknowledges that:

(i) it is the Provider’s responsibility to:

(A) obtain its own legal advice in relation to the monitoring and recording activities described in clause 2.7(a); and

(B) ensure that it complies with all relevant Laws in performing the monitoring and recording activities described in clause 2.7(a).

(ii) notwithstanding that RMS requires the Provider to monitor and record Assessments under clause 2.7(a) and that RMS reserves the right to inspect and audit any of the Provider’s Records created as a result of monitoring and recording performed under clause 9, any monitoring or recording is performed by the Provider as principal and not as RMS agent.

2.8 Provider’s Personnel

(a) If requested by RMS, Provider must authorise or obtain all relevant consents for RMS to conduct criminal records checks and police checks in relation to any or all of Provider’s Personnel.

(b) Provider must ensure that its Personnel:

(i) hold all relevant qualifications including any required licences;

(ii) are each Fit and Proper Persons;

(iii) comply with all WHS Laws; and

(iv) comply with all RMS work health and safety policies notified to Provider by RMS from time to time.

(c) Provider must immediately notify RMS if any of its Personnel are involved in, or are alleged to be or are suspected of being involved in, any criminal activity, any serious driving offences, or any misconduct.
2.9 Work health and safety

Without limiting clause 2.6, Provider must at all times:

(a) ensure, so far as is reasonably practicable, that all Assessments are conducted safely and in a manner that does not put the health and safety of any person at risk;

(b) comply with its duties under WHS Laws;

(c) consult, co-operate and co-ordinate with RMS regarding work health and safety matters relevant to the Assessments;

(d) maintain and provide to RMS records or information regarding health and safety matters arising in connection with the Assessments as required by RMS from time to time; and

(e) following a Health and Safety Incident in connection with an Assessment:

(i) comply with any notification obligations under the WHS Laws;

(ii) immediately upon becoming aware of the Health and Safety Incident, notify RMS of that Health and Safety Incident;

(iii) undertake a risk assessment in relation to the Health and Safety Incident and ensure all reasonably practicable control measures identified during that risk assessment are implemented to eliminate, so far as is reasonably practicable, any risk of a similar incident occurring again;

(iv) maintain any records relating to the Health and Safety Incident; and

(v) provide RMS with a written report of the Health and Safety Incident.

3 TERM

(a) This agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, continues until the End Date (Initial Term). Either party may terminate this agreement at the end of the Initial Term by giving the other party notice at least 30 days before the end of the Initial Term.

(b) Unless terminated earlier, this agreement continues after the Initial Term on a month to month basis. Either party may terminate this agreement in its absolute discretion after the Initial Term by giving the other party 30 days notice, in which case this agreement terminates at the end of that 30 day notice period.

4 PROVISION OF ASSESSMENT

4.1 Compliance with HVCBA Scheme Policies and Procedures

Provider, and each Assessor, must comply and Provider must ensure that each Assessor complies, at all times with the HVCBA Scheme Policies and Procedures in relation to all Assessments.

4.2 When Assessments must be provided

(a) Provider must provide the Assessments in accordance with the HVCBA Scheme Policies and Procedures to all Applicants who meet the Application Criteria and who are prepared to pay the Provider’s fees for the Assessment.

(b) Provider must offer and provide each Assessment for each Applicant at the earliest time available to Provider that is convenient for the Applicant.

(c) Provider must provide Assessments to each Applicant who wants to undertake Assessments, whether or not that Applicant also wants to obtain other services (such as a Training Course) from Provider.

(d) Except where indicated otherwise in Item 6 of the Details, where an Applicant has undertaken a Training Course provided by Provider, Provider must ensure that the Assessor that conducts that Applicant's Assessment is not the same person who delivered the Training Course for that Applicant.
4.3 Application Criteria
Provider must ensure that each Applicant meets the Application Criteria before Provider commences providing Assessment to the Applicant.

4.4 Reporting Requirements
Provider must complete and supply to the Applicant and RMS all records in connection with the Assessments in accordance with the HVCBA Scheme Policies and Procedures.

4.5 Driving Instructors Act
(a) If any Assessment to be provided to Applicants pursuant to this agreement is governed by the Driving Instructors Act, Provider must comply, and must ensure that Assessors comply, with that Act and the regulations under that Act.

(b) Even if any Assessment to be provided to Applicants pursuant to this agreement would not be governed by the Driving Instructors Act, Provider must comply with, and must ensure that all Assessors agree to comply with, that Act and its regulations at all times when providing Assessments pursuant to this agreement as if that Act were referring to the provision of Assessment of Applicants and as if Provider were a Driving School and each Assessor was a Driving Instructor.

(c) Breaches of this agreement or misconduct or unsatisfactory performance in relation to Assessments may constitute Provider or an Assessor as persons not of good character or not fit and proper persons under s.26(2) of the Driving Instructors Act.

(d) Provider must record details of all Assessments by Assessors in a way that complies with the requirements of the Driving Instructors Act (even if that Act has no application to the Assessment of Applicants) as if that Act were referring to the provision of Assessment of Applicants and as if Provider were a Driving School and each Assessor was a Driving Instructor.

(e) For the purposes of this clause, Driving Instructor and Driving School have the meaning given in the Driving Instructors Act.

4.6 Fees
No fees, costs, charges or other amounts are payable by RMS to Provider or Assessors under or in connection with this agreement.

5 REPRESENTATIVE

5.1 Appointment of Representative
Provider appoints the Provider Representative as Provider’s representative for the purposes of all matters arising in connection with this agreement.

5.2 Authority of Representative
Provider warrants that the Provider Representative has the authority and legal power to sign documentation on Provider’s behalf and to bind Provider in respect of all matters arising in connection with this agreement and Assessments.

5.3 Substitution of Representative
(a) Provider must give RMS prior written notice of any proposal to substitute the Provider Representative. The notice must include details of:

(i) the reason for the substitution;

(ii) the name, title, position and relevant experience of the proposed substitute; and

(iii) the date on which Provider proposes the substitution is to become effective.
(b) RMS will notify Provider if it objects to a proposed substitute within five Working Days after its receipt of the notice given by Provider under clause 5.3(a).

(c) If required by RMS, Provider must provide all additional information required by RMS to make a decision in relation to the proposed substitution.

(d) If RMS objects to the appointment of a proposed substitute pursuant to clause 5.3(b), Provider will not appoint the proposed substitute as the Provider Representative.

(e) If RMS does not object to the proposed new representative in the timeframe specified in clause 5.3(b) or within 5 Working Days after receipt of any additional information required pursuant to clause 5.3(c), the proposed new representative becomes the Provider Representative replacing the previous Provider Representative.

6 ASSESSORS

6.1 Use of Assessors

(a) Provider may only appoint persons as Assessors, and permit persons to conduct Assessments, under this agreement who:

   (i) are approved in writing by RMS in accordance with clause 6.3;

   (ii) have signed a Deed Poll in the form contained in ATTACHMENT B; and

   (iii) satisfy the Assessor Qualifications.

(b) Provider must ensure that Assessments are conducted only by Assessors and not by any person:

   (i) who is not an Assessor;

   (ii) whose status as an Assessor has been suspended, expired or revoked; or

   (iii) who RMS has notified Provider is not to provide Assessments.

(c) Provider must ensure its Assessors meet, and continue to meet, the requirements for Assessors set out in the HVCBA Scheme Policies and Procedures.

(d) RMS acknowledges that it has approved the Assessors specified in item 6 of the Agreement Details as Assessors that Provider may use from the Commencement Date.

(e) If RMS has issued a suspension or cancellation notice in respect of an Assessor, Provider must not allow that Assessor to conduct any Assessments while such suspension or cancellation is in force.

(f) Provider must not permit any person to conduct Assessments if at any time that person does not satisfy the Assessor Qualifications.

(g) RMS may at any time request that Provider withdraw particular Personnel (including Assessors) from conducting activities under or in connection with this agreement. On request by RMS, Provider must immediately arrange for such Personnel to cease being involved in any way in the activities under or in connection with this agreement. Provider must, at its own expense, use its reasonable endeavours to promptly propose a replacement for any such Personnel.

6.2 Assessors Qualifications and Experience

Assessors must, and Provider must ensure that Assessors, at all times hold, maintain and satisfy the Assessor Qualifications.

6.3 Changes in Assessors

(a) Provider must give RMS written notice of:

   (i) each resignation or removal of an Assessor and the reasons for the resignation or removal; and
(ii) subject to clause 6.3(b), each proposed appointment of a new Assessor utilising the form in ATTACHMENT A of this agreement.

(b) Provider must obtain RMS’ written approval of a proposed new Assessor before permitting that person to conduct any Assessments by submitting to RMS:

(i) the completed Additional Assessors form under clause 6.3(a)(ii); and

(ii) a Deed Poll in the form in ATTACHMENT B executed by the proposed new Assessor.

(c) RMS may in its absolute discretion, object to the appointment of a person as an Assessor. RMS’ decision is final and no correspondence will be entered into.

(d) Provider must not appoint any person as an Assessor to whom RMS has objected pursuant to clause 6.3(c).

(e) Provider must advise RMS of any change in Provider’s or an Assessor's address and contact details using the form contained in ATTACHMENT C of this agreement within 10 Working Days after the change occurs.

6.4 Unsatisfactory Performance of Assessors

(a) Where RMS is not satisfied with the delivery of Assessments being undertaken by an Assessor or the Assessor’s conduct and the matter is not resolved by discussion between the Assessor and Provider to RMS’ satisfaction, RMS may, in addition to any other rights which it may have:

(i) require Provider to ensure that the Assessor undertakes further training in relation to Assessor Qualifications and requirements for Assessors set out in the HVCBA Scheme Policies and Procedures;

(ii) require the Assessor to be re-assessed by RMS to determine the Assessor's competency to carry out Assessments;

(iii) require Provider’s supervision of any or all of the Assessments to be carried out by the Assessor; or

(iv) suspend or cancel the Assessor’s approval as an Assessor.

(b) For the avoidance of doubt, Provider remains responsible for ensuring that an Assessor complies with this agreement notwithstanding any action taken by RMS under clause 6.4(a).

7 VARIATIONS TO HVCBA SCHEME POLICIES AND PROCEDURES

7.1 Use

Assessors must understand and correctly and honestly apply the HVCBA Scheme Policies and Procedures and Provider must ensure that Assessors do so also.

7.2 Variations Required by RMS

RMS may at any time amend the HVCBA Scheme Policies and Procedures. RMS will make the HVCBA Scheme Policies and Procedures available in the form in which they are current from time to time and Provider must comply, and ensure that Assessors comply, with the most current version of the HVCBA Scheme Policies and Procedures.

8 ROUTES AND VEHICLES

8.1 Requirements

Without limiting the obligations of Provider and Assessors under this agreement, Assessors must comply with the requirements of the HVCBA Scheme Policies and Procedures concerning the
routes and Vehicles used during Assessments and Provider must ensure that Assessors comply with those requirements.

9 RECORD KEEPING, REPORTING AND AUDITING

9.1 Records

(a) Provider must securely collect, maintain and archive the Records and keep them at the premises and/or location specified in item 7 of the Agreement Details. Provided Provider first obtains RMS’ written consent, Provider may store Records which are more than 12 months old at other premises or another location approved by RMS.

(b) Provider must make the Records available to RMS for inspection when requested to do so by RMS.

(c) Provider must keep all Records secure, comply with all directions of RMS in relation to the security of Records, and maintain confidentiality in relation to the Records.

(d) Provider must notify RMS immediately of any loss or destruction of any Records.

(e) Provider must keep each of the Records for at least 7 years from the date that the last entry was made in that Record.

(f) All Records must be kept in English, and legible.

(g) Provider may safely and securely destroy Records which are more than 7 years old provided Provider first gives 30 days written notice to RMS and RMS does not object to the proposed destruction and the method to be used.

(h) Records may be recorded and stored electronically provided that when the RMS exercises its audit rights, Provider provides RMS (at its option) either hard copies in eye-readable form or the necessary hardware and software and copies of the electronic records for RMS to read the electronic copies in eye-readable form.

(i) Provider must securely collect, maintain and archive electronic Records created under this agreement, including surveillance Records required to be collected under clause 2.6(a)(iii), in accordance with the HVCBA Scheme Policies and Procedures.

9.2 Providing access to RMS

Provider must at all reasonable times give RMS access to:

(a) any premises and sites used by Provider in connection with the provision of Assessments;

(b) the Vehicles used by Provider to provide Assessments (whether those Vehicles are owned by Provider, another person or organisation); and

(c) the Records and any other information maintained by Provider or an Assessor in connection with Assessments or otherwise required pursuant to this agreement, to allow RMS to audit, inspect and monitor Provider’s and each Assessor's performance under this agreement.

9.3 Auditing

(a) Provider will allow RMS and any Auditor and, if the consent of any other person is required, procure the other person's consent for RMS and any Auditor to:

(i) travel with the Assessor and Applicant during Assessment and enter any premises used by Provider in connection with Assessments;

(ii) inspect and enter the Vehicles used by Provider to provide the Assessments; and
(iii) inspect the Records and other records in Provider’s possession or control relating to Assessments, at all reasonable times for the purposes of reviewing Provider’s performance of its or any Assessor's obligations under this agreement.

(b) Without limiting clause 9.3(a), Provider will allow any review undertaken by RMS and any Auditor to include:

(i) subject to the Applicant’s consent, the Auditor repeating the Assessment of an Applicant previously passed by an Assessor during which (at the option of the Auditor) the original Assessor may or may not be present; and

(ii) any other reasonable means of assessing Provider’s or any Assessor’s competence or compliance with this agreement.

9.4 Self-assessment and reporting

(a) Provider must once a year conduct a self-assessment of its performance under this agreement.

(b) The self-assessment must be completed in accordance with a template provided by RMS and the HVCBA Scheme Policies and Procedures and must include all information required by the HVCBA Scheme Policies and Procedures.

(c) Provider must deliver to RMS a copy of the completed self-assessment for each year within 10 days after the last day of that year.

10 OBLIGATIONS OF PROVIDER

10.1 General Obligations

Without limiting any of Provider’s obligations under this agreement, Provider must:

(a) monitor, supervise, direct and assess the performance of Assessors by reference to the HVCBA Scheme Policies and Procedures;

(b) undertake all necessary action to improve the performance of Provider’s obligations under this agreement including advising each of Provider’s Assessors, as necessary, of methods to overcome difficulties or problems in carrying out Assessments;

(c) report drivers who have committed a serious error (as defined in the HVCBA Scheme Policies and Procedures) in accordance with the HVCBA Scheme Policies and Procedures;

(d) contribute to the improvement of driver training and assessment by:

(i) giving RMS written notice of any error or ambiguity in any of the RMS Materials as soon as practicable after Provider becomes aware of the error or ambiguity;

(ii) training Assessors in accordance with the HVCBA Scheme Policies and Procedures;

(iii) giving RMS written notice of any improvements or other matter that can assist RMS in the development of the HVCBA Scheme Policies and Procedures or the administration of Heavy Vehicle driver Assessment; and

(iv) identifying areas which are reasonably likely to cause difficulties or delays in carrying out Assessments; and

(e) at all times act in a lawful manner in connection with Assessments and when conducting business.
10.2 Representations
Provider must not, and must ensure that the Provider Representative and Assessors do not:
(a) make any misrepresentations or false or misleading statements in relation to:
   (i) the function of RMS in relation to Heavy Vehicle driver Assessment; or
   (ii) the consequences of an Applicant successfully completing Assessment
        (including fees payable by an Applicant); or
(b) do anything that exposes RMS to negative publicity or might reasonably be expected to
    bring RMS into disrepute.

10.3 RMS Name and Logo and media releases
(a) Subject to clause 10.3(b), Provider must not in any circumstances (including in any
    advertising or promotional material):
    (i) use any trade mark or logo of RMS;
    (ii) expressly or impliedly claim or represent that RMS endorses, recommends,
         approves or authorises Provider or any services provided by it; or
    (iii) make or permit any public statement concerning RMS or this agreement,
         including by way of disclosure of information to or through any
         communications media or any press release, advertisement, information,
         publication, document, article or promotional material,
         without RMS’ prior written approval.
(b) During the Term of this agreement, Provider may describe its business as accredited by
    RMS solely and strictly as expressly permitted in the HVCBA Scheme Policies and
    Procedures or as otherwise notified by RMS. Provider must not describe itself or its
    business or its Assessors in any other manner or make any other representations about
    the status of its business or relationship with RMS without the prior written approval of
    RMS (which approval may be given or withheld in the absolute discretion of RMS).

11 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

11.1 Confidentiality
(a) Where Provider receives Confidential Information, Provider must at all times:
    (i) keep the Confidential Information secret and preserve its confidential nature;
    (ii) not use or permit the use of 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 in clause 11.1(b);
    (iv) only copy or reproduce Confidential Information for the purposes of this
         agreement or with the prior written consent of RMS;
    (v) establish and maintain appropriate security measures to protect the
         Confidential Information against unauthorised access, use or disclosure;
    (vi) immediately notify RMS of any unauthorised access to, use or disclosure of
         any Confidential Information;
    (vii) not reverse engineer, decompile or disassemble any Confidential Information;
    (viii) ensure that adequate security measures have been taken to protect Confidential
          Information and Personal Information from misuse or loss or from
          unauthorised access, use, modification or disclosure; and
    (ix) if Online Access Terms apply, comply with those Online Access Terms.
This agreement does not prohibit the disclosure of Confidential Information by Provider or an Assessor in the following circumstances:

(i) the disclosure is specifically contemplated and permitted by this agreement;

(ii) the disclosure of Confidential Information is to the Personnel of the Provider who need that information to enable Provider to conduct Assessments or comply with its obligations under this agreement and the Personnel have executed a confidentiality agreement if required by RMS;

(iii) the disclosure is required by a court or governmental or administrative authority; or

(iv) the disclosure is required by an applicable Law.

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

(i) Provider's obligations of confidence set out in this clause 11;

(ii) the Online Access Terms (if applicable); and

(iii) all applicable Privacy Laws.

11.2 Privacy

Notwithstanding any permitted handling of Confidential Information under this agreement, Provider and Assessors must:

(a) not do any act or engage in any practice:

(i) that would breach any of its obligations; or

(ii) which if done or engaged in by RMS, would breach any of RMS’ obligations, under any Privacy Laws;

(b) 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;

(c) when collecting Personal Information about any Applicant (including on any enrolment or application form), provide the Applicant with a written privacy statement as required by the Privacy Laws and obtain the Applicant’s authority:

(i) to disclose their Personal Information to RMS;

(ii) for RMS to disclose the Applicant’s full name, address, licence number, licence expiry date and licence State / Territory of issue, to any Australian State or Territory government agency that administers Heavy Vehicle Licences;

(d) notify RMS immediately upon:

(i) becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 11.2, by Provider or any of Provider’s Personnel;

(ii) receiving a complaint relating to privacy; or

(iii) receiving a request from an individual for access to, alteration, amendment or correction of Personal Information used by RMS in connection with this agreement;

(e) 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

(f) ensure that any of RMS’ Personnel who may be handling Personal Information in connection with this agreement, comply with this clause 11.2 as if they were Provider.
11.3 Intellectual Property

(a) Provider acknowledges and agrees that RMS retains all Intellectual Property and other rights in the RMS Materials and, other than the rights granted under this agreement, Provider obtains no Intellectual Property or other rights in the RMS Materials.

(b) Provider must promptly notify RMS on becoming aware of any actual or suspected infringement of the Intellectual Property or other rights of RMS.

11.4 Access to RMS systems

If any Assessor is given access or otherwise accesses any of RMS’ information technology systems, including the Heavy Vehicle Competency Online Reporting System (HVCORS) (Systems) in connection with this agreement, Provider must ensure that the Assessor complies with the Online Access Terms. Breach of the Online Access Terms by an Assessor will be considered a breach of this agreement.

12 WARRANTIES, EXCLUSIONS AND INDEMNITIES

12.1 Warranties

(a) Provider and each Assessor warrant on entering into the agreement and at all times during the Term that:

(i) the Provider Representative, each Assessor and Provider are not subject to a prohibition under the Driving Instructors Act or its regulations;

(ii) each Assessor is suitably qualified and experienced, including for the requisite Heavy Vehicle licence class for the Assessment being conducted; and

(iii) the Assessments will be conducted in a diligent manner to the standard of skill and care expected of a provider experienced in providing driver assessments of the type the subject of the Assessment and in accordance with the HVCBA Scheme Policies and Procedures.

(b) Each Assessor gives the warranties in clause 12.1(a) only in relation to that Assessor.

12.2 Bribery and codes

(a) Provider agrees on entering into this agreement and at all times during the Term that it must not and must ensure that the Provider Representative and each Assessor does not engage in or condone any bribery, corruption or collusion in the delivery of Assessments.

(b) Each Assessor must not engage in or condone any bribery, corruption or collusion in the delivery of Assessments.

(c) Provider and each Assessor must immediately report any evidence or suspicion of bribery, corruption or collusion to the General Manager Governance Branch at RMS or the Independent Commission Against Corruption.

(d) In this clause references to “bribery” include requesting or accepting any benefits of any kind from or on behalf of an Applicant for Provider or an Assessor (whether the benefit is for Provider or Assessor or a third person) but excludes any training or assessment fee which Provider usually charges.

12.3 Conflict of Interest

(a) Provider warrants that no Conflict of Interest exists at the date it enters into this agreement.
Provider must immediately inform RMS upon my becoming aware of the existence or possibility of a Conflict of Interest during the Term.

Provider must at all times during this agreement use its best endeavours to ensure that no action is taken by itself, or its Personnel, which results in a Conflict of Interest.

In particular, but without limiting clause 12.3(c), Provider must take all necessary and proper precautions to prevent its Personnel from receiving or making, providing or offering to any person a gift, entertainment, payment, loan or other consideration from any Applicant or potential Applicant.

Provider must within 5 Working Days after a request by RMS, advise RMS in writing of all potential and actual Conflicts of Interest, including details of the conflict, the Personnel involved, and the steps taken to address the conflict. A conflict includes reference to any Applicant who is a family member or other person known to the Personnel.

12.4 Exclusion of warranties and liability

(a) RMS excludes from this agreement all conditions, warranties and terms implied by statute, general law or custom, except the express warranties given by RMS in this agreement and any Consumer Guarantee.

(b) Subject to clause 12.4(c), RMS and its Personnel limit all liability, whether arising in contract, tort (including negligence) or otherwise for any and all claims that Provider or Assessors have, or may have had but for this clause 12.4, against RMS or its Personnel under or in connection with this agreement, to $5,000.

(c) Except as set out in this clause 12.4(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 Provider or any Assessor because of a failure of RMS to comply with a Consumer Guarantee that applies to this agreement is limited to RMS (at its election):

(i) 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

(ii) 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.

12.5 Indemnity

Provider will indemnify RMS and its Personnel (Those Indemnified) and keep Those Indemnified indemnified in respect of all loss, damage, liabilities, costs and expenses (including legal costs and expenses) directly or indirectly incurred or suffered by them (including as a result of a claim by any person against any of Those Indemnified) in connection with:

(a) any breach of this agreement by Provider or any Assessor;

(b) any negligence by Provider or any Assessor;
(c) any personal injury or death to any person (including any Applicant) and damage to property of any person (including any Applicant and any third party) in any way in connection with any Assessment; and

(d) any unlawful act or omission of Provider or any of its Personnel.

13 INSURANCE

13.1 Obtaining and Maintaining Insurance

Before the Commencement Date, Provider must obtain on terms approved by the RMS, such approval not to be unreasonably withheld, and then maintain the policies of insurance listed in item 8 of the Agreement Details for at least the amounts, on the terms of and for the risks identified in
SCHEDULE A.

13.2 Variation of Insurances
Provider must not vary any of the insurances required pursuant to clause 13.1 without the prior written consent of RMS (which consent will not be unreasonably withheld by RMS).

13.3 Proof of Insurances
Annually and at any other time upon request by RMS, Provider must provide to RMS certificates of currency issued by each insurer for each of the insurances Provider is required to hold and maintain under clause 13.1.

13.4 Subcontractors' insurance
Without limiting RMS' requirements pursuant to clause 13.1, if Provider subcontracts any of its obligations or the conduct of Assessments then Provider must ensure that each subcontractor obtains, on terms approved by RMS, such approval not to be unreasonably withheld, professional indemnity insurance and motor vehicle comprehensive and third party property damage insurance for at least the amounts, on the terms of and for the risks specified in
SCHEDULE A.

14 PROBITY EVENT

14.1 Probity Event Notice by Provider
Provider must give notice to RMS as soon as it becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).

14.2 Probity Event Notice by RMS
RMS may give notice to Provider if RMS becomes aware that a Probity Event has occurred or is likely to occur (Probity Event Notice).

14.3 Content of Notice
The Probity Event Notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.

14.4 Probity Investigations
(a) Following the issue of a Probity Event Notice, Provider must promptly comply with any reasonable request from RMS for access to Provider’s Personnel for the purpose of undertaking any investigations that RMS may wish to carry out in relation to the actual or likely occurrence of the Probity Event.

(b) Provider must use reasonable endeavours to ensure that all of its Personnel co-operate with RMS and comply with any reasonable requests for information that RMS may make in the course of its investigations.

14.5 Remedial Action
Upon the issue of a Probity Event Notice the Parties must meet at a time nominated or agreed by RMS to discuss the occurrence of the Probity Event. During any such meeting, RMS and Provider must use reasonable endeavours to agree on the actions to be taken by Provider to reverse the effect of the Probity Event.

14.6 RMS may direct Remedial Action
If RMS and Provider are unable to agree within 5 Working Days of such meeting (or any longer period RMS may agree) RMS may give notice to Provider setting out the action it must take to address the adverse effect of the Probity Event, and Provider must comply with any such notice as soon as possible and in any event within 5 Working Days after receiving the notice.

15 TERMINATION AND SUSPENSION

15.1 Termination without cause
RMS or Provider may terminate this agreement at any time without cause in its absolute discretion by giving at least 90 days' written notice of such termination to the other.

15.2 Termination by RMS for cause
Without prejudice to any other rights RMS may have under this agreement or at Law, RMS may terminate this agreement by issuing a written notice to Provider if:

(a) (Breach of agreement) Provider breaches any term of this agreement and:
    (i) the breach is not capable of remedy; or
    (ii) the breach is capable of remedy and Provider fails to:
remedy the breach within 14 days (or such longer time as RMS states) after receiving notice from RMS requiring the breach to be remedied; and

(B) satisfy RMS that the Licensee has taken action to prevent a re-occurrence of the breach;

(b) Provider has previously committed a breach of this agreement which has been the subject of a notice under clause 15.2(a)(ii) and Provider subsequently commits a similar breach within 6 months after the first breach;

(c) **(Recurring Breach)** the following occurs:

(i) Provider breaches this agreement on 3 separate occasions that are notified by RMS during the Term (whether or not such breaches are remedied);

(ii) RMS issues Provider with a notice stating that any further breach of this agreement will give RMS the right under this clause to terminate this agreement; and

(iii) Provider commits a further breach of any provision of this agreement;

(d) **(Insolvency)** Provider becomes subject to an Insolvency Event;

(e) **(Wrongful assignment)** Provider assigns or subcontracts, or purports to assign or subcontract, its rights otherwise than as permitted by this agreement;

(f) **(Fraud or dishonesty)** Provider or any of its Personnel have been found guilty of an offence involving fraud or dishonesty or punishable on conviction by imprisonment;

(g) **(Misconduct)** RMS is satisfied that Provider or any of its Personnel are guilty of misconduct as defined in the Driving Instructors Act (even if that Act does not apply in respect of the activities of Provider or its Personnel under this agreement); or

(h) **(Probity Event)** a Probity Event is not remedied to the satisfaction of RMS or within the time required by RMS.

15.3 **Consequences of Termination**

If the agreement is terminated under clauses 15.1, 15.2 or 15.4(d), Provider must from the date of termination:

(a) cease conducting Assessments;

(b) cease representing that Provider or an Assessor is authorised to conduct Assessments; and

(c) return all RMS Materials, Confidential Information and Personal Information to RMS or, if required by RMS, destroy the RMS Materials, Confidential Information and Personal Information and provide a statutory declaration (signed by a duly authorised officer or representative of Provider) to RMS confirming that Provider has destroyed the RMS Materials, Confidential Information and Personal Information.

15.4 **Suspension or Cancellation by RMS**

(a) Without limiting any other rights of RMS under this agreement and in addition to such rights (including any rights of RMS to terminate this agreement), if RMS believes on reasonable grounds that:

(i) Provider or an Assessor has breached this agreement or the HVCBA Scheme Policies and Procedures;

(ii) a Probity Event has occurred;
the performance of Provider or an Assessor under this agreement is unsatisfactory (whether or not Provider or an Assessor is in breach of this agreement); or

(iv) an Assessor is involved in, or alleged to be or is suspected of being involved in, any criminal activity, any serious driving offences, or any misconduct, then RMS may:

(v) suspend the performance of Assessments by the Provider under this agreement; and/or

(vi) suspend the Assessor from conducting Assessments, with immediate effect by issuing a written notice to Provider.

A notice issued by RMS under clause 15.4(a) must specify the nature of the acts or omissions giving rise to the grounds for suspension, and give Provider sufficient information to allow it to investigate such acts or omissions.

(b) If a notice is given to Provider pursuant to clause 15.4(a), Provider must:

(i) submit a written response to RMS (which addresses the matters raised in the notice) within the time stipulated in the notice and if no time is stipulated then within 10 Working Days after the date of the notice issued by the RMS;

(ii) participate in any discussions required by RMS;

(iii) provide any additional information or documentation required by RMS;

(iv) in the case of suspension of this agreement, cease conducting Assessments unless and until the operation of this agreement resumes under clause 15.4(d)(i); and

(v) in the case of suspension of an Assessor, not allow that Assessor to conduct any Assessments unless and until suspension of that Assessor is lifted under clause 15.4(d)(iii).

(c) RMS will conduct a review of the matters giving rise to the notice issued under clause 15.4(a), including the Provider’s and/or an Assessor’s conduct, after receipt of Provider’s response pursuant to clause 15.4(b) (Review).

(d) On completion of a Review conducted by RMS, RMS will issue a written notice to Provider stating that:

(i) the operation of this agreement is to resume from a specified date and any course of action that Provider must undertake prior to the resumption; or

(ii) this agreement will terminate with effect from a specified date; or

(iii) an Assessor’s suspension is to be lifted from the specified date and any course of action that the Assessor must take prior to that Assessor resuming conducting Assessments; or

(iv) RMS’ approval of the Assessor is cancelled and the Assessor must not undertake any Assessments and is ineligible to be re-appointed in future as an Assessor.

(e) If the operation of the agreement resumes under clause 15.4(d)(i), Provider will reimburse to RMS if requested all costs, expenses and damages incurred or suffered by RMS as a consequence of the suspension and resumption of the agreement.

(f) If the agreement is terminated under clause 15.4(d)(ii), Provider must comply with clause 15.3.

16 ASSIGNMENT AND CHANGE OF CONTROL
(a) Provider must not assign any right or interest under this agreement without RMS’ prior written consent.

(b) If there is a change in Control of Provider, then RMS may immediately terminate this agreement by giving notice to Provider.

17 DISPUTES

(a) Neither party may commence legal proceedings or arbitration in relation to this agreement (except proceedings seeking interlocutory relief) in respect of any dispute in relation to this agreement (Dispute) unless it has first complied with this clause 17.

(b) A party claiming that a Dispute has arisen must notify the other party with reasonable details of the Dispute.

(c) Within 14 days after a notice under clause 17(b) each party must nominate in writing to the other party an employee of that party to address the Dispute with the other party.

(d) During the 30 day period after a notice is given under clause 17(c) (or if the parties agree a longer period, that longer period) each party’s nominee must use his or her best efforts to resolve the Dispute.

(e) If the Dispute is not resolved within the time referred to in or agreed under clause 17(d), then:

(i) if both parties, in their absolute discretion, agree to submit the Dispute to mediation, the Dispute must be referred:

(A) for mediation, in accordance with the Australian Commercial Disputes Centre (ACDC) Mediation Guidelines; and

(B) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current Chief Executive Officer of ACDC or the Chief Executive Officer’s nominee (or if no such person is available or willing to nominate a mediator, the then current President of the Law Society of New South Wales); and

(ii) if either party, in its absolute discretion, does not agree to submit the Dispute to mediation, the Dispute must be referred for expert determination to an independent expert agreed by the parties, or if the parties do not agree on an expert, an independent expert nominated by the then current President of the Australian Driver Trainers Association (or if no such person is available or willing to nominate an expert, the then current President of the Law Society of New South Wales).

(f) The decision of an expert under clause 17(e) must be in writing and will be final and binding.

(g) Except where RMS has suspended this agreement under clause 15.4, each party must continue performing their obligations in accordance with this agreement during any Dispute.

(h) Nothing in this clause affects a party’s rights to terminate this agreement or RMS’ right to suspend this agreement under clause 15.4.

18 WAIVER

Failure by a party to compel performance of any term or condition of this agreement does not constitute a waiver of that term or condition (unless it is in writing signed by the party with the right to insist on performance of that term or condition) and does not impair the right of the party to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

19 NOTICES
19.1 Method of giving Notices

All notices must be in writing and must be given by any one of the following means:
(a) by delivering it to a party's Address;
(b) by sending it to a party's Address by ordinary post;
(c) by sending it by facsimile transmission to a party's Address; or
(d) by sending it by email to the Provider’s Address.

19.2 Time of Receipt

A notice will be deemed to be given and received:
(a) if given in accordance with clause 19.1(a), on the working day of delivery in the place of delivery;
(b) if given in accordance with clause 19.1(b), three clear working days after the day of posting in the place of delivery;
(c) if given in accordance with clause 19.1(c), on the next working day after transmission in the place of delivery; or
(d) if given by RMS in accordance with clause 19.1(d), the earlier of when the email is opened by the Provider and the next Business Day after the time at which it enters the Provider’s system (provided that RMS does not receive a delivery failure or out of office message).

20 GOVERNING LAW

This agreement will be governed and interpreted in accordance with the Laws for the time being in force in New South Wales and the parties agree to be subject to the non-exclusive jurisdiction of the courts of New South Wales.

21 GENERAL

21.1 Rights of RMS

Any express statement of a right of RMS under the agreement is without prejudice to any other right of RMS expressly stated in the agreement or arising at Law.

21.2 Severability

If any provision of the agreement is invalid and or unenforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable provision will be and continue to be valid and enforceable in accordance with their terms.

21.3 Statutory Rights

Nothing in the agreement will limit or restrict the ability of RMS to undertake any action that it is required to take or may take under any applicable Laws.

21.4 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 documents related to this agreement.
21.5 Entire agreement
This agreement states all the terms of the agreement between the parties in respect of its subject matter, and supersedes any previous representations, warranties, arrangements and agreements between the parties in respect of its subject matter.

21.6 Good faith
The parties expressly exclude any implied duty of good faith in the exercise of their rights under this agreement.

21.7 Survival of Obligations
The provisions of this agreement which are capable of having effect after the expiration or termination of the agreement will remain in full force and effect following the expiration or termination of this agreement.

21.8 Variation of Agreement
Except as otherwise provided in this agreement, RMS may vary the agreement at any time by giving 60 days’ written notice to Provider and the variation takes effect at the end of that 60 day period.

22 DEFINITIONS & INTERPRETATION

22.1 Definitions
These are the capitalised terms used in this document and their meaning:

"Address" means the address of a party specified in item 2 of the Agreement Details;

"Agreement Details" means the Agreement Details set out in Part 1 of this agreement;

"Applicant" means a person who wants to apply to undertake Assessments in relation to Heavy Vehicles who satisfies the Application Criteria, and who requests or has engaged Provider to provide Assessment;

"Application Criteria" means the application criteria specified in the HVCBA Scheme Policies and Procedures;

"Assessment" means a Final Competency Assessment (FCA) or a Competency Test (CT) as defined in the HVCBA Scheme Policies and Procedures, for a person who wants to obtain a Heavy Vehicle Licence;

“Assessor” means a person engaged by Provider to conduct Assessments of Applicants under this agreement and who meets the requirements for Assessors as set out in this agreement;

“Assessor Qualifications” means the qualifications set out in the HVCBA Scheme Policies and Procedures which Assessors must hold and maintain;

"Auditor" means a person authorised by RMS to audit the performance of Provider under this agreement;

“Certificate of Competence” means a certificate, in the form required by RMS, confirming that an Applicant has satisfied the requirements of an Assessment;

"Commencement Date" means the date specified in item 3 of the Agreement Details;

"Confidential Information" means any information provided by RMS to Provider or any of its Personnel, or otherwise obtained by Provider or any of its Personnel, whether obtained before or after the execution of this agreement, in connection with this agreement or RMS in any way. Without limiting the foregoing:

(a) Confidential Information includes confidential business information, documents, records, financial information, reports, Intellectual Property, specifications, technical
information and forecasts which relate to RMS, Assessments, HVCBA Scheme Policies and Procedures, the fact that the Confidential Information may be or has been provided, and the terms of this agreement; and

(b) Confidential Information does not include information which is in or becomes part of the public domain (other than through a breach of this agreement or an obligation of confidence) or which the recipient of the Confidential Information can prove was independently acquired or developed by it without breaching the terms of this agreement;

“Conflict of Interest” means any circumstances that exist or arise which:

(a) constitute an actual conflict;

(b) constitute a known risk of conflict; or

(c) may be perceived by others to be a conflict, between the duties of Provider or its Personnel to RMS and their duties to another person in relation to the activities under this agreement;

“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);

“Control” of a Provider includes the direct or indirect power to directly or indirectly:

(a) direct the management or policies of Provider; or

(b) control the membership of the board of directors (or other governing body) of Provider, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares of that Provider or otherwise;

“Driving Instructors Act” means the Driving Instructors Act 1992 (NSW);

"End Date" means the date specified in item 4 of the Agreement Details;

“Fit and Proper Persons” means a person that meets the requirements of any RMS “fit and Proper” policy in place from time to time;

“Health and Safety Incident” means any occupational health and safety related incident that is notifiable under the WHS Laws;

“Heavy Vehicle” means a light rigid vehicle, a medium rigid vehicle, a heavy rigid vehicle, a heavy combination vehicle or multi-combination vehicle as defined under the Road Transport (Driver Licensing) Regulation 2008 (NSW);

“Heavy Vehicle Licence” means any or all of the licences required to drive a Heavy Vehicle;

“HVCBA Scheme” means the Heavy Vehicle Competency Based Assessment Scheme described in the HVCBA Scheme Policies and Procedures.

"HVCBA Scheme Policies and Procedures” means the requirements provided by RMS from time to time, and as amended by notice from RMS from time to time, for the conduct of Assessments and the HVCBA Scheme including:

(a) all requirements that apply to Provider’s status as a Registered Training Organisation, including any requirements in respect of health and safety, equal employment opportunity and environment;

(b) Heavy Vehicle Assessment Guide or similar RMS document from time to time;

(c) Heavy Vehicle Assessment Route Development Guide or similar RMS document from time to time;

(d) Specification - Monitoring Heavy Vehicle Assessments using In-Cabin Cameras; and
all other policies, procedures, guides and other material issued from time to time by RMS relating to Assessments or the HVCBA Scheme.

If there is any inconsistency between the documents listed above, the document listed first above prevails;

"Insolvency Event" means:

(a) where Provider is an individual or partnership, Provider is declared bankrupt;

(b) where Provider is a company:
   (i) a liquidator has been appointed;
   (ii) an administrator has been appointed (voluntarily or otherwise);
   (iii) the appointment of a receiver or trustee in respect of any of Provider’s property;
   (iv) Provider enters into a scheme or other arrangement with its creditors;
   (v) a winding-up order is made in respect of Provider;
   (vi) a mortgagee of any property of Provider takes possession of that property;
   (vii) Provider is unable to pay its debts as and when they fall due; or
   (viii) Provider enters into any other form of insolvency administration;

"Intellectual Property" means all intellectual property rights including rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of Intellectual Property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967;

"Laws" means all laws of any jurisdiction including rules of common law, equity, statutes, regulations, proclamations, rules, regulatory principles and requirements, by-laws, writs, orders and judgements, and all codes of conduct, industry standards, requirements and directives of any government or governmental body, agency or authority;

"Online Access Terms" means any terms notified by RMS from time to time in relation to access to and use of Systems or otherwise required to be agreed by a user of Systems (including by way of electronic acceptance at the time of accessing Systems);

"Personal Information" has the same meaning in the Privacy Laws;

"Personnel" of a party means officers, employees, agents and contractors of that party, and in respect of Provider includes Assessors;

"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;

"Probity Event" means an event, matter, situation or thing that in RMS’ reasonable opinion:

(a) has a material adverse effect upon the character, honesty or integrity of Provider, its Personnel or RMS;

(b) relates to Provider or any of its Personnel and has a material adverse effect upon the public interest (having regard to the policy objectives of RMS) or the reputation of or public confidence in RMS or the New South Wales Government; or

(c) that involves a material failure by Provider or its Personnel to achieve or maintain:
   (i) reasonable standards of ethical behaviour;
   (ii) the avoidance of conflicts of interest that may have (or may give the public the appearance of having) a material adverse effect on the ability of Provider to impartially perform and observe its obligations in respect of this agreement; or
(iii) standards of behaviour expected of a person operating with a government approval;

"Provider Representative" means the person nominated in item 5 of the Agreement Details as they may be substituted pursuant to clause 5.3;

"Records" means the records that Provider is required to maintain under this agreement including as required under the HVCBA Scheme Policies and Procedures, the Driving Instructors Act, the Surveillance Devices Act 2007 (NSW), the Workplace Surveillance Act 2005 (NSW) and Privacy Laws;

“Registered Training Organisation” or “RTO” means a training organisation registered as such with Australian Skills Quality Authority established under the National Vocational Education and Training Regulator Act 2011 (Cth);

"RMS Materials" means any materials provided to Provider by RMS for the purposes of the agreement, including any HVCBA Scheme Policies and Procedures;

“Systems” has the meaning given in clause 11.4;

"Term" means the term of this agreement determined under clause 3;

“Training Course” means a course to be provided to a person to train that person in the driving of a Heavy Vehicle so that person is eligible and prepared to undertake an Assessment;

"Vehicles" means the vehicles used by Provider in conducting Assessments;

“WHS Laws” means all applicable work health and safety related Laws including, but not limited to:

(a) Work Health and Safety Act 2011 (NSW);
(b) regulations, codes of practice, Australian Standards or compliance codes; and
(c) directions, guidance notes or notices issued by any relevant Government authority or agency responsible for administering work health and safety laws; and

"Working Day" means a day that is not a Saturday, Sunday or public holiday in New South Wales.

22.2 Interpretation

In this agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;
(b) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
(c) a reference to gender includes all genders;
(d) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this agreement;
(e) a recital, schedule, annexure or the description of the parties forms part of this agreement;
(f) where an expression is defined, another part of speech or grammatical form has a corresponding meaning;
(g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, notated, supplemented or replaced from time to time;
(h) a reference to a statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or
replacing it as at the date of the agreement and a reference to a statute includes all
regulations, proclamations, ordinances and by-laws issued under that statute;

(i) headings are for convenience of reference only and do not affect interpretation;

(j) no provision of the agreement will be construed adversely to a party solely on the
ground that the party was responsible for the preparation of the provision or the
agreement; and

(k) specifying anything in this agreement after the words 'include' or 'for example’ or
similar expressions does not limit what else is included.

22.3 Precedence of Documents

If Provider considers there is any inconsistency between any requirement in the Agreement
Details, Part 2 (Terms and Conditions) of this agreement, the HVCBA Scheme Policies and
Procedures or any other document comprising or referred to in this agreement:

(a) Provider must notify RMS of the alleged inconsistency;

(b) RMS will, acting reasonably, direct Provider which document is to apply and the
requirement Provider is to follow; and

(c) Provider agrees to comply the reasonable directions of RMS given under clause 22.3(b).

22.4 Multiple parties

If more than one person is identified in item 1 of the Agreement Details as Provider:

(a) an obligation of those persons is joint and several;

(b) a right of Provider is held by each of those persons severally; and

(c) any other reference to Provider is a reference to each of those persons separately, so that,
for example:

(i) a representation, warranty or undertaking is given by each of them separately;
and

(ii) a reference to Provider or that term for the purposes of an "Insolvency Event"
is a reference to each of those persons separately.
## Contractor-Arranged Insurance Schedule

<table>
<thead>
<tr>
<th>TYPES OF INSURANCES</th>
<th>MINIMUM SUM INSURED</th>
<th>PERIOD OF INSURANCE</th>
<th>INSURANCE COVER IS TO INCLUDE THE FOLLOWING</th>
<th>QUALIFICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broadform Public Liability and Product Liability</td>
<td>$20 million</td>
<td>Annually for the duration of the contract plus the duration of any warranty or maintenance periods.</td>
<td>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</td>
<td>If no products are being supplied then only Public Liability cover is required.</td>
</tr>
<tr>
<td></td>
<td>For any single occurrence</td>
<td></td>
<td>(b) is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(c) lists RMS as an additional named insured; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(d) includes a cross liability clause as defined in clause 3 of the Definitions and Notes below.</td>
<td></td>
</tr>
<tr>
<td>Motor Vehicle Comprehensive</td>
<td>$20 million</td>
<td>Annually for the duration of the contract.</td>
<td>(a) Is with an approved insurer as defined in clause 1 of the Definitions and Notes below;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>For any single occurrence</td>
<td></td>
<td>(b) covers motor vehicles owned or used by the Contractor or its subcontractors directly or indirectly engaged in performance of the Services; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(c) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.</td>
<td></td>
</tr>
<tr>
<td>Professional Indemnity</td>
<td>$5 million per occurrence</td>
<td>From time contract is awarded to completion of the contract plus 6 years following completion of the contract</td>
<td>The Insurance can be taken out as annual covers where the cover is</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(a) Is an approved insurer as defined in clause 1 of the Definitions and Notes below;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(b) a description of the risk covered by the policy;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(c) one automatic restatement per period of insurance; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(d) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>to include a retroactive date being the commencement date of the contract</td>
<td>Notes below.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>--------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>As per the relevant Workers Compensation legislation.</td>
<td>Annually.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>As per relevant Workers Compensation legislation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Accident &amp; Illness</td>
<td>N/A</td>
<td>Minimum of 104 weeks</td>
<td>Only required for a sole trader.</td>
<td></td>
</tr>
</tbody>
</table>

**Definitions & Notes**

1. 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;
   
   (b) Lloyds Underwriters;
   
   (c) A Treasury Managed Fund insurance scheme with the NSW State Government; or
   
   (d) The Comcover insurance scheme for the Australian Federal Government.

   Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a ‘fronting’ placement is acceptable from an insurer listed in Note 1(a) or 1(b).

2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.

3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.

4. References in this Insurance Schedule to the “contractor” and the “contract” are to be interpreted to harmonise with the terminology used in the contract in which this Insurance Schedule is used (eg “Service Provider” and “Agreement” or as the case may be). References to RMS mean Roads and Maritime Services.
## ADDITIONAL ASSESSORS

*(clause 6.3(a)(ii))*

<table>
<thead>
<tr>
<th>Item 1</th>
<th>Details of Provider</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td>Trading As:</td>
</tr>
<tr>
<td><em>RTO number</em></td>
<td></td>
</tr>
<tr>
<td><em>ABN</em>:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td>Facsimile:</td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 2</th>
<th>Details of Proposed Assessor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full name:</td>
<td></td>
</tr>
<tr>
<td>Postal Address:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td>Facsimile:</td>
</tr>
<tr>
<td>Driver licence number:</td>
<td></td>
</tr>
</tbody>
</table>

**Relationship with Provider (please tick):**  
- Employee of Provider  
- Contractor of Provider

*ABN if the Assessor is a Contractor not an Employee:*

<table>
<thead>
<tr>
<th>Item 3</th>
<th>Proposed date that appointment will commence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement date:</td>
<td></td>
</tr>
</tbody>
</table>
ASSESSOR DEED POLL

This deed poll is entered into by

[Insert Assessor name and details] (Assessor)

in favour of Roads and Maritime Services (RMS).

Background

A. RMS has developed the HVCBA Scheme Policies and Procedures for the conduct of Assessments for persons in relation to Heavy Vehicle Licences.

B. RMS and [Insert Provider name and details] (Provider) has entered into the Accreditation Agreement for Heavy Vehicle Competency Assessment (Agreement) under which RMS accredits Provider to conduct Assessments of Applicants in accordance with the Agreement.

C. Under the Agreement, Provider must obtain RMS’ prior written consent to appoint any new Assessors and new Assessors must execute a deed poll in favour of RMS.

Now this deed witnesses

(a) The Assessor acknowledges that the Provider proposes to appoint the Assessor as an Assessor under the Agreement, subject to the terms of the Agreement.

(b) The Assessor:

(i) acknowledges and agrees that it has been provided a copy of and an opportunity to read and understand the Agreement and HVCBA Scheme Policies and Procedures;

(ii) agrees to be appointed by the Provider to be an Assessor of the Provider;

(iii) agrees to be bound by and observe the terms of the Agreement and HVCBA Scheme Policies and Procedures as applicable to Assessors;

(iv) agrees to act in a way that at all times enables Provider to comply with the Agreement; and

(v) agrees at all times to act in a way that is consistent with the terms of the Agreement and the HVCBA Scheme Policies and Procedures.

(c) All terms in this deed that are defined in the Agreement have the same meaning in this deed as is given to them in the Agreement.

Executed as deed
SIGNED SEALED AND DELIVERED BY
[INSERT NAME OF THE ASSESSOR] in the presence of:

Assessor (signature)

Assessor (Name printed)

Witness (signature)

Witness (Name printed)

Date:

NOTE TO NEW ASSESSOR: YOU MUST OBTAIN AND READ A COPY OF THE AGREEMENT BETWEEN RMS AND THE PROVIDER AND RMS’ HVCBA SCHEME POLICIES AND PROCEDURES BEFORE YOU SIGN THIS DEED POLL.
FORM TO NOTIFY OF CHANGE OF ADDRESS FOR PROVIDER OR ASSESSOR

This form is to be completed and faxed to the Enrolment Training Unit on (02) 8837 0120 no more than 7 days after the change of address.

<table>
<thead>
<tr>
<th></th>
<th>Provider/Assessor’s Name:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Provider/Assessor’s:</td>
<td>Previous Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Postcode:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Provider/Assessor’s:</td>
<td>New Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Postcode:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Provider/Assessor’s:</td>
<td>New Contact Numbers:</td>
<td></td>
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<tr>
<td></td>
<td>Work:</td>
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<td>Home:</td>
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<tr>
<td></td>
<td>Mobile:</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Email address:</td>
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</tbody>
</table>