



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

**DOTXXXXXX AGREEMENT FOR THE PROVISION OF SERVICES IN TERMS OF SECTION 6B OF
THE ROAD TRAFFIC ACT 1974**

BETWEEN:

The Director General of the Department of Transport of 140 William Street, Perth, Western
Australia 6000 (**“the Director General”**)

AND:

(NAME) (ABN/ACN XXXX): (**“the Agent”**)

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THIS AGREEMENT is made on the _____ day of _____ 2015

BETWEEN:

The Director General of the Department of Transport, 140 William Street, Perth, Western Australia 6000 (**"the Director General"**)

AND:

(NAME) (ABN/ACN XXXX): (**"the Agent"**) of
(Parties)

RECITALS:

- A. Pursuant to the *Road Traffic Act 1974* (the Act) and *Road Traffic Licensing Regulations 1975*, (Regulations) a statutory scheme has been established for the licensing of vehicles. Under section 6(2) of the Act, the administration of the Licensing Provisions of the Act, are carried out by the Director General.
- B. Under section 29 of the Act, the Minister has by notice published in the Government Gazette, prohibited the grant, renewal or transfer of any vehicle licence, in respect of certain vehicles unless and until the vehicle has been examined and a certificate of inspection has been issued that the vehicle meets the prescribed vehicle standards and that the vehicle is fit for the purpose for which the licence is required.
- C. Vehicle inspections in the metropolitan and regional areas of Western Australia are carried out by the Director General's employees being Vehicle Compliance Examiners and individual persons authorised under Regulation 3A of the Road Traffic (Licensing) Regulations 1975 (Authorised Vehicle Examiners or AVE's). These AVE's inspect vehicles for the purpose of licensing them, in compliance with: the *Australian Design Rules*; the Act; the *Road Traffic (Vehicle Standards) Rules and Regulations 2002*, and to confirm the identity of vehicles.
- D. Pursuant to section 6B of the Act, the Director General may enter into an agreement with a person, providing for the Director General's functions under the Act that are described in the agreement to be performed on the Director General's behalf.
- E. The Director General has requested the Agent and the Agent has agreed to act as the Director General's agent in accordance with section 6B of the Act to undertake the Director General's specific functions as detailed in this Agreement in order to assist the Director General determine whether vehicles meet the prescribed standards and requirements and are fit for the purposes for which licences are required.

- F. In pursuance of the Agreement, and once certain Conditions Precedent are met, the Director General will authorise the Agent to, in accordance with Regulation 3A(1)(b) of Regulations, establish premises as Authorised Inspection Stations (AIS) for the purpose of AVE's examining and testing vehicles.
- G. Once the Agent's Personnel have satisfied the Director General as to their suitability and qualifications to undertake inspections of vehicles, the Director General may authorise the Agent's Personnel to be Authorised Vehicle Examiners in accordance with Regulation 3A(1)(a) of the Regulations and issue Certificates in accordance with Regulation 3C of the Regulations.

THE PARTIES NOW AGREE as follows:

OPERATIVE PART -

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Act means the *Road Traffic Act 1974*.

Agent means the Party to this Agreement who is authorised by the Director General to perform the Director General's functions under section 6B of the Act as set out in this Agreement.

Agreement means this Agreement, including its recitals and any schedules or annexures.

AIS and Authorised Inspection Station means an inspection station established under Regulation 3A(1)(b) of the *Road Traffic (Licensing) Regulations 1975*.

Auditor General means the Auditor General of Western Australia.

AVE and Authorised Vehicle Examiner means a person employed by the Agent who is appointed in accordance with Regulation 3A(1)(a) of the *Road Traffic (Licensing) Regulations 1975*.

Business Day means any normal working day.

Business Hours means any normal working hours on a Business Day.

Certificate of Appointment means the certificate issued by the Director General under Regulation 3A of the *Road Traffic (Licensing Regulations) 1975* which authorises the AVE to undertake the Services and the AIS to operate as the Authorised Inspection Station.

Certificate of Inspection means a certificate provided in accordance with Regulation 3C of the Regulations by an AVE after undertaking an inspection of a relevant vehicle and finding that the vehicle meets the prescribed standards and is fit for the purposes for which a licence is required.

Confidential Information means information in respect of the Agreement that:

- (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.
- (d) includes all details relating to vehicle inspections 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.

Confidentiality Undertaking means an undertaking provided by the Agent's Personnel in accordance with Schedule B.

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

Defect Notice / Compliance Notice means a notice issued under Part 7 *Road Traffic (Vehicle Standards) Regulations 2002* indicating the vehicle does not comply, and is not exempt from compliance, with these regulations or the Vehicle Standards as defined in the *Road Traffic (Vehicle Standards) Rules 2002*.

Department or DoT means the Department of Transport.

Director General means the Director General of the Department of Transport and where the context permits, the Director General's Representatives.

Director General's Representative means officers designated by the Director General to perform, carry out and represent the Director General in his/her duties in relation to this Agreement.

Heavy Vehicle means a motor vehicle that has a manufacturer's Gross Vehicle Mass (GVM), or a trailer having an Aggregate Trailer Mass greater than 4,500 kg, and in the case of plant machinery, where the Tare weight exceeds 4,500 kg.

Licensing Provision of the Act means:

- (a) Parts III, IV and IVA, section 76, section 82, section 113; and
- (b) regulations made for the purposes of the provisions mentioned in paragraph (a); and
- (c) regulations made under section 111(2)(d) to (g), (i), (l) and (m), (2a) and (2b); and
- (d) regulations made under section 111(2)(j), (k) and (n), (3), (4) and (5) for the purposes of the regulations referred to in paragraph (c).

Light Vehicle means a motor vehicle that has a manufacturer's Gross Vehicle Mass (GVM), or a trailer having an Aggregate Trailer Mass (ATM) equal to or less than 4,500 kg.

Parties means the Director General and the Agent.

Personnel means the Agent's employees, directors, officers, nominee's, agent or subcontractor.

Physical Stock means any materials provided by the Director General to the Agent for the purpose of carrying out the Services, including but not limited to invoice books, forms and training materials.

Premises means any premises which are owned or occupied by the Agent from which the Agent is authorised to operate an AIS.

Prescribed Fee means any statutory fee applicable to the provision of the Services.

Recipient Created Tax Invoice has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

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.

Regulations mean the *Road Traffic Licensing Regulations 1975*.

Road Test means test driving a motor vehicle for licensing purposes to ascertain that the vehicle performs and complies with the relevant licensing legislation.

Service Fee means the component of the Prescribed Fee retained by the Agent in consideration of providing the Services.

Service Fee GST Component means the amount the DoT shall pay the Agent up to the value of 10 per cent of the Prescribed Fee charged by the Agent for inspections undertaken by the AVE and required to be paid pursuant to - A New Tax System (Goods and Services Tax) Act.

Services means the vehicle inspection and other licensing functions described in this Agreement.

Temporary Movement Permit (up to 48 hours) means a temporary Third Party Insurance Policy used for the purpose of allowing an unlicensed vehicle that would normally be licensed, to travel on the road to obtain repairs prior to and for the purposes of, eventual registration.

Trade Plates means a prescribed class of number plates assigned and issued by the Director General to a person, which may be used, subject to such conditions as may be prescribed, on any unlicensed motor vehicle.

VIN means Vehicle Identification Number.

WA means Western Australia.

1.2 Interpretation

In the Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it;
- (c) an agreement or representation on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly;
- (d) a reference to the Agreement includes all variations and replacements of any of them;
- (e) a reference to a clause or schedule is a reference to a clause in, or a schedule to this Agreement;
- (f) all provisions in any schedule or annexure to this Agreement are incorporated in, and form part of, this Agreement and bind the Parties;
- (g) a reference to legislation includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them;
- (h) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind; and
- (i) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day.

2. CONDITIONS PRECEDENT

- 2.1 It is a condition precedent to this agreement that the Agent establishes to the Director General's satisfaction, an AIS in accordance with Regulation 3A(1)(b) of the Regulations, in order to undertake the Services.
- 2.2 It is a condition precedent to this agreement that the Agent employs Personnel who are qualified to the Director General's satisfaction to undertake the Services as Authorised Vehicle Examiners.
- 2.3 In order for the Director General to be satisfied whether the Agent has established an AIS and employs qualified Personnel as Authorised Vehicle Examiners, the Agent and relevant Personnel will be required to participate in training, as stipulated by the Director General, at a location arranged by the Director General.
- 2.4 Where the Director General determines that training should be conducted on the Agent's Premises, the Agent must provide access to the relevant Personnel (the nominated Authorised Vehicle Examiners) and suitable training facilities.

- 2.5 The Agent must not provide the Services unless and until the training has been completed to the satisfaction of the Director General and Certificates of Appointment for both an AIS and AVE have been issued.

3. TERM AND EXTENSION

3.1 Subject to Regulation 3A(1) of the Regulations, which empowers the Director General to:

- (a) Appoint, cancel, or suspend the authorisation for persons to examine and test vehicles; and
- (b) Appoint, cancel, or suspend the authorisation for persons to establish premises as inspection stations for the purpose of examining and testing vehicles,

the term of appointment of the Agent by the Director General shall expire on [30 September 2018](#).

4. FUNCTIONS OF THE AGENT

The Director General, pursuant to Section 6B of the Act, hereby appoints the Agent to undertake all the Director General's functions as set out in this Agreement including those functions which are set out in Schedule A and the Agent accepts the appointment to act as an agent of the Director General.

5. AUDITS AND ACCESS TO RECORDS

5.1 Access and Records

- (a) The Agent shall:
 - i. allow the Director General 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 to have reasonable access to all Records pertaining to this Agreement in the custody or control of the Agent;
 - iii. allow the Director General 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.

5.2 Site Visits

The Director General will conduct on-site visits of the Agent's AIS from time to time to ensure the Agent is maintaining the Premises and equipment to an acceptable standard; documentation is being completed and stored correctly; physical vehicle inspections are being undertaken correctly and to investigate customer complaints.

6. PUBLICITY

- 6.1 The Agent shall not use the Director General or the DoT or the State of Western Australia's logo or coat of arms.
- 6.2 Unless the Director General gives his prior written consent, the Agent shall not:
 - (a) use the Director General or the DoT's name;
 - (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.
- 6.3 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.
- 6.4 The Agent and its Personnel must refrain from commenting on vehicle inspection services provided by any other party when advertising or promoting its business.

7. SPECIFIED PERSONNEL

- 7.1 The Agent must ensure that only Authorised Vehicle Examiners carry out the Services.
- 7.2 The Agent must remove any person from the supply of the Services whose authorisation to act as an AVE has been cancelled by the Director General.
- 7.3 If required by the Director General, the Agent must nominate another person in its employ to be assessed by the Director General as suitable to be authorised as an AVE.

7.4 General provisions for the Agent and Agent's Personnel

- (a) The Agent and any of its Personnel must not, during the Term, have any affiliations, associations, connections, or professional engagements with any companies, agencies, organisations, clubs, associations, or other business or charitable institutions which can, or are likely to, or have found or proven to have any disreputable, criminal or illegal business dealings or other transactions.
- (b) Where the Agent receives a complaint from a Customer about a member of the Agent's personnel, the Agent shall document the particulars of the complaint and forward the particulars to the Director General's Representative.
- (c) The Director General will terminate this Agreement effective immediately, or at a time determined solely by the Director General, if it becomes aware or is advised of any such affiliations, associations, connections, or professional engagements referred to in 7.4(a) from a reputable source, including a law enforcement agency.
- (d) Notwithstanding other rights and remedies or actions available to it, the Director General may require the removal from the Services of any Personnel.
- (e) The Agent must immediately comply with a request under 7.4(d).
- (f) Where the Agent continues to engage or retains the engagement of Personnel contrary to the provisions of this clause 7.4, notwithstanding any other rights and actions available to the Director General, the Director General may terminate this Agreement immediately without notice.
- (g) In the event that any Personnel are required to be removed from undertaking the Services, pursuant to this clause 7.4, the Agent must at its own cost:
 - i. remove Personnel in question;
 - ii. ensure that the Personnel in question immediately cease providing the Services;
 - iii. find replacement Personnel, acceptable to and approved by the Director General; and
 - iv. if Personnel are replaced, then references to Agent's Personnel are taken to include the new Personnel.
- (h) Where the Personnel is a firm or body corporate, then the provisions of this clause 7.4 apply to any employees of the firm or body corporate who intend to provide the Services.

8. NON-ASSIGNMENT

- 8.1 The Agent shall not assign any of its obligations, rights, benefits or interests under this Agreement.
- 8.2 This Agreement is not transferable, and the Agent must not subcontract all or any part of the Services.

9. CONFIDENTIALITY

- 9.1 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.
- 9.2 The Director General may, at any time, require the Agent's Personnel to give a written undertaking in a form set out in Schedule B or as required by the Director General relating to the use and non-disclosure of the Director General's Confidential Information.
- 9.3 The Agent must ensure that its Personnel fully comply with this Clause.
- 9.4 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.
- 9.5 Where the Agent's Personnel breaches this clause and discloses Confidential Information other than in the manner required, the Director General reserves the right to request the immediate removal, and any subsequent prosecution, of the relevant Personnel.
- 9.6 The information the subject of this Agreement is subject to *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 if otherwise required by law.

10. CONFLICT OF INTEREST

- 10.1 Where the Agent has a conflict of interest, the Agent must:
- (a) not undertake a vehicle inspection without the Director General's prior written authorisation; and
 - (b) promptly notify the Director General and take reasonable steps, in consultation with the Director General, to remove the conflict.

10.2 Without limiting the meaning of conflict of interest, a conflict of interest may arise in the following circumstances, where:

- (a) the business authorised as the Agent;
- (b) any AVE employed by the Agent;
- (c) any other person who has a financial interest in the Premises or Agent;
- (d) any Personnel of the Agent; or
- (e) a family member of any of the above

presents a vehicle for an inspection under this Agreement.

10.3 Integrity and Ethics

- (a) The Agent and any AVE employed by the Agent will at all times carry out the functions and Services under this Agreement to the highest standard, diligence, good faith and integrity in a manner that is honest, fair and impartial.
- (b) The Agent will at all times observe the requirements of the Code of Conduct and Code of Ethics in Schedule D.

11. RETURN OF CONFIDENTIAL INFORMATION AND PHYSICAL STOCK

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

- (a) at the expiration or termination of the Agreement; or
- (b) immediately on demand by the Director General.

12. INDEMNITIES AND INSURANCE

12.1 Indemnity

- (a) The Agent indemnifies the Director General, the State of Western Australia and its respective officers, employees and agents against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, 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 Personnel (including an AVE employed by the Agent);
 - ii. any wilful, tortious or unlawful act or omission of the Agent or any Personnel (including an AVE employed by the Agent); or

- iii. any breach of a State or Commonwealth law relevant to the Agreement by the Agent or any of its Personnel (including an AVE employed by the Agent).

12.2 Insurance Requirements

- (a) The Agent shall take out and maintain all insurances required by law and any other insurances in relation to the liabilities of the Agent under the Agreement for the benefit of the Parties named in the Agreement, including but not limited to:

- i. **workers' compensation insurance** in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than fifty million dollars (\$50,000,000) for any one occurrence in respect of the Agent's personnel. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*;

- ii. **public liability insurance** covering any legal liability of the Agent and the Agent's personnel that may arise from the Agreement for an amount of not less than twenty million dollars (\$20,000,000) for any one occurrence and unlimited in the aggregate with an extension to cover Motor Vehicles in the Agent's care, custody and control including whilst being tested on the road; OR

Motor trade insurance which includes material damage and third party liability (outside of Compulsory Third Party insurance) for vehicles in the care, custody and control of the Agent, including whilst the vehicles are tested on the road for an amount of not less than twenty million dollars (\$20,000,000) for any one occurrence and unlimited in the aggregate; OR

Public Liability Insurance for an amount not less than twenty million dollars (\$20,000,000) for any one occurrence and unlimited in the aggregate AND **Motor Vehicle Insurance** extended to cover Motor Vehicles in the Agent's care, custody and control including whilst being tested on the road.

12.3 Maintenance of Insurance

The Agent shall:

- (a) pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 12.2;
- (b) not vary or cancel any insurance required under clause 12.2 or allow it to lapse during the Term or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and

- (c) Without limiting clause 12.3(b) promptly reinstate any insurance required under clause 12.2 if it lapses or if cover is exhausted or becomes ineffectual for any reason.

12.4 Evidence of Insurance

The Agent shall give to the Director General sufficient evidence of the insurance required under clause 12.2 (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Director General at any time.

12.5 Continuing obligation

- (a) The Agent shall maintain the insurances required throughout the Term.
- (b) The obligations of the Agent under this clause are continuing obligations and survive suspension, expiration or termination of the Agreement for so long as the obligations of Agent under this clause continue.

12.6 If the Agent consists of a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, those persons are bound by the conditions contained in clause 12 jointly and severally.

13. DEFAULT, SUSPENSION AND TERMINATION

13.1 The Director General is entitled under Regulation 3A(1) of the Regulations to cancel or suspend the authorisation of persons to examine and test vehicles as Authorised Vehicle Examiners and cancel or suspend the authorisation for persons to establish Premises as AIS. This Agreement does not fetter the Director General's discretion to act in accordance with Regulation 3A(1) of the Regulations.

13.2 In addition to 13.1 above and notwithstanding any other provisions of this Agreement, the Agreement may be terminated by the Director General in writing if any of the following events occur or for any of the following reasons, but is 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 its 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.

13.3 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.

13.4 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 agreed by the Agent and the Director General to enable the Director General to establish alternative arrangements for the performance of the Services.

13.5 Suspension and Termination

Notwithstanding any other provisions of this Agreement, the Director General may in accordance with Regulation 3A (1) of the Regulations and whether or not there has been a breach of the Agent's obligations under this Agreement by notice to the Agent:

- (a) suspend this Agreement; or
- (b) terminate this Agreement.

13.6 Ending of Suspension

- (a) In accordance with Regulation 3A of the regulations and section 52 of the Interpretation Act 1984 the Director General may retract the suspension at any time by notice to the Agent.

13.7 Consequences of Suspension or Termination

- (a) If the Director General suspends this Agreement under this clause 13 then:
 - (i) the Agent must during the period of suspension cease performing all Services.

- (b) On expiration or termination of this Agreement, the Agent must as soon as practicable:
- (i) deliver to the Department all Records as required by the Department;
 - (ii) cease to provide the Services;
 - (iii) in every other respect cooperate with the Director General as reasonably required in order to minimise any loss, damage or inconvenience to the Director General resulting from the termination of this Agreement; and
 - (iv) 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 work in hand in accordance with the terms and conditions of this Agreement.

14. POLICE CLEARANCE

- 14.1 The Director General may request the Agent at any time, to obtain and provide to the Director General's representative an Australia-wide police clearance in respect of any of the Agent's Personnel including its Authorised Vehicle Examiners.
- 14.2 Notwithstanding 14.1, if the Agent becomes aware that a criminal charge has been laid against it, or its Personnel including its Authorised Vehicle Examiners, it will immediately notify the Director General.
- 14.3 The Director General may request the Agent at any time to obtain and provide confirmation of the status of the driving licence of all or any of its Authorised Vehicle Examiners.
- 14.4 The Agent must comply with the Director General's request referred to in 14.1 and 14.2 within twenty (20) Business Days of such request.
- 14.5 At the Director General's discretion, depending on the response received regarding the Australia-wide police clearances requested in accordance with 14.1 and information received regarding the status of a driver's licence in 14.2, the Director General may require the Agent to act in accordance with clauses 7.2 and 7.3 of this Agreement.

15. DISABILITY ACCESS AND INCLUSION PLAN (DAIP)

The Agent must:

- (a) to the extent practicable, implement the Department's DAIP prepared under the *Disability Services Act 1993*; and
- (b) provide a report to the Department by 30th June in each year of the Term, reporting on the extent to which the Agent has implemented the Department's DAIP.

16. GENERAL

16.1 This Agreement shall be construed and governed in accordance with the laws of Western Australia.

16.2 If any provision of this Agreement is held unenforceable or void, the remaining provisions must be enforced in accordance with their terms.

16.3 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; and
- (b) may only be varied or altered in writing executed by the Parties.
- (c) Notwithstanding (b) above the Director General may unilaterally amend Schedule C from time to time and must by written notice provide the Agent with a copy of the amended Schedule C before the Prescribed Fees indicated in the Schedule come into effect.

16.4 Any person described in the Agreement as the Director General's Representative or Agent's Representative may act as the Representative of the respective Party in relation to the Agreement. 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.

17. 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 sent by prepaid post to the address of the Party receiving the notice; or
 - ii. sent by facsimile to the facsimile number of the Party receiving the notice; or
 - iii. a scanned notice and sent by email to the email address of the Party receiving the notice who in turn acknowledges receipt thereof.
- (d) subject to paragraph (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 third Business Day after posting; and

- iii. in the case of facsimile and email, on the date of transmission; 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.
- (f) Address of Parties for receipt of Notices:

Director General – 140 William Street, PERTH WA 6000

Agent –

18. RELATIONSHIP

The Agent is the Director General's agent in accordance with Section 6B of the Act for the purpose of carrying out the Director General's functions referred to in this Agreement. However notwithstanding the aforementioned, the Parties agree that nothing in this Agreement may be construed to make either of them a partner, employee or joint venture partner of the other.

19. WAIVER

- 19.1 No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.
- 19.2 A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- 19.3 Any failure to enforce this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party will not be construed as a waiver of any rights.

20. LIMITATION OF LIABILITY AND NO GUARANTEE OF WORK

- 20.1 The Director General, the DoT 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.
- 20.2 The Director General, the DoT and the State of Western Australia give no guarantee that the appointment of the Agent as an agent of the Director General will result in the Agent receiving any requests for Services from the public.

21. VARIATIONS

Subject only to 16(3)(c), any variation to this Agreement shall only be valid if approved by the Director General and executed by the Parties in writing.

22. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

23. DISPUTE RESOLUTION

Before resorting to external dispute resolution mechanisms, the Parties shall in good faith attempt to settle by negotiation any dispute in relation to this Agreement, and where practical, each Party shall refer the matter to personnel who have authority to intervene and facilitate some form of resolution. Nothing in this clause shall prevent any Party from seeking urgent interlocutory relief.

24. LEGISLATIVE COMPLIANCE

The Agent shall comply with all Legislative Requirements in carrying out the Services.

25. FEES

25.1 AIS Establishment and Renewal Fees

The Agent shall pay the Prescribed Fees for the establishment of an AIS and renewal of an AIS authorisation as are prescribed in Schedule 1, Division 2 of the *Road Traffic (Charges and Fees) Regulations* 2006, as applicable from time to time.

25.2 Vehicle Inspection Fees

- (a) The applicable Prescribed Fees to be paid by the Customers for vehicle inspections are prescribed in Schedule 1, Division 2 of the *Road Traffic (Charges and Fees) Regulations* 2006, as applicable from time to time.
- (b) The Agent must only charge the Prescribed Fees for the Services.
- (c) The DoT shall pay the Agent an additional Service Fee GST Component to the value of 10 per cent of the Service Fee for inspections the AIS has performed during the month. Payments will be made during the second week of the month following the month in which the inspection was performed.
- (d) The Agent shall be responsible for remitting the GST applicable on the Service Fee and Service Fee GST Component to the Australian Taxation Office (ATO).
- (e) The Agent shall be liable to pay any interest that accrues for failing to pay in time any GST required to be paid to the ATO.

25.3 In the event that the Director General authorises the Agent to undertake an examination of a vehicle for the purposes of licensing it, at a location other than at the AIS premises, the

Agent may negotiate with the Customer for the payment of any additional costs associated with travelling to that location.

25.4 Invoice to be issued to Customers

- (a) The Agent must issue a DoT Invoice to each Customer who presents to the Agent for the Services, in accordance with the requirements of the Director General.
- (b) In the event that a duplicate, cancellation or adjustment of an Invoice is required, a written request must be made to the Director General's Representative.

25.5 Recipient Created Tax Invoice

- (a) The DoT shall issue a Recipient Created Tax Invoice (RCTI) to the Agent detailing the activities of the Agent pertaining to the collection of the Prescribed Fees. The RCTI will detail the value of the Prescribed Fees collected for the preceding month and the amount of GST on the Service Fee that must be remitted to the ATO. The Agent must retain a copy of the RCTI for GST purposes.
- (b) The DoT shall issue a second (RCTI) to the Agent for the additional Service Fee GST Component being 10 per cent of the Service Fee for inspections performed in the preceding month also detailing the amount of GST that must be remitted to the ATO on this component. The Agent must retain a copy of the RCTI for GST purposes.

EXECUTION

EXECUTED as an AGREEMENT on the date written at the beginning of this document:

Executed for and on behalf of the Director General, of the Department of Transport by an Officer duly authorised by the Director General

Witness

Name (please print)

Name (please print)

Signature

Signature

Executed by ABC Pty Ltd (ACN #####) in accordance with section 127 of the Corporations Act 2001 (Cth) (Agent)

XXXX
Director's Signature

XXXX
Director/Director Secretary's Signature

SCHEDULE A: FUNCTIONS AND SCOPE OF THE AGREEMENT

1. Scope of Agreement

The Agent and its Authorised Vehicle Examiners are restricted to inspecting the range of vehicles specified in the relevant Certificates of Appointment.

2. Certificates of Appointment

- 2.1 Upon being satisfied that the Agent's nominated Premises are appropriately equipped to conduct the Services, the Director General will issue a Certificate of Appointment specifying the authorised Premises at which the Services may be undertaken (AIS).
- 2.2 Upon being satisfied that the Agent and its nominated Personnel are appropriately skilled and competent to conduct the Services, the Director General will issue Certificates of Appointment to the Agent's Personnel to act as Authorised Vehicle Examiners.
- 2.3 The certificates referred to in 2.1 and 2.2 will be issued subject to the conditions indicated thereon and will remain in force unless amended, updated or cancelled by the Director General or at such a time that an AVE resigns or his employment by the Agent is terminated or the Agreement is cancelled.
- 2.4 All Certificates of Appointment must be returned to the Director General upon termination of the Agreement (or in the case of earlier expiry), regardless of the reason for termination or expiry.
- 2.5 If the Agent ceases to be authorised to act as the Director General's Agent, all Certificates of Appointment for Authorised Vehicle Examiners employed by the Agent will become null and void.

3. Training

- 3.1 The Agent and its Authorised Vehicle Examiners will be required to undertake training provided by the Director General throughout the Term including, but not limited to:
 - (a) implementation of new standards, legislation and DoT policy or procedures;
 - (b) training requirements identified as a result of auditing; or
 - (c) the upgrading of general skills required for the Services.
- 3.2 Training will be delivered at a location nominated by the Director General.
- 3.3 Where the Director General determines that training should be conducted on the Agent's Premises, the Agent must provide access to Authorised Vehicle Examiners and a suitable training space.

- 3.4 The Agent is responsible for all expenses incurred for participating in training including, but not limited to, travel, meals and accommodation.

4. AIS Business Requirements

The Agent must:

- (a) maintain a Motor Vehicle Repair Business Licence if the AIS carries out repairs;
- (b) be registered for GST;
- (c) promptly notify the Director General of any event that may impact on the conditions and requirements of the agreement including, but not limited to:
 - i. changes in the structure of the business's ownership;
 - ii. change in trading name; and
 - iii. an AVE's resignation, termination or intention to relinquish his or her authorisation.
- (d) perform the Services on Business Days and during Business Hours.
- (e) be of good character and reputation.

5. AVE Requirements

The Agent must ensure that Authorised Vehicle Examiners performing the Services:

- (a) Hold the following:
 - i. a motor mechanical trade qualification or equivalent with a minimum of two (2) years post-trade experience in the repair and maintenance of a wide range of vehicles appropriate to the Services; and
 - ii. a current Western Australian Driver's Licence relevant to each class of vehicle the AVE is authorised to inspect (for example, classes 'R' and 'C' if authorised to inspect all light vehicles including motorcycles); and
- (b) are of good character and reputation.

6. Document Management Requirements

The Agent must:

- (a) advise the Director General of any loss, theft or damage of documentation or reference material; and
- (b) ensure all vehicle inspection documentation is completed correctly, legibly and to the standard specified in the training and forwarded to the Department in the prescribed timelines.

7. Premises, Equipment and Facilities Requirements

7.1 The Agent must provide and maintain the following equipment and facilities in working order during the Term:

- (a) a secure, covered inspection area;
- (b) a fixed ramp, pit or hoist suitable for under-body inspection of the authorised vehicle types;
- (c) a flat, sealed surface suitable for undertaking inspections not requiring under-body inspection;
- (d) adequate parking;
- (e) IT and telecommunications equipment to support the delivery of Services;
- (f) 8 mm (as a minimum) number and letter punches;
- (g) headlight aiming equipment (minimum requirement is an approved screen);
- (h) window tint tester capable of testing fixed glass;
- (i) exhaust noise test meter;
- (j) a trolley jack suitable for raising light vehicles (if applicable);
- (k) a trolley jack suitable for raising heavy vehicles (if applicable);
- (l) a brake testing machine or an area suitable for road testing including a safe area in which to test brakes;
- (m) all other material, equipment or things reasonably required to conduct vehicle inspections such as measuring tapes, cleaning materials and portable lighting; and
- (n) any other reasonable requirement stipulated by the Director General during the Term.

7.2 The Agent must ensure the Premises are kept in a clean and tidy condition.

7.3 The Agent must display the following at the Premises, in clear public view:

- (a) a sign issued or authorised by the Director General indicating the business is authorised to provide vehicle inspection services;
- (b) the Code of Conduct issued by the Director General;
- (c) the current Schedule of Fees; and
- (d) The AIS and AVE Certificates of Appointment.

8. Vehicle Inspection Service Requirements

8.1 The Agent must ensure:

- (a) a courteous, efficient, professional and impartial vehicle inspection service is provided to Customers;
- (b) Authorised Vehicle Examiners perform the Services correctly and in accordance with the Director General's training, policies, procedures and relevant legislation, which may change from time to time;
- (c) Authorised Vehicle Examiners do not perform the Services under the influence of any drugs or alcohol, or other substance which may affect the Authorised Vehicle Examiners ability to properly perform the Services;
- (d) Authorised Vehicle Examiners comply with the Code of Conduct issued by the Director General, as amended from time to time;
- (e) a current Temporary Movement Permit or a correctly licensed set of Trade Plates are issued for any unlicensed vehicle prior to conducting a Road Test;
- (f) Customers are aware that rectification work arising from an inspection may be carried out by any appropriately registered motor vehicle repairer;
- (g) all vehicle inspections are conducted on the Premises, except for the purpose of conducting a Road Test or unless prior authorisation has been obtained from the Director General; and
- (h) the performance of any other duties associated with the inspection of vehicles as required or requested by the Director General.

SCHEDULE B: DEED OF CONFIDENTIALITY UNDERTAKING AGENT'S EMPLOYEES

IN CONSIDERATION of being provided with and or given access to Confidential Information as provided for and defined in the Agreement and or that I may learn certain facts for purposes relating to licensing and or registration or the like ('The Confidential Information') and unless ordered otherwise to so do by a competent court,

I, _____ of _____, agree and hereby undertake as follows:

1. That I shall not divulge or communicate any of the Confidential Information to any other person who is not an authorised to receive such Confidential Information
2. That I shall not use the Confidential Information for any purpose other than the purpose for which the Confidential Information was given or released to me and I acknowledge that the Confidential Information and or any documents created and information imparted are created and imparted in circumstances to which privilege attaches and that such privilege is vested in the Department of Transport
3. That I shall provide a secure storage environment for the Confidential Information and that I shall institute and maintain an effective form of control of access to the Confidential Information.
4. That I understand and agree that such Confidential Information as may be identified with a particular person can be legally actionable if divulged and I accept legal responsibility.
5. That I shall indemnify the Director General and his officers, servants, employees or Agents from and against all losses, claims, costs and expenses (including legal costs) and all actions proceedings and demands whatsoever which may be brought or made against them or any of them by any person in respect or by reason of or arising out of any negligent or other wrongful act or omission of myself, in connection with or in the course of the performance or of any breach of this undertaking.
6. That this undertaking shall survive the termination or expiry of my employment with my employer (whether directly or indirectly) and inure for the benefit of my (then) employer and or the Departments of Transport and the Attorney General and their respective successors and assigns and is binding upon me, my executors, administrators and others in interest.
7. That I give this undertaking on the condition that no claim for damages or compensation shall be made against me in respect of any breach of this undertaking save and except where the breach is knowing or deliberate.

GIVEN by me (signature): _____

In the presence of (signature of witness): _____

At (place of signature): _____

(Date of signature): _____

SCHEDULE C: FEE SCHEDULE

Vehicle Inspection Fees applicable as at 1 July 2014

Inspection type	Category	Amount collected from Customer on the Department's behalf	Amount retained by the Agent	Additional Service Fee GST Component of 10% paid to the Agent from DoT	Total amount paid to the Agent
		Prescribed Fee (not subject to GST)	*Service Fee (inclusive of GST)	*Additional Service Fee GST Component (inclusive of GST)	
GREAT SOUTHERN					
Caravan and Trailer (without brakes), Motor Cycles, Mopeds and Motor Carrier	Initial Inspection	60.80	60.80	6.08	66.88
	Re-Inspection	47.55	47.55	4.76	52.31
Any other light vehicle	Initial Inspection	88.45	88.45	8.85	97.30
	Re-Inspection	60.80	60.80	6.08	66.88
Minor inspection	Inspection	60.80	60.80	6.08	66.88
Engine Change		60.80	60.80	6.08	66.88
Heavy vehicle	Initial Inspection	143.60	143.60	14.36	157.96
	Re-Inspection	96.70	96.70	9.67	106.37

- Fees are prescribed in the *Road Traffic (Charges and Fees) Regulations 2006*.
- Prescribed Fees and the Service Fee are revised on an annual basis, effective from 1 July.

SCHEDULE D: CODE OF CONDUCT AND CODE OF ETHICS



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

AUTHORISED INSPECTION STATION (AIS) CODE OF CONDUCT

This Authorised inspection station (Agent) undertakes to:

- Treat all customers courteously, ethically and equitably;
- Examine all vehicles strictly in accordance with Department of Transport policies and procedures implemented under the *Road Traffic Act 1974*;
- Display the current Schedule of Fees, this Code and the Authorisations issued to the AIS and its Authorised Vehicle Examiners, where they are easily visible to customers;
- Charge only the Scheduled Fee(s) for inspections carried out as an AIS;
- Be reasonably available to conduct inspections;
- Ensure Customers are aware that rectification work arising from an inspection may be carried out by any repairer; and
- Not pass comment to Customers on the suitability or work standards of other AIS Agents, and to report complaints regarding practices of other AIS only directly to the Department.

SCHEDULE D: (Continued)

AUTHORISED INSPECTION STATION (AIS) CODE OF ETHICS

This AIS Agent at all times undertakes:

- Not to solicit or receive a gift, or any sort of consideration from any organisation or individual with whom the Agent may have dealings related to the Services. Consideration extends to any inducement or reward for either doing, or refraining from doing, anything with respect to the Services.
- Not to seek or accept any gifts, benefit, privilege or concessions whatsoever, from any Customer, or the public with whom the Agent may have dealings related to the Services.
- To immediately report to the Department in writing, if the Agent is confronted with an attempt by a Customer or the public to offer a gift in any form, either with the object of obtaining a concession or in recognition of a service rendered [for example, a favourable decision after an examination].
- To inform the Customer that the requirements of this Code of Ethics requires the Agent to immediately report the incident to the Department if any Customer attempts to offer any form of gift or inducement before during or after the provision of the Services.

Kim Dolzadelli

From: [REDACTED]
Sent: Wednesday, 8 July 2015 11:39 AM
To: Kim Dolzadelli
Subject: Dept. of Transport - Authorised Inspection Station
Attachments: "AVG certification".txt

Importance: High

Hi Kim,

As discussed yesterday.

Please do not sign the proposed new agreement supplied by DoT.
The Shire can maintain services under the current agreement, as new agreement not signed/agreed.

We are in legal discussions with DoT on the same issue, for the Shire of [REDACTED], as we do not agree with DoT indemnity wording/clause.

The following extract is from our legal colleague to DoT legal.

Proposed amendment to Indemnity

As it stands the LGIS Liability Protection Policy contains an exclusion in clause 20 to the effect that *"claims arising out of any liability assumed by the Member under any contract or agreement except to the extent that such liability would have existed under the law of tort (in WA)"*. Consequently it would not respond to the wording in 12.1(a)(i) of the proposed agreement.

May I suggest a redrafting of the wording of that clause along the following lines:

"Any and only a tortious breach of an obligation under the Agreement by the Agent or any Personnel (including an AVE employed by the Agent); but not otherwise to include a breach by the Agent of its contractual obligations to the Director General of WA pursuant to the Agreement Schedules"

Further, can you please add below (iii):

"The Agent's liability under this indemnity will be reduced proportionally to the extent caused or contributed to by the DG of WA or its officers, members, employees agents or contractors"

"Both parties agree to use their reasonable endeavours to cooperate with each other, at their own cost, in respect of the conduct of any defence, or the agreement of any settlement, or any third party action, suit, claim, demand or proceedings the subject of this indemnity"

Will revert once we achieve a positive conclusion.

Kind regards Dave

David Wood | Account Manager
Client Services Team

[REDACTED]
[REDACTED]
[REDACTED]

www.lgiswa.com.au