



Government of **Western Australia**
Department of **Transport**

**DOT963017 AGREEMENT FOR THE PROVISION OF NON ROAD LAW FUNCTIONS IN
SHIRE OF WYNDHAM EAST KIMBERLEY**

BETWEEN:

The **Chief Executive Officer of the Department of Transport** (titled the Director General)

and

The Shire of Wyndham East Kimberley a body corporate with perpetual succession under the Local Government Act 1995 (**“the Agent”**)

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This Agreement is made the _____ day of _____ 201_

RECITALS:

- A. The Chief Executive Officer (referred to as the Director General) of the Department has been assigned certain functions under the *Road Traffic Administration Act 2008*; the *Road Traffic Authorisation to Drive Act 2008*; the *Road Traffic Vehicles Act 2012* and the *Road Traffic (Vehicles) (Taxing) Act 2008* (the Road Laws).

The Director General has issued for execution the Agreement for Provision of Licensing Services in terms of section 11 of the *Road Traffic Administration Act 2008* for the Agent to undertake certain Road Law relation functions on his behalf.

- B. The Director General also undertakes certain functions in licensing pleasure vessels in accordance with regulations made under section 99(1) (a) of *Western Australian Marine Act 1982*.
- C. The Director General also undertakes functions in accordance with the *Western Australian Photo card Act 2014* and the *Motor Vehicles Drivers Instructors Act 1963*.

In addition the Director General on behalf of other parties undertakes certain functions. These are as follows:

- (a) On behalf of the Minister for Local Government, the Director General undertakes the licensing and renewal of licences for off road vehicles in accordance with the *Control of Vehicles (Off Road Areas) Act 1978*.
- D. In the past the Agent has undertaken certain functions on the Director General's behalf that the Director General was empowered to perform regarding the licensing of vessels, photo cards, firearm licenses, off road vehicles and motor vehicle driving instructor fees. These functions were undertaken by the Agent either under Memoranda of Understandings or in terms of conditions that were set out in the schedules to agreements made under section 6B of the *Road Traffic Act 1974*.
- E. On 27 April 2015 the Road Laws came into effect and it became necessary to enter into separate agreements for the Director General's non Road Law functions to be undertaken by the Agent.
- F. This Agreement formalises past arrangements for non-Road Law related functions and has commenced notwithstanding the date of execution of this Agreement.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires:

Agreement means this document and any Schedules and annexures hereto.

Auditor General means the Auditor General of Western Australia.

Authorised Employee means person the Agent determines are suitable and has trained to undertake the Services.

Business Day means any day, except a Saturday, Sunday or a Gazetted public holiday in Perth, Western Australia.

Business Rules means those business rules set out in Schedule 5 and those that the Director General informs the Agent in writing are applicable from time to time for undertaking the Services, and may be set out and described in other documents and agreements, including the Business Rules set out in the Road Law Agreement.

Chief Executive Officer or CEO means the Chief Executive Officer of the Department and is also known as the Director General.

Confidential Information means information that is set out in Clause 15 and includes the following:

- (a) is by its nature confidential; or
- (b) is specified by the Director General or the Agent to be confidential; or
- (c) the other party knows or reasonably ought to know is confidential; and
- (d) includes all details relating to Licensing undertaken by the Agent, including internal processes of the Director General, policies and procedures which are not otherwise able to be obtained publicly; personal details of Customers, financial details and payments that the Agent is provided either by the Director General or Customers, directly or indirectly, and are either directly, or indirectly related to the Services.

Consumer Price Index means the Perth Consumer Price Index (Consumer Price Index, Australia (Cat No 6401.0)): 1 All Groups, Index Numbers – Perth) from the preceding March quarter published by the Australian Bureau of Statistics.

Customer means the Director General's customers, being members of the public seeking to utilise the Services.

Database means the Director General's designated motor vehicle and driver licensing databases, including TRELIS.

Department means the Department of Transport or such other person or government agency which is responsible for assisting the Principal with the administration of this Agreement;

Director General means the Chief Executive Officer of the Department or an authorised representative of the Director General.

Employee means:

- (a) Where the Agent is a local government body, a person employed by the Agent under Section 5.36 of the Local Government Act 1995, or otherwise engaged by the Agent, and includes a chief employee, a chief executive officer, a senior executive officer, executive officer, an employee, a public service officer, public officers or a respondent as defined under the Public Sector Management Act 1994 or a clerk or servant as defined under section 1 of the Criminal Code Act 1913; and
- (b) the Agent's employees, directors, officers, nominees, agent or subcontractor.

GST has the same meaning as in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and, where the context permits, includes the Commissioner of Taxation's goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in the State of Western Australia.

Language Interpretation Facility means the facility established by State Government to meet the needs of people unable to communicate effectively in English.

Personnel means all Employees engaged in relation to the supply of the Services.

Physical Stock means any items provided by the Director General to the Agent for the purpose of facilitating the Agent to undertake the Services.

Performance Measures means the criteria specified in Schedule 10 against which the Agent's delivery of Services will be measured.

Premises means any premises listed in Schedule 6 which are owned or occupied by the Agent on or from which the Services are to be supplied or to which the Agent has access in order to supply the Services, and includes anything on those premises.

Prescribed Fee means any statutory fee applicable to vessel licenses, photo cards, off road vehicle licenses and driving instructor fees; that appear in the Government Gazette from time to time.

Principal means the CEO of the Department of Transport.

Purpose means the provision of Services.

Records means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not containing Confidential Information, and whatever format in which such records and information are held, stored or recorded.

Representative(s) means either or both the Agent's Representative or the Principal's Representative set out in Schedule 3 as the context requires.

Road Laws means one or more of the Acts referred in Recital A of this Agreement.

Road Law Agreement means the agreement concluded under section 11 of the *Road Traffic (Administration) Act 2008* between the CEO and the Agent for the performing of Road Law functions.

Services means tasks that the Agent undertakes to perform on the Director General's behalf as outlined in Schedule 1.

Service Fee means those fees that the Director General will pay the Agent for undertaking the Services and set out in Schedule 2.

Term means the length of time that this Agreement is valid.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) words importing persons include corporations, governments and government bodies and vice versa;
- (d) references to Clauses and subsidiary parts of Clauses are to Clauses and parts of Clauses in this Agreement;
- (e) terms such as "herein", "hereby", "hereunder", and "hereof" refer to this Agreement as a whole and not to the Clause or subsidiary part where those terms appear;
- (f) references herein to any deed, agreement or other instrument are references to that deed, agreement or other instrument as it may from time to time be amended or extended in accordance with its terms; and
- (g) references to a party mean a party to this Agreement, and include the successors and permitted assigns of a party.

2 APPOINTMENT OF AGENT

- 2.1 The Director General appoints the Agent to act on behalf of the Director General for the Purpose for the Term.
- 2.2 The Agent accepts the appointment and shall perform its duties under this Agreement to the best of their ability and strictly in accordance with the relevant legislation.
- 2.3 The Agent will act in accordance with the Business Rules as they apply from time to time.

3 APPLICABLE LAW

This Agreement shall be subject to the laws of the State of Western Australia.

4 TERM OF AGREEMENT

- 4.1 This Agreement will begin on the Commencement Date as specified in Item 2 of Schedule 9 for the term specified in Item 1 of Schedule 9. The Principal may by notice in writing to the Agent extend the term at his entire discretion for a further period or periods up to the maximum period set out in Item 3 of Schedule 9.
- 4.2 This Agreement does not create or otherwise confer upon the Agent an enforceable right to be offered an extension of this Agreement.

5 SERVICES

The Agent undertakes the Services on behalf of the Director General as set out in Schedule 1 in accordance with the Business Rules.

6 DUTIES OF AGENT

- 6.1 The Agent covenants and agrees with the Director General:
- (a) to collect the Prescribed Fees payable for transactions in relation to the Services; and
 - (b) to notify the Department of any moneys banked for the credit of the Department's account.
- 6.2 The Agent shall not have authority to undertake any other functions that are not set out in this Agreement.

7 LIABILITY AND INDEMNITY

- (a) The Agent indemnifies the Director General, the State of Western Australia and all their respective officers, employees and agents against all costs, losses, expenses, claims, damages and other liabilities (including, legal costs and expenses) as a result of any action, suit, claim, demand or proceeding taken or made by any third party arising from or in connection with:
- (i) any breach of an obligation under the Agreement by the Agent or any Employee; or
 - (ii) any wilful, tortious or unlawful act or omission of the Agent or any Employee; or
 - (iii) any breach of a State or Commonwealth law relevant to the Agreement by the Agent or any Employee.
- (b) The Agent's liability under the indemnity in Clause 7 (a) shall be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result

from the negligence of the Director General, the State of Western Australia or their respective officers, employees or agents.

- (c) The Director General agrees to use his best endeavours to cooperate with the Agent, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of the indemnity under Clause 7 (a).

8 PUBLICITY

8.1 Unless the Director General gives his prior written consent, the Agent shall not:

- (a) use the Department's or State of Western Australia's name and/or logo or coat of arms.
- (b) make any statement concerning the Agreement, in any publication, advertisement or media release other than its annual report, annual financial statement, annual budget or other documentation necessary under statutory reporting requirements.

8.2 The Director General may use the Agent's name and logo for reasonable promotional or publicity purposes (regarding this Agreement) at the Director General's discretion, and the Director General shall acknowledge the role of the Agent to the extent that is reasonable within the circumstances.

9 AUDITS AND ACCESS TO RECORDS

(a) The Agent shall:

- (i) allow the Director General or his authorised representative to have reasonable access to inspect any Premises and equipment (where applicable) used or occupied in connection with this Agreement;
- (ii) allow the Director General or his authorised representative to have reasonable access to all Records pertaining to this Agreement in the custody or control of the Agent;
- (iii) allow the Director General or his authorised representative to examine, audit, copy and use any Records pertaining to this Agreement in the custody or control of the Agent;
- (iv) maintain accurate and complete records of all work pertaining to this Agreement carried out during the Term;
- (v) allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Agent's Records concerning the Agreement; and
- (vi) provide for the care, safety, security and protection of all Records (whether created by the Director General, the Agent or any other person) that are in the custody or control of the Agent, and all property supplied by the Director General to the Agent in connection with the Agreement.

(b) The powers and duties of the Auditor General under law are not limited or otherwise affected by the terms and conditions of the Agreement.

(c) This Clause survives expiration or termination of the Agreement.

10 REDUCTION, SUSPENSION AND TERMINATION

- 10.1 Notwithstanding any other provisions of this Agreement, the Director General may by notice to the Agent at any time and in his sole discretion do any of the following including taking more than one of the following actions.
- (a) reduce the scope of Services;
 - (b) temporarily suspend this Agreement;
 - (c) terminate this Agreement by notice.
- 10.2 In exercising the powers under Clause 10.1:
- (a) upon receiving notice under Clause 10.1, the Agent must immediately cease the provision of all Services within time period set forth in the notice;
 - (b) the Agent will not be entitled to compensation for loss of prospective profits or on any other basis.
- 10.3 Notice by the Director General in accordance with this Clause does not relieve the Agent of any of its warranties and obligations set out in this Agreement including those that continue after termination.
- 10.4 In the event of suspension of this Agreement by the Director General, the Agent must immediately cease performing all Services for the duration of the suspension period.
- 10.5 The suspension, reduction or termination of this Agreement does not affect any rights, liabilities or obligations under this Agreement as a result of anything occurring before the expiration, reduction or termination.
- 10.6 On termination of this Agreement, whether at the Director General's discretion or at the end of the Term, the Agent must as soon as practicable and within ten (10) working days following notice:
- (a) deliver to the Director General's nominated representatives all Records as required by the Director General;
 - (b) in every other respect cooperate with the Director General and nominated representatives as reasonably required by the Director General in order to minimise any loss, damage or inconvenience to the Director General resulting from the expiration or termination of this Agreement. If this Agreement is terminated without default, then subject to the requirements of the Director General and notwithstanding any due date laid down for the termination of this Agreement, the Agent shall complete all the Services in accordance with the terms and conditions of this Agreement.
- 10.7 The Director General and Agent may terminate the Agreement by mutual agreement. If the Agreement is terminated by mutual agreement, and on the initiation of the Agent, the Agent agrees to continue to perform the Services for a period required by the Director General to enable the Director General to establish alternative arrangements for the performance of the Services.
- 10.8 In the event of an alleged breach by the Director General of this Agreement, the Agent's sole remedy is a claim for damages.

11 EVENTS AFFECTING PERFORMANCE OF SERVICES

11.1 This Agreement may be terminated by the Director General in writing if any incapacitating event occurs including but not limited to:

- (a) a breach of the Agent's obligations under the Agreement;
- (b) failure to pay any of the applicable Prescribed Fees and charges;
- (c) failure to be registered for GST;
- (d) if for any reason whatsoever the Agent is unable or unwilling to commence or continue providing the Services;
- (e) if the Agent does not promptly inform the Director General of any occurrence which may adversely affect the Agreement in a material way or the ability of the Agent to deliver the Services;
- (f) if the Agent does not, in providing the Services, act with integrity, good faith and probity in accordance with good corporate governance practices;
- (g) if the Agent attempts to sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of their rights, entitlements and powers under this Agreement;
- (h) if the Agent does not comply with all State or Commonwealth laws;
- (i) if the Agent refuses upon reasonable notice to provide the Director General with access at any reasonable time and from time to time to the Agent's Premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Director General in order to verify compliance by the Agent with this Agreement;
- (j) if the Agent does not reasonably cooperate with the Director General in the administration of this Agreement;
- (k) if the Agent also provides services under the Road Law Agreement and that agreement is terminated in accordance with the breach provisions of that agreement.

11.2 If the Agent breaches this Agreement and the Director General in his discretion considers it appropriate, the Director General may first send the Agent a written notice specifying the breach and calling upon the Agent to rectify the breach within ten (10) Business Days of receipt of the notice or such other time period as specified by the Director General.

11.3 The Agent must notify the Director General in the event of the occurrence of any event that could in whole or in part impede the ability of the Agent to perform the Services under this Agreement including one or more of the following events:

- (a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- (b) except to reconstruct or amalgamate while solvent, a body corporate:
 - (i) is wound up or dissolved; or
 - (ii) resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; or
 - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement,

deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or

- (c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the Corporations Act 2001 (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate or any asset or undertaking of a body corporate; or
- (e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate; or
- (f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property;
- (g) a body corporate:
 - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
 - (ii) stops or suspends payment of all, or a class of, its debts; or
 - (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
 - (A) insolvent or unable to pay its debts when they fall due; or
 - (B) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001 (Cth)*; or
 - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth); or
 - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- (h) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth) or action is taken which could result in that event; or
- (i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable, for any reason, of managing his own affairs; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

12 POLICE CLEARANCE

- 12.1 The Director General may request the Agent at any time, to obtain and provide to the Director General an Australia-wide police clearance in respect of any of the Agent's Authorised Employees.
- 12.2 In addition to the obligations set out in this Agreement, in the event that the Agent becomes aware that a criminal charge has been laid or may be laid against it or its Employees, it will immediately notify the Director General.

13 EMPLOYEES

The Agent must ensure that only Authorised Employees carry out the Services.

- (a) Notwithstanding other rights and remedies or actions available to it, the Director General may require the removal from the undertaking of Services of any Employees.
- (b) The Agent must immediately comply with a request under Clause 13 (a) and ensure that the Employee does not access the Director General's Physical Stock, Records and Database

14 NON-ASSIGNMENT

- (a) The Agent shall not assign any of its obligations, rights, benefits or interests under this Agreement.
- (b) The Agent shall not sub-contract the Services to another person or entity.

15 CONFIDENTIALITY

- 15.1 The Agent acknowledges that during this Agreement, the Agent will have access to Confidential Information, both oral and written or in other material form, belonging to members of the public that the Director General is required to keep confidential. The Agent may use Confidential Information solely for the purpose of performing its obligations under this Agreement and the obligation to maintain confidentiality continues after termination of this Agreement.
- 15.2 The Agent will ensure that its Personnel have signed a Confidentiality Deed Poll to cover the Services described in this Agreement which Deed poll is set out in Schedule 4.
- 15.3 Use of Confidential Information

The Agent must:

- (a) use Confidential Information solely for the purpose of providing the Services under the Agreement and for no other purpose;
- (b) not allow or assist a third party to access or use, or publish or disclose Confidential Information for any other purpose;
- (c) take and cause its Employees to take all steps and do all things necessary to safeguard the confidentiality of Confidential Information;
- (d) ensure the proper and secure storage of Confidential Information;
- (e) protect Confidential Information from unauthorised access, disclosure or use.

15.4 Misuse of Confidential Information

The Agent must notify the Director General immediately upon becoming aware of a suspected or actual breach of this Clause by any of the Agent's Employees.

15.5 Privacy

The Agent agrees to:

- (a) comply with all privacy laws in relation to personal information, whether or not the Agent is an organisation bound by the privacy laws;
- (b) indemnify the Director General and the State of WA, their officers and agents against liability or loss arising from, and any costs, charges and expenses incurred in connection with the use or misuse of the Confidential Information and / or breach.

15.6 The Agent must ensure that its Employees fully comply with this Clause.

15.7 Where a person discloses Confidential Information to another person pursuant to this Clause, the disclosing person must notify the receiving person of the existence and content of this Clause and the sensitivity of the information being disclosed.

15.8 Where the Agent's Employee breaches this Clause and discloses Confidential Information other than in the manner required, the Director General reserves the right to request that the relevant Personnel cease providing the Services.

15.9 The information contained in this Agreement is subject to the Freedom of Information Act 1992 (WA) and Financial Management Act 2006 and may also be disclosed by the Director General or the State under a court order or upon request by Parliament or any committee of Parliament or as otherwise required.

16 RETURN OF CONFIDENTIAL INFORMATION AND PHYSICAL STOCK

The Agent will return all Records containing the Director General's Confidential Information and Physical Stock immediately:

- (a) at the expiration or termination of the Agreement; or
- (b) as scheduled by the Principal through Business Rules; or
- (c) on demand by the Director General.

17 LIMITATION OF LIABILITY AND NO GUARANTEE OF WORK

17.1 The Director General, and the State of Western Australia, are not liable for any losses or damages which may be suffered by the Agent in undertaking its functions as an Agent under this Agreement.

17.2 The Director General does not underwrite, guarantee or accept any liability for the volume and value of the Services performed under this Agreement.

18 VARIATIONS

Except as provided in Clause 19.2(c), Clause 19.2(d) and Clause 19.3, any variation to this Agreement shall only be valid if approved by the Director General and executed by the Parties in writing.

19 GENERAL

- 19.1 If any provision of this Agreement is held unenforceable or void, the remaining provisions must be enforced in accordance with their terms.
- 19.2 This Agreement:
- (a) constitutes the entire agreement between the Parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter;
 - (b) may only be varied or altered in writing executed by the Parties;
 - (c) The Schedules 2, 3, 4, 5, 7 and 11 may be varied at the sole discretion of the Principal by the issuing of a Notice of Variation to Schedule in the format in Schedule 11; and
 - (d) the Business Rules may be varied unilaterally from time to time by the Director General.
- 19.3 Either Party may, at any time, by notice in writing to the other Party vary or terminate the appointment of its Representative; or appoint any other person to act as its Representative in relation to the Agreement.

20 INSURANCE REQUIREMENTS

In the event that the Agent has not already obtained relevant and sufficient insurances under the Road Law Agreement to also cover the provision of Services in this Agreement, then the Agent must take out and maintain all insurances required by law and any other insurances in relation to liabilities of the Agent under this Agreement.

21 AGENT'S GENERAL WARRANTIES AND UNDERTAKINGS

21.1 Agent's General Warranties

Except where the Agent has otherwise disclosed in writing to the Director General, and the Director General has given prior written consent to the matter disclosed, the Agent warrants in favour of the Director General that:

- (a) the Agent has no conflict of interest arising out of the Agreement;
- (b) the Agent is properly authorised and has the power to enter into the Agreement and perform the Agent's obligations under the Agreement;
- (c) the Agent's obligations under the Agreement are valid and binding and are enforceable against the Agent;
- (d) all information provided by the Agent to the Director General in connection with the Agreement is true and correct;
- (e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Agent which could have a materially adverse effect on the Agent's ability to supply the Services in accordance with the Agreement;
- (f) no Personnel performing the Services has been convicted of a criminal offence that is punishable by imprisonment or detention; and
- (g) there is nothing that prevents the Agent from complying with any obligation under the Agreement.

21.2 General Warranties Made Continuously

The warranties made by the Agent under clause 21.1 are taken to be made continuously throughout the Term.

21.3 Agent's Undertakings

The Agent must:

- (a) properly provide for the care, safety, security and protection of:
 - (i) all Records (whether created by the Director General, the Agent or any other person) that are in the custody or control of the Agent; and
 - (ii) all property, information technology equipment and software applications supplied by the Director General to the Agent in connection with the Agreement;
- (b) promptly notify the Director General if any warranty in clause 21.1 is breached or becomes untrue within two (2) business days of the identification of the breach;
- (c) securely manage and destroy any waste documentation;
- (d) securely return by the Director General's approved courier or nominated representative, at the Director General's cost, all obsolete vehicle number plates to the Director General's nominated contractor for destruction;
- (e) securely manage all new and retained vehicle number plates at all times and only return or transfer those plates through the Director General's approved courier or representative;
- (f) always act ethically in connection with the Agreement and in accordance with good corporate governance practices;
- (g) comply with all State and Commonwealth laws relevant to the Agreement;
- (h) if the Agent obtains or has custody or control of State Records as a result of its activities under this Agreement, comply with the Director General's record keeping plan to the extent necessary under the State Records Act 2000;
- (i) cooperate fully with the Director General in respect of the administration of the Agreement;
- (j) ensure that no Personnel causes the Agent to breach the Agreement; and
- (k) except as otherwise specified in the Agreement, provide everything necessary to fully comply with all of its obligations under the Agreement.

21.4 Warranties and Indemnity

- (a) The Agent must give, or ensure the Director General has the benefit of, any warranties specified in the Agreement.
- (b) The Agent must do everything necessary to obtain the benefit of all third party warranties and must ensure that the Director General has the benefit of those warranties.
- (c) The Agent indemnifies the Director General against any loss or liability that results from the Agent not complying with sub-clauses 21.4(a) or (b).

21.5 Conflict of Interest

- (a) Without limiting the meaning of conflict of interest, a conflict of interest may arise in the following circumstances:
 - (i) when the Agent, or a person associated with the Agent, is in a position to benefit directly or indirectly from the actions of the Agent through an unfair or unintended imposition or loss on the Principal or some third party; or
 - (ii) when, due to a personal interest or a conflicting business arrangement, an Agent's honesty, objectivity or fairness in performing the Services is open to question.
- (b) If a conflict of interest arises in respect of the Agent or the Agent's Employees, in respect of the supply of the Services under the Agreement, the Agent must:
 - (i) promptly notify the Director General that the conflict has arisen and provide full details; and
 - (ii) take reasonable steps in consultation with the Director General to manage or resolve the conflict.
- (c) Without limiting the meaning of conflict of interest, a perceived conflict of interest may arise when an Agent or the Agent's Personnel accesses the Principal's Database or undertakes a transaction on behalf of a friend or relative or the Personnel's own record, without first obtaining the Principal's approval.

21.6 Agent's Obligation for Services Directly to the Public

The Agent must:

- (a) to the extent practicable, implement the CEO's 'Disability Access and Inclusion Plan' (DAIP) prepared under the Disability Services Act 1993 and available at the CEO's website: <http://www.transport.wa.gov.au/aboutus/disability-access-and-inclusion-plan.asp>
- (b) provide a report to the CEO by 30 June in each year of the Term reporting on the extent to which the Agent has implemented the CEO's DAIP.
- (c) advise Customers that they may make use of the Language Interpretation Facility if they require such assistance.

22 BANK FEES AND CHARGES

The CEO will reimburse the Agent for specified bank fees and charges, being:

- (a) charges incurred in relation to dishonoured cheques received from the CEO's Customers.

23 PERFORMANCE and COMPLIANCE MANAGEMENT

23.1 Audit and Review

- (a) The CEO will conduct regular auditing, performance review and compliance activities, including, but not limited to:
 - (i) a daily electronic audit of all licensing transactions performed on the Database by the Agent;
 - (ii) a daily audit of all transaction supporting documentation received and processed by the Agent (refer to Schedule 10);

- (iii) a monthly audit and review of the Agent's performance and compliance in key Agreement areas including but not limited to:
 - A) the Processing Errors;
 - B) compliance with the Business Rules;
 - C) timeliness of transactions;
 - D) daily receipt by the Director General of transaction supporting documents;
 - E) Reconciliation of revenue collection against the Department of Transport TRELIS bank account; and
 - F) the Agent's performance generally.
- (b) The Director General may engage an independent qualified auditor to conduct a quality audit of the Services.
- (c) The Agent must:
 - (i) assist in the conduct of any audit, performance and compliance reviews undertaken in accordance with this Clause 23.1; and
 - (ii) provide all and any information, including documentation, at the request of the Director General or the Director General's appointed auditor within fifteen (15) days of the request.
- (d) In instances of significant non-compliance, the Director General may issue a notice seeking an explanation or information regarding the non-compliance and/or details of how the Agent would prevent further non-compliance. The Agent shall provide a written response within seven (7) business days.
- (e) In requesting a written response under 23.1 (d), the Director General in no way limits his capacity under section 10.
- (f) The Director General shall be entitled to rely on the results of audits, performance and compliance reviews in the event of any breach and or default by the Agent and when considering any extension of the Agreement.
- (g) Notwithstanding the preceding provisions of this Clause 23.1, auditing, performance and compliance reviews will be undertaken at the Director General's sole and absolute discretion.

23.2 Performance Review Meetings

- (a) Performance review meetings may be held between the Agent and the Director General as determined by the Director General in consultation with the Agent to discuss performance and other issues associated with the Services which may be identified through auditing, performance and compliance review, or any other means of performance monitoring undertaken by the Director General.
- (b) Performance and compliance review meetings will be held at a location agreeable to the Parties.
- (c) Should the Representatives be unable to meet, any issues of non-compliance will be detailed by the Principal's Representative through written notice. The Agent's Representative shall respond in writing accordingly detailing what action the Agent shall undertake.

24 INFORMATION TECHNOLOGY, EQUIPMENT AND PREMISES

24.1 Supply by Principal

The Principal will supply the Agent with the following:

- (a) telecommunications hardware and software, the nature of which is subject to the availability of telecommunications technology in the Agent's locality, linking the Agent's transaction processing equipment supplied by the Principal to the Database;
- (b) transaction processing hardware to the extent necessary to operate the software applications required by the Principal being:
 - (i) PC/s;
 - (ii) printer/s (excluding consumables); and
 - (iii) image capture unit.
- (c) transaction processing software, being the Principal's software applications that enable the Agent to access the Principal's Database and any third party software applications required by the Principal;
- (d) hardware and software to the extent necessary for the Agent to provide CTT/HPT and testing required by the Principal;
- (e) the Physical Stock required by the Agent to perform this Agreement; and
- (f) Vehicle licence plates.

24.2 Supply by Agent

- (a) The Agent must supply and maintain all hardware and software, not otherwise specified in the Agreement as the Principal's responsibility, to the extent required to enable the Agent to perform the Services. The Agent shall ensure that such hardware and software is compatible in all respects with the Principal's hardware and software.
- (b) Except as otherwise expressly provided in this Agreement, the Agent must provide, at its cost all office consumables.

24.3 Installation of Additional Hardware or Software (other than supplied by the Principal)

- (a) The Agent must make written application to the Principal, and obtain the Principal's written approval before installing any additional hardware or software to a PC designated for transaction processing.
- (b) Subject to clause (a) above:
 - (i) the installation of any additional hardware or software on the Principal's designated PC will be entirely at the Agents risk and the Principal will not be responsible for any hardware or software failure or resultant loss of the Agents data; and
 - (ii) the Agent will be responsible for and at its own cost to address any support issues, security breaches, network vulnerabilities, including increases in PCI DSS scope or loss of data resulting in the installation of the additional hardware or software.
- (c) The Agent will uninstall any additional hardware or software that the Agent installs on a PC designated for transaction processing by prior agreement with the Principal, when the PC is required to be replaced or returned to the Principal.

24.4 Compliance with Principal's Requirements

All information technology, whether supplied by the Principal or the Agent, must comply with the information technology policies and specification requirements as provided by the Principal from time to time.

24.5 Maintenance of Equipment

- (a) The Agent will ensure all equipment including, but not limited to, information technology hardware and software is:
 - (i) maintained in good, safe and proper working condition, and capable of reliably performing the Services at all times; and
 - (ii) housed at the Agent's customer service area where the Services are provided.
- (b) All equipment provided by the Principal including, but not limited to, information technology hardware and software remains the property of the Principal and will be returned to the Principal on demand, at the Principal's cost and by the Principal's approved courier or nominated representative.
- (c) The Agent will provide any information required by the Principal relating to the audit and tracking of the Principal's equipment.
- (d) In the event that equipment supplied by the Principal requires maintenance, the Agent will contact the Principal to discuss the maintenance options for the equipment as detailed in Schedule 7.
- (e) If any equipment supplied by the Principal requires repairs or replacement, the Principal will then organise at its cost.
- (f) In the event equipment supplied by the Principal requires off-site maintenance, and that maintenance results in equipment not being available to the Agent for more than five (5) Business Days, the Principal will supply the Agent with equivalent replacement equipment for the duration of the period the equipment is unavailable to the Agent.

24.6 Premises

The Agent will:

- (a) ensure all areas in which the Services are to be performed are suitable for the purpose;
- (b) provide a secure and confidential environment to ensure protection of the Principal's interests against outside intrusion, improper or unauthorised use or access;
- (c) ensure security complies with any reasonable Direction given by the Principal;
- (d) do everything reasonably necessary to protect people and property on the Premises, as they relate to the delivery of the Services; and
- (e) ensure compliance with Requirement 9 of the PCI DSS at Schedule 8.

25 NOTICE

Any notice or other communication that may or must be given under this Agreement:

- (a) must be in writing;
- (b) may be given by an authorised officer of the Party giving notice;

- (c) must be:
 - (i) hand delivered; or
 - (ii) sent by prepaid post; or
 - (iii) sent by facsimile; or
 - (iv) sent by email;

to the Representative of the respective Party specified in this Agreement.

- (d) subject to clause 25(e), is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the fifth Business Day after posting; and
 - (iii) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted;
 - (iv) in the case of email, on the date on which the receiver's email server records that the email was received; and
- (e) if received after 5:00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

26 RELATIONSHIPS – NO PARTNERSHIP

- (a) The Agent is an independent Contractor, and nothing in the Agreement may be construed to make the Agent a partner, representative, employee or joint venturer of the Principal.
- (b) The Agent must not represent that the Agent or any of its Personnel are the employees, partners or joint venturers of the Principal.
- (c) The Principal shall have no responsibility to the Agent or Agent's Personnel in respect of remuneration for annual leave, sick leave, long service leave, public holidays, redundancy payments, superannuation contributions or any other benefits for Personnel providing the Services.

Executed as an Agreement on the date written at the beginning of this document:

Executed for and on behalf of the CEO, Department of Transport by his Delegate

Name of Delegate (Please Print)

Name of Witness (Please Print)

Signature

Signature

Executed for and on behalf of the Shire of Wyndham East Kimberley, as a body corporate under section 2.5 of the *Local Government Act 1995* by:

Shire Mayor (Please Print)

Name of Chief Executive Officer
(Please Print)

Signature

Signature

Or

The COMMON SEAL of the)
SHIRE OF Wyndham East Kimberley)
Was hereunto affixed by)
Authority of a resolution of the)
Council in the presence of)

Affix Common Seal

Shire Mayor (Please Print)

Chief Executive Officer (Please Print)

Signature

SCHEDULE 1: SERVICES TO BE PROVIDED BY THE AGENT

DEFINITIONS

Driving Instructor Fee Agents means the Agent responsible for licensing driving instructors.

Maritime Collections Agents means the Agent who is responsible for vessel registration.

Off Road Vehicle New Registration Agents means the Agent responsible for off road vehicle registrations.

Photo Card Agents means the Agent who is responsible for proof of age Licenses.

- 1) Maritime Collections Agents shall in accordance with the Business Rules:-
 - a) collect boat renewal payments; and
 - b) collect boat transfer payments; and
 - c) collect commercial vessel survey payments; and
 - d) collect hire vessel survey payments; and
 - e) collect marine payment – miscellaneous; and
 - f) collect maritime pen duty payments; and
 - g) collect slipway fees.
- 2) Photo Card Agents shall in accordance with the Business Rules
 - a) process applications; and
 - b) process replacement copy; and
 - c) provide certified copy.
- 3) Off Road Vehicle New Registration Agents shall in accordance with the Business Rules
 - a) process new registrations (includes new registration updates); and
 - b) process renewals: and
 - c) process plate changes; and
 - d) process transfers; and
 - e) process plate receipt – manual.
- 4) Driving Instructor Fee Agents shall in accordance with the Business Rules
 - a) collect fees from driving instructors

SCHEDULE 2: NORTHERN REGION SERVICE FEES: 1 JANUARY 2018**FEES PER TRANSACTION PAID BY THE DEPARTMENT OF TRANSPORT**

Category	Average Transaction Time	Commissions less than predetermined volume	Commissions greater than predetermined volume
		Transaction volume will be aggregated with the Road Law Agreement to determine the rate payable.	
Scale of Fees for On-line Processing - Monetary Transactions (M)			
Category 1	0 – 3.5 minutes	\$10.56	\$7.56
Category 3	5.6 – 8.5 minutes	\$17.20	\$11.94
Scale of Fees for On-line Processing - Non Monetary Transactions (NM)			
Category – updates		\$3.56	\$3.56
Category 9	0 - 3.5 minutes	\$7.05	\$5.28

Transaction Type	Time (min)	(M/NM)	Cat.	Commission payable	Commission payable
Photo Card					
Application	3	M	1	\$10.56	\$7.56
Replacement copy	2	M	1	\$10.56	\$7.56
Certified copy	2	NM	9	\$7.05	\$5.28
Off Road Vehicle New Registrations					
New registrations (includes new registration update)	6	M	3	\$17.20	\$11.94
Renewals	2.5	M	1	\$10.56	\$7.56
Plate change	2.5	M	1	\$10.56	\$7.56
Transfers	2.5	M	1	\$10.56	\$7.56
Plate receipt – manual	2.5	NM	9	\$7.05	\$5.28
Maritime Collections					
Boat renewal payments	2	M	1	\$10.56	\$7.56
Boat transfer payments	2	M	1	\$10.56	\$7.56
Commercial vessel survey payments	2	M	1	\$10.56	\$7.56
Hire vessel survey payments	2	M	1	\$10.56	\$7.56
Marine payment – miscellaneous	2	M	1	\$10.56	\$7.56

Maritime pen duty payments	2	M	1	\$10.56	\$7.56
Slipway fees	2	M	1	\$10.56	\$7.56
Motor Driving Instructor Fee Agent				\$10.56	\$7.56
Instructor Fees	2	M	1	\$10.56	\$7.56

SCHEDULE 3: AGREEMENT REPRESENTATIVES AND ADDRESSES FOR NOTICES

1. PRINCIPAL'S REPRESENTATIVE

- (a) The Principal's Representatives are:
- (i) Director Commercial and Partnerships, or
 - (ii) Assistant Director Commercial and Partnerships, or
 - (iii) Manager Statutory Agency Agreements; or
 - (iv) the person/s who for the time being, for all intents and purposes, occupies those offices; or
 - (v) the person acting in the office that substitutes for any of the above-described offices; or
 - (vi) any officer of the Department of Transport exercising powers under an appropriate Instrument of Delegation.
- (b) The Principal will not be bound by any representations made to the Agent other than those made by the Principal's Representative.
- (c) The Principal's address for notices:

Manager, Statutory Agency Agreements,
Commercial and Partnerships
Department of Transport
GPO Box R1290
Perth WA 6844
Telephone: 08 6551 6378
Facsimile: 08 6551 7022
Email: SAA@transport.wa.gov.au

2. AGENT'S REPRESENTATIVES

- (a) The Agent's Representatives are:
- (i) CEO
 - (ii) or the person/s who for the time being, for all intents and purposes, occupy those offices.
- (b) The Agent's address for notices is the Agent's postal box address or, where the Agent does not maintain a postal box, the Agent's street address.

3. PERSONNEL AUTHORISED TO ISSUE NOTICES

The Principal and Agent's respective Representatives listed at clauses 1 and 2 of this Schedule 3 are authorised to issue notices under the Agreement.

SCHEDULE 4: AGENT'S EMPLOYEE CONFIDENTIALITY DEED POLL

CONFIDENTIALITY DEED POLL

CEO's particulars

Name	The CEO (the Director General), Department of Transport		
ABN	27 285 643 255		
Address	140 William Street, Perth, Western Australia 6000		
Contact	Access Management	Email	access.management@transport.wa.gov.au
Phone	6551 6881	Fax	9227 3416

Agent's Employee's particulars

Name			
Address			
Contact person			
Phone		Email	

RECITALS

- A. In order to be able to carry out the Services, the Agent's Employees will require access to Confidential Information and the CEO has agreed to disclose Confidential Information to the Agent's Employees on the strict understanding that the Confidential Information is provided solely to enable the Agent's Employees to carry out the Services.
- B. This Confidentiality Deed Poll must be executed by the Agent's Employees and returned to the CEO before the CEO will disclose Confidential Information to the Agent's Employees.

SERVICES

THE AGENT'S EMPLOYEE AGREES:

In consideration of, amongst other things, being granted access to the Confidential Information on the terms contained in this deed, the Agent's Employee undertakes and agrees that he is subject to the following obligations:

1. DEFINITIONS AND INTERPRETATION

In this deed:

Agent means Shire of Wyndham East Kimberley and ABN 35 647 145 756

Agent's Employee means a person who supplies Services to the CEO's Customers under the Agreement made between the CEO and the Agent.

Agreement, Business Rules and CEO have the meanings given in the Agreement made between the Agent and the CEO.

CEO's Customers means those persons who use the Services supplied by the Agent under an Agreement made between the CEO and the Agent.

Confidential Information includes but is not limited to:

- (a) information regarding personal details of the CEO's Customers including, but not limited to, driver's licence number, name, date of birth, address and all other contact details of the CEO's Customers;
- (b) any information which pertains to the conduct of the CEO's business which is not public knowledge or which is not publicly available;
- (c) information regarding business or system processes that the Agent's Employee has obtained, or which may be provided by the CEO, whether directly or indirectly;
- (d) information relating to the internal management and structure of the CEO, or the personnel, policies and strategies of the CEO;
- (e) policies, strategies, practices and procedures of the CEO and any sensitive information which the Agent's Employee may come to obtain or have access to relating to the Western Australian Public Service;
- (f) information which the Agent's Employee may come to obtain or have access to relating to the CEO, the CEO's Customer or suppliers, and like information; and
- (g) information which is commercially sensitive information or personal information, but does not include Excepted Information.

Driving Instructor Fee Agents means the Agent responsible for licensing driving instructors.

Excepted Information means information which:

- (a) is available or becomes available in the public domain other than by breach of this deed;
- (b) is known to the Agent's Employee before receiving it from the CEO and is not subject to an existing obligation of confidence between the parties;
- (c) is provided to the Agent's Employee by a third party whose use and disclosure of the information is not subject to any restrictions.

Law includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether State, Federal or otherwise.

Maritime Collections Agents means the Agent who is responsible for vessel registration and maritime transactions.

Off Road Vehicle New Registration Agents means the Agent responsible for off road vehicle registrations.

Photo Card Agents means the Agent who is responsible for proof of age Licenses.

Services means as follows:

1. Maritime Collections Agents shall in accordance with the Business Rules:
 - a) collect boat renewal payments; and
 - b) collect boat transfer payments; and
 - c) collect commercial vessel survey payments; and
 - d) collect hire vessel survey payments; and
 - e) collect marine payment – miscellaneous; and

- f) collect maritime pen duty payments; and
 - g) collect slipway fees.
2. Photo Card Agents shall in accordance with the Business Rules:
- a) process applications; and
 - b) process replacement copy; and
 - c) provide certified copy.
3. Off Road Vehicle New Registration Agents shall in accordance with the Business Rules:
- a) process new registrations (includes new registration updates); and
 - b) process renewals; and
 - c) process plate changes; and
 - d) process transfers; and
 - e) process plate receipt – manual.
4. Driving Instructor Fee Agents shall in accordance with the Business Rules:
- a) collect fees from driving instructors.

A reference to a gender includes other genders.

2. USE AND RETURN OF CONFIDENTIAL INFORMATION AND ACKNOWLEDGMENTS

25.1 Use of Confidential Information

The Agent's Employee agrees that, in consideration of the CEO disclosing Confidential Information to him, he will:

- a) keep the Confidential Information secret and confidential;
- b) use the Confidential Information solely for supplying the Services and for no other purpose;
- c) not allow or assist a third party to access or use, publish or release the Confidential Information for any purpose;
- d) take all steps and do all things necessary to safeguard the confidentiality of the Confidential Information including:
 - i) keeping the Confidential Information within his possession confidential;
 - ii) not making, or permitting to be made, any copy, note or memorandum of the Confidential Information;
 - iii) ensuring that proper and secure storage is provided for the Confidential Information; and
 - iv) protecting the Confidential Information from unauthorised access, disclosure or use in breach of this deed;
- e) co-operate with the CEO if the CEO commences proceedings in respect of the unauthorised access, use, copying or disclosure of Confidential Information; and

- f) immediately notify the CEO if he becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 2.

25.2 Return of Confidential Information

The Agent's Employee acknowledges and agrees that:

- a) immediately on request, he must deliver up to the CEO and cease to access and use all Confidential Information, including any copies of the Confidential Information (stored in any medium) which is in his possession as soon as practicable after the date when the Agent completes the Services or the relevant part of the Services; and
- b) the return of Confidential Information does not release him from his other obligations under this deed.

25.3 Acknowledgments

The Agent's Employee acknowledges and agrees that:

- a) the Confidential Information provided by the CEO is secret and confidential;
- b) the Confidential Information is the property of the CEO, and this deed does not convey any proprietary interest in the Confidential Information to him;
- c) he is liable to the CEO for any unauthorised access, use or disclosure of the CEO's Confidential Information by him or by any third party as a result of his act or neglect to act;
- d) disclosure of the Confidential Information in breach of this deed may cause considerable detriment to third parties and to the commercial, financial, regulatory affairs and reputation of the CEO; and
- e) damages may not be a sufficient remedy for the CEO for any breach of this deed and the CEO may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by him in addition to any other remedies available to the CEO.

3. CRIMINAL CODE, ROAD TRAFFIC ACT AND STATE RECORDS ACT

The Agent's Employee acknowledges and agrees that:

- a) as a '*government contractor*', the contractor is under a duty not to make an '*unauthorised disclosure*' (as those terms in italics are defined in section 81 of the *Criminal Code*) and he is guilty of a crime if he does so - Maximum penalty: 3 years imprisonment;
- b) the contractor is under a duty not to unlawfully use a '*restricted access computer system*' (as that term in italics is defined in section 440A of the *Criminal Code*) and he is guilty of a crime if he does so - Maximum penalty: 10 years imprisonment;
- c) the contractor is under a duty not to, directly or indirectly, record, disclose or make use of information obtained while carrying out the Services except for those purposes set out in 103 (1) (a) to (d) and (2) of the *Road Traffic Act 1974* - Penalty: a fine of 100 PU or imprisonment for 12 months; and
- d) the contractor is employed by the Agent who is engaged under an Agreement for services by the State Government to carry out the Services and that he comes within the definition of '*government organization employee*' (as that term in italics is defined in section 3 of the *State Records Act 2000*) and that he may be subject to a maximum penalty of \$10,000 if found guilty of an offence under section 78 (1) to (5) of the *State Records Act 2000*.

4. SURVIVAL OF THE OBLIGATIONS

The obligations of the Agent's Employee under this deed commence on the date of this deed and will survive and will continue in force until the CEO releases him from his obligations by means of a written release.

5. GOVERNING LAW

This deed is governed by the laws of the State of Western Australia and the Agent's Employee irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that state and courts entitled to hear appeals from those courts.

IMPORTANT - THIS DOCUMENT HAS LEGAL IMPLICATIONS AND YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE BEFORE EXECUTING IT

EXECUTED AS A DEED POLL ON THE _____ DAY OF _____ 2017

SIGNED and DELIVERED _____)

by.....) (Signature and job title)

the Agent's Employee

in the presence of:

Signature of witness:.....

Full name of witness

(PLEASE WRITE IN BLOCK OR CAPITAL LETTERS)

Address of witness:.....

SCHEDULE 5: BUSINESS RULES

1. DEFINITIONS

In this Schedule all definitions have the same meaning as in the Agreement.

2. PAYMENT

2.1. Commissions Payable

Subject to the provisions of sub-clause 2.2, the Director General must pay the Agent Commissions to the value of the Services performed under the Agreement in accordance with the Schedule of Service Fees as set out in Schedule 2, as certified by the Director General, less any overpayment in Commissions or any other payment made to the Agent as advised in writing to the Agent by the Director General.

2.2. Variations to Commissions Payable

- (a) On July 1 of each year of the Term, the Director General will review the Commissions specified in the Schedule of Service Fees in accordance with annual changes in the Consumer Price Index and the Commission's payable to the Agent will be increased accordingly, except in the instance where there is no movement in the CPI.
- (b) Where the CPI is a negative 'downward' movement, the Commission's payable to the Agent shall remain at the rate applicable for the previous year.
- (c) The Director General will forward the Agent a revised Schedule of Service Fees in accordance with clause 2.2(a) no later than 30 Business Days after the Commission review date.

2.3. Invoices

- (a) The Director General will issue the Agent Transaction and Payment Summary reports which include, inter-alia:
 - (i) tabulations to show all licensing transactions processed and the corresponding Commissions payable; and
 - (ii) confirmation the Commissions payable have been reconciled and authorised by the Director General.
- (b) The Director General will issue the Agent tax invoices, being Recipient Created Tax Invoices (RCTI), in respect of Commissions payable, on the basis of the Transaction and Payment Summary report for the corresponding period.
- (c) The Director General will issue a Transaction and Payment Summary Report and RCTI to the Agent:
 - (i) for each calendar month; and
 - (ii) not more than thirty (30) Business Days after the last day of the invoice period.
- (d) The Agent agrees it will not issue tax invoices in respect of the Services.
- (e) The Agent acknowledges that it is registered for GST when it agrees for the Director General to issue RCTI for the Services and will notify the Director General if it ceases to be registered or if it ceases to satisfy any of the requirements imposed by the Commissioner for Taxation.

- (f) The Director General acknowledges that it is registered for GST when it agrees to issue RCTI for the Services and will notify the Agent if it ceases to be registered or if it ceases to satisfy any of the requirements imposed by the Commissioner for Taxation.

2.4. Payment of Invoices

The Director General will pay the amount specified in a RCTI within thirty (30) days of the last day of the month to which it relates.

2.5. Method of Payment

The Director General will directly credit Commissions payable to the Agent's nominated bank account.

2.6. No Obligation to Pay

The Director General has no obligation to make any payment to the Agent unless and until:

- (a) the Services have been supplied in accordance with the Agreement; and
- (b) the Director General is satisfied that no default has occurred.

2.7. Incorrect Payment

- (a) If the Agent finds an amount paid based on the RCTI is incorrect and the Director General has paid, the Agent is responsible for issuing an Adjustment Note to the Director General. If the amount is:
 - (i) less than the amount that should have been paid, the Director General must pay the difference to the Agent within twenty (20) days after the date the Adjustment Note is received;
 - (ii) more than the amount that should have been paid, the Director General may:
 - A) debit the difference from the Agent's nominated account within twenty (20) days after the date the Adjustment Note is received; or
 - B) offset the difference against any amount subsequently payable by the Director General to the Agent.
- (b) If the Director General finds that the amount paid based on the RCTI was incorrect and the Director General has overpaid, the Director General is entitled to take the steps outlined in sub-clause 2.7(a)(ii) (A) or (B), without receipt of an Adjustment Note from the Agent.

2.8. GST and other duties, taxes and charges

- (a) In this clause (2.8) the expressions 'consideration', 'recipient', 'supply', 'tax invoice' and 'taxable supply' have the meanings given to those expressions in the GST Act
- (b) All amounts in the Schedule of Fees are expressed exclusive of GST.
- (c) If GST is imposed on any supply made under the Agreement, the Principal will pay to the Agent an amount equal to the GST payable on the taxable supply.
- (d) The amount referred to in clause 2.8 (c) must be paid in addition to, and at the same time as, payment for the taxable supply is required to be made under the Agreement.

- (e) If a GST-inclusive price is charged or varied under the Agreement, the Principal will provide the Agent with a valid RCTI at or before the time of payment or variation.
- (f) If the amount of GST paid or payable by the Agent on any supply made under the Agreement differs from the amount of GST paid by the Principal, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the Principal will be adjusted accordingly by a further payment by the Principal to the Agent or the Agent to the Principal, as the case requires.
- (g) The Principal indemnifies the Agent for any liability for GST and penalty that may arise from an understatement of the GST payable on any supply for which it issues a RCTI where the understatement arises from fault on the part of the Principal.
- (h) All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the Services or any additional work undertaken by the Agent are payable by the Agent.

3. COLLECTION OF REVENUE

3.1. Forms of Payment

- (a) The Agent must accept from the CEO Customers and process all forms of payment acceptable to the CEO for the processing of licensing transactions, being cash, EFTPOS, credit cards (except Diners Club and American Express) debit cards, cheque and money order.
- (b) If a customer cheque or other payment is dishonoured or is otherwise not credited to the Agent's bank account, the relevant provisions set out in the Business Rules will apply.

3.2. No Surcharge

The Agent must not impose a surcharge, or any other form of cost recovery, on the CEO or the CEO's Customers for Services performed pursuant to this Agreement.

3.3 Direct Debit

- (a) The Agent will use its own EFTPOS terminal and funds will be banked directly into the Agents nominated bank account.
- (b) The Agent will bank on a daily basis revenue collected (cash/cheques/money orders) into the Agents nominated bank account.
- (c) The Agent will prior to the commencement of Service provide the CEO with a Direct Debit Request and the CEO will debit the Agents bank account two business days after collection to the value of transactions processed on the Database. Note: the Agent will ensure that sufficient funds are available at the time of the direct debit.
- (d) The Agent will comply with the Payment Card Industry Data Security Standards (PCI DSS) as set out in the Business Rules of the Road Law Agreement.

SCHEDULE 6: LOCATION OF PREMISES FOR SERVICE PROVISION

The Agent shall provide the Services under the Agreement from the following Premises:

WYNDHAM

Address	990 Koolama Street WYNDHAM WA 6740		
Contact	Carl Askew	Email	mail@swek.wa.gov.au
Phone	9161 1200	Fax	

SCHEDULE 7: EQUIPMENT MAINTENANCE

This Equipment Maintenance Schedule is the procedure for Agents to follow in the event Department of Transport supplied information technology hardware requires repairs or replacement.

Step	Process	
Repair or Replacement Issue	<p>Agent Personnel are to contact Transport's Customer Service Phone-Support only.</p> <p>Please do not contact the Business Information Systems (B.I.S) <i>Helpdesk</i> directly.</p>	<p>1800 354 928</p> <p>Phonesupport@transport.wa.gov.au</p>
Job/Incident Logged	<p>Agent Personnel must provide details of the faulty equipment including the LF number (yellow sticker) and DP number (white sticker) and details of the problem. Customer Service Phone-Support will log the incident with Helpdesk.</p> <p>**Please Note** When logging an issue, the Agent will be provided a <u>job/incident number which will need to be reference for any subsequent enquiries</u>. Always record this number.</p>	
Courier	<p>Transport's Customer Phone-Support or B.I.S Helpdesk will instruct the Agent Personnel to courier the equipment if it needs to be returned for repair/replacement.</p>	
Courier details	<p>The Agent is to immediately arrange for the return of the equipment item by calling Toll Ipec ☎ 13 18 85. Quote account number XV1437.</p> <p>The cost of the courier will be charged to the Department of Transport.</p> <p>Courier to Department of Transport B.I.S Level 3, 2 Tassels Place. Innaloo WA 6018.</p>	
Repair and/or Replacement	<p>The Department of Transport will organise the repair and/or replacement of the equipment item.</p>	
Return Courier	<p>B.I.S will arrange for the equipment item to be returned by courier to the Agent's Site.</p>	
Follow Up	<p>If the Agent's Personnel require any follow-up assistance, Transport's Customer Service Phone-Support can be contacted for further instruction. Please quote the job/incident number.</p>	
Escalation	<p>If the Agent experiences any delay or has any unresolved issues, an email should be sent to phonesupport@transport.wa.gov.au with all details, including the job/incident number. Attention to: Customer Service Phone Support Manager.</p>	

SCHEDULE 8: PAYMENT CARD INDUSTRY DATA SECURITY STANDARD (PCI DSS)

Overview - The Payment Card Industry Data Security Standard (PCI DSS) was developed to encourage and enhance cardholder data security and facilitate the broad adoption of consistent data security measures globally. PCI DSS provides a baseline of technical and operational requirements designed to protect account data. PCI DSS applies to **all** entities involved in payment card processing—including merchants, processors, acquirers, issuers, and service providers. PCI DSS also applies to **all** other entities that store, process or transmit cardholder data (CHD) and/or sensitive authentication data (SAD). More detailed information is available at the Payment Card Industry Security Standards Council's website at: <https://www.pcisecuritystandards.org/merchants/index.php>

PCI DSS Objectives and Requirements

Objective	Requirement No.	Requirements
Build and Maintain a Secure Network and Systems	1	Install and maintain a firewall configuration to protect cardholder data
	2	Do not use vendor-supplied defaults for system passwords and other security parameters
Protect Cardholder Data	3	Protect stored cardholder data
	4	Encrypt transmission of cardholder data across open, public networks
Maintain a Vulnerability Management Program	5	Protect all systems against malware and regularly update anti-virus software or programs
	6	Develop and maintain secure systems and applications
Implement Strong Access Control Measures	7	Restrict access to cardholder data by business need to know
	8	Identify and authenticate access to system components
	9	Restrict physical access to cardholder data
Regularly Monitor and Test Networks	10	Track and monitor all access to network resources and cardholder data
	11	Regularly test security systems and processes
Maintain an Information Security Policy	12	Maintain a policy that addresses information security for all personnel

SCHEDULE 9: AGREEMENT TERM AND CONTACT DETAILS

Item No	Item Description	Details
1	Agreement Term	The appointment of the Agent by the CEO is for an initial term expiring 31 December 2022.
2	Commencement Date	The Commencement Date is the date the Agreement is made.
3	Maximum Term	The appointment of the Agent by the CEO will expire on 31 December 2022.

SCHEDULE 10: PERFORMANCE MEASURES

No.		Qualitative Matrix
1	Daily Audit	<p>A report of transactions conducted by the Agent is forwarded daily to the allocated Transport Services Centre (TSC) office for audit. All documentation supporting each transaction processed must be forwarded by the Agent to the TSC within 2 business days of processing to assist with the audit process.</p> <p>The TSC will audit all the licensing transactions and notify the Agent in writing of the errors.</p> <p>The allocated site for the Agent is Broome.</p>
2	Identified errors	<p>Errors identified through an audit are corrected and returned to the Broome within seven (7) Business Days.</p>
3	Recurrent or significant errors	<p>In instances where there are recurring errors or where an error requires significant rework, the Principal may issue a notice seeking an explanation from the Agent including advice on how the Agent will prevent future instances, or may request the Agent to implement processes intended to eliminate the incidence of errors.</p> <p>The Agent is to respond within seven (7) business days of this notice.</p>
4	Zero breach of TRELIS data security.	<p>Suspected breaches of TRELIS data security, within two (2) Business Days of the identification of the suspected breach, are to be communicated in writing to the:</p> <ol style="list-style-type: none"> 1. SAA@transport.wa.gov.au; or 2. Manager Statutory Agency Agreements Department of Transport GPO R1290 Perth WA 6844
5	Written customer complaints	<p>Customer complaints are discussed with the Manager Statutory Agency Agreements and responded to in writing within 14 Business Days.</p> <p>Proposed strategies for service improvement are discussed with the Manager Statutory Agency Agreements and implemented within a mutually agreed timeframe.</p> <p>Should any strategies or timeframes not be agreed on, the Agent may escalate to the Assistant Director Commercial Management.</p>

No.		Qualitative Matrix
6	Compliance Escalation	<p>The Agent must address initial concerns with compliance requirements to the Manager Statutory Agency Agreements.</p> <p>The escalation process for any Agreement compliance requirements, are to be issued in writing, as follows:</p> <ol style="list-style-type: none"> 1. Manager Statutory Agency Agreements 2. Assistant Director Commercial Management 3. Director Commercial & Partnerships <p>The Director Commercial & Partnerships is the final escalation level.</p>

SCHEDULE 11: NOTICE OF VARIATION TO SCHEDULE FORM

NOTICE OF VARIATION TO SCHEDULE

Agreement No.: **DOT963017**
Title: **<Provision of Licensing Services>**
Schedule: **<<Schedule X – Title of Schedule>**
Agent: **Shire of Wyndham East Kimberley, 990 Koolama Street WYNDHAM WA 6740**

Variation No.: _____ Variation Date: _____

Date of Variation Effect: _____

VARIATION TO SCHEDULE <enter Schedule Alpha Identifier>:

The Principal, pursuant to Clause 19.2(c) of the Agreement, hereby provides the Agent notice of the following variation(s) in relation to the above Schedule:

Except as expressly varied, the terms and conditions of the Agreement, remain unaltered and in full force and effect.

<Name and Title of authorised officer in DVS>

<Date>