

**ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES**  
**HVCBA SERVICE PROVIDER AGREEMENT**

**NSW ICAC  
EXHIBIT**

**TERMS AND CONDITIONS**

**1. PRELIMINARY ASPECTS OF THE AGREEMENT**

**1.1 What the agreement consists of**

The agreement between the RTA and me consists of the Contract Details (attached to front of this document), these Terms and Conditions and the two schedules and four attachments A to D to this document. The agreement constitutes the sole and entire agreement between us in relation to my appointment as an RTA approved provider for heavy vehicle competency based assessments and no warranties, representations, guarantees or other terms or conditions in relation to such appointment not contained and recorded in the agreement will be of any effect.

**1.2 Definitions and Interpretation**

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

**2. APPOINTMENT TO PROVIDE SERVICES**

**2.1 Appointment**

The RTA appoints me on a non-exclusive basis to provide the service of the Assessments in accordance with the terms of the agreement with effect from the Commencement Date. I accept this appointment and I and each Assessor agree to be bound by the terms of the agreement.

**2.2 Subcontracting Prohibited**

- (a) Except as provided in clause 2.2(b), I must not subcontract my obligations under the agreement without the prior written consent of the RTA, which consent may be withheld at the RTA's absolute discretion. I agree that in giving its consent to the subcontracting of the agreement, the RTA may impose such conditions as it considers necessary.
- (b) Subject to clause 6, I may subcontract my obligations under the agreement to the Assessors specified in Item 5 of the Contract Details who are independent contractors and any Assessors appointed

pursuant to clause 6.3 who are independent contractors.

- (c) If I subcontract any part of my obligations under the agreement, I will remain primarily responsible to the RTA under the agreement and will indemnify and keep indemnified the RTA in respect of all losses, damages, costs and expenses directly or indirectly incurred or suffered by the RTA or any other person including an Applicant as a consequence of the conduct of any subcontractor.

**2.3 Relationship of the Parties**

- (a) The RTA and I are independent contractors.
- (b) Nothing in the agreement is to be treated as creating a partnership or joint venture between us under the laws of any applicable jurisdiction.
- (c) I must not act and do not have any authority to act as agent of or in any way bind or commit the RTA to any obligation except to the limited extent specified in the agreement.

**2.4 Responsibility for Salary and Entitlements**

I acknowledge and agree that I will be solely responsible for the payment of salary, wages, holiday pay, sick pay and all other employee benefits (including, without limitation, superannuation contribution benefits) to and on behalf of all Assessors and for the making of tax instalment deductions in respect of the salary and wages (where relevant) of all Assessors which may arise in relation to the services provided by Assessors.

**3. TERM**

**3.1 Term**

My appointment as a provider of Assessment services commences on the Commencement Date and will continue for the Initial Term unless the appointment is terminated before the expiry of the Initial Term under clause 15 or clause 16.

**3.2 Renewal Term**

My appointment as a provider of Assessment services may be renewed or extended, at the

- sole discretion of the RTA, for a Renewal Term of not more than 3 years, by the RTA issuing a written notice to me at least 30 days prior to the expiry of the Initial Term or the then current Renewal Term (as the case may be).
- 4. PROVISION OF ASSESSMENT**
- 4.1 Compliance with Assessment Procedures and the Guide**
- I, and each Assessor, must comply and I must ensure that each Assessor complies at all times with the Assessment Procedures and the Guide.
- 4.2 When Assessment must be provided**
- I must provide the Assessments in accordance with the Assessment Procedures to all Applicants who meet the Application Criteria and who are prepared to pay the fees I set. I must offer and provide each Assessment at the earliest available opportunity to me that is convenient to an Applicant.
- 4.3 Application Criteria**
- I must ensure that each Applicant meets the Application Criteria before I commence providing Assessment to the Applicant.
- 4.4 Log Books**
- (a) The RTA will provide Assessors Log Books to me as the RTA considers necessary.
  - (b) I and each Assessor must complete the Assessor and Learner's Log Books in accordance with the Assessment Procedures.
  - (c) At the time of completing the Learner's log book where the Applicant has successfully completed the Assessment, I must inform the Applicant of all requirements, limitations and other details as specified in the Assessment Procedures or as otherwise notified to me by the RTA in writing, including, without limitation that the successful result is valid until the expiry date of the Learner's log book (max 36 months).
  - (d) I, and each Assessor, acknowledge that each Learner's log book is the property of that Applicant and under no circumstances should I, or an Assessor, retain a Learner's log book.

**4.5 Certificates**

I may issue a Certificate to an Applicant who successfully completes the Assessment. The certificate must identify the name and address of the Applicant, the class of licence for which the Applicant was assessed, details of the Vehicle used for the Assessment (including details of its make, capacity, transmission type and year of manufacture), the Provider and Assessor/s who conducted the Assessment and be signed by the Assessor with whom the Applicant successfully completes the FCA.

**4.6 Application of Driving Instructors Act**

I, and each Assessor, acknowledge that I, and each Assessor, are subject to the NSW Driving Instructors Act and Regulations at all times when providing Assessments pursuant to the agreement.

**4.7 Fees**

- (a) I must ensure that the fees I charge for providing an Assessment are reasonable according to the circumstances under which the Assessment is being offered and provided.
- (b) I must notify the Applicant of the fees payable for the provision of the Assessment before the Applicant commences the Assessment.

**5. REPRESENTATIVE****5.1 Appointment of Representative**

I appoint the Provider Representative as my representative for the purposes of all matters arising in connection with the agreement.

**5.2 Authority of Representative**

I confirm that the Provider Representative has the authority and legal power to sign documentation on my behalf and to bind me in respect of all matters arising in connection with the agreement.

**5.3 Substitution of Representative**

- (a) I must give the RTA written notice of any proposal to substitute the Provider Representative. The notice must include details of:
  - (i) the reason for the substitution;
  - (ii) the name and relevant experience of the proposed substitute; and

- (iii) the date on which I propose the substitution is to become effective.

- (b) The RTA will notify me if it objects to the change within five Working Days of its receipt of the notice given by me under clause 5.3(a).
- (c) If required by the RTA, I must provide all additional information required by the RTA to make a decision in relation to the proposed substitution.
- (d) If the RTA objects to the appointment pursuant to clause 5.3(b), I will not appoint the proposed representative as the Provider Representative.
- (e) If the RTA does not object to the proposed new representative in the timeframe specified in clause 5.3(b) or within five Working Days of receipt of any additional information requested pursuant to clause 5.3(c), the proposed new representative becomes my Provider Representative replacing the previous Provider Representative.

## 6. ASSESSORS

### 6.1 Use of Approved Assessors

- (a) I may only appoint Assessors to perform my obligations under the agreement who:
- (i) are approved by the RTA; and
  - (ii) have signed the Contract Details or the application form as contained in **Attachment A** in the spaces provided.
- (b) The RTA acknowledges that it has approved the Assessors specified in item 5 of the Contract Details as Assessors that I may use from the Commencement Date.

### 6.2 Qualifications of Assessors

I must ensure that at all times all Assessors who conduct Assessments:

- (a) hold a current drivers licence for the class of licence for which they conduct an Assessment;
- (b) hold a current driving instructors licence for the class of licence for which they conduct an Assessment; and
- (c) are accredited by the RTA to conduct Assessments of Applicants for the class of licence for which they conduct Assessments.

### 6.3 Changes in Assessors

- (a) I must give the RTA written notice of each:
- (i) resignation or removal of an Assessor and the reasons for the resignation or removal; and
  - (ii) proposed appointment of a new Assessor utilising the form in **Attachment A** (pages 2 & 3) of the agreement,
- before the resignation, removal or appointment becomes effective.
- (b) The RTA may object to the appointment of a person as an Assessor on reasonable grounds within 10 Working Days of receipt of the notice given by me under clause 6.3(a).
- (c) I must not appoint any person as an Assessor to whom the RTA has objected pursuant to clause 6.3(b).
- (d) If the RTA does not object to any proposed appointment of an Assessor within the period specified in clause 6.3(b), the RTA is deemed to have accepted the appointment at the expiry of such period.
- (e) I must advise the RTA of any change in my or an Assessor's address and contact details using the form contained in **Attachment C** of the agreement within 10 Working Days of the change occurring.

### 6.4 Unsatisfactory Performance of Assessors

- (a) Where the RTA is not satisfied with the delivery of the Assessments being undertaken by an Assessor on behalf of me and the matter is not resolved by discussion between the Assessor and me to the RTA's satisfaction, the RTA may, in addition to any other rights which it may have under the Agreement;
- (i) require the Assessor to undertake further training;
  - (ii) require the Assessor to be re-assessed by the RTA to determine the Assessor's competency to carry out Assessments;
  - (iii) require my supervision of any or all of the Assessments to be carried out by the Assessor;

<ul style="list-style-type: none"> <li>(iv) suspend, under the terms of this Agreement, the Assessor's qualification as a Assessor; or</li> <li>(v) take any action as is provided for under the Driving Instructors Act (NSW) 1992.</li> <li>(b) The Assessor and I will not be entitled to any compensation as a consequence of any action taken by the RTA pursuant to sub-clause (a) above.</li> <li>(c) The RTA may charge a fee, to be determined by the RTA, for the delivery of further training pursuant to sub-clause (a)(i) above.</li> </ul>	<ul style="list-style-type: none"> <li>(iii) the proposed date on which the variations are to become effective.</li> <li>(b) I agree that the RTA may give or refuse to approve a variation in its absolute discretion.</li> <li>(c) If the RTA approves a variation to the Assessment Procedures, this will take effect from the date nominated in the request or such other date as is determined by the RTA.</li> </ul>
<p><b>6.5 Compulsory Refresher Training and Assessment of Assessors by RTA</b></p> <ul style="list-style-type: none"> <li>(a) I, and all other Assessors covered by this agreement, acknowledge that I/they must attend compulsory Skills Workshops as requested by the RTA, at our own cost, and failure to meet this requirement will result in my/their suspension from Assessment activities at the end of the current Term and that suspension to be effective until I/they have attended, and successfully completed, a HVCBA Assessors Training Programme at my/their own cost.</li> <li>(b) I/they acknowledge that failure to achieve the required 90% Pass Mark at a Skills Workshop will result in my/their suspension from Assessment activities at the end of the current Term and that suspension to be effective until I/they have attended, and successfully completed, a HVCBA Assessors Training Programme at my/their own cost.</li> </ul>	<p><b>7.2 Variation Required by the RTA</b></p> <ul style="list-style-type: none"> <li>(a) The RTA may at any time on at least 20 Working Days prior written notice amend the Guide or the Assessment Procedures.</li> <li>(b) If the RTA requires amendments to be made to the Assessment Procedures, I will incorporate the amendments into the Assessment and submit the revised Assessment Procedures to the RTA as confirmation of the incorporation of the amendments.</li> </ul> <p><b>8. FCA ROUTES AND VEHICLES</b></p> <p><b>8.1 Requirements</b></p> <p>I must ensure that the FCA route:</p> <ul style="list-style-type: none"> <li>(a) complies at all times with the requirements specified in the Assessment Procedures; and</li> <li>(b) is approved by the RTA</li> </ul> <p><b>8.2 Approval of existing FCA routes</b></p> <p>An FCA route that is approved by the RTA at the Commencement Date is approved by the RTA for the purposes of clause 8.1(b).</p> <p><b>8.3 Request by Me for Variation of a FCA route</b></p>
<p><b>7. VARIATIONS TO ASSESSMENT PROCEDURES</b></p> <p><b>7.1 Request by Me for Variation in Assessment Procedures</b></p> <ul style="list-style-type: none"> <li>(a) I may only vary the Assessment Procedures if I receive the prior written approval of the RTA to the variation. The request for approval must be in writing and must identify: <ul style="list-style-type: none"> <li>(i) the variations I wish to make to the Assessment Procedures;</li> <li>(ii) the reasons for the variations; and</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>(a) I may only vary a FCA route if I receive the prior written approval of the RTA to the variation. Any request for approval for a variation of a FCA route must be in writing, comply with the requirements set out in <b>Attachment D</b> of the agreement and must identify: <ul style="list-style-type: none"> <li>(i) the variations I wish to make to the FCA route;</li> <li>(ii) the reasons for the variations; and</li> <li>(iii) the proposed date on which the variations are to become effective.</li> </ul> </li> </ul>

- (b) The RTA may object to any variation sought pursuant to clause 8.2(a) on reasonable grounds within 10 Working Days of receipt of the notice given by me.

#### 8.4 Request by RTA for Variation in Training Facility or Assessment Course

- (a) If any part of any training facility is not owned by me, I must provide a written approval from the owner of the facility confirming my entitlement to use the facility for the purposes of Assessment.
- (b) The RTA may, on reasonable grounds, require a variation to an FCA route by issuing a written notice that specifies the variation and the date on which the variation will become effective.
- (c) I must comply with any notice issued under clause 8.3(a).

#### 8.5 Vehicles

- (a) I must ensure that all Vehicles (whether owned by me or by another person) are roadworthy, mechanically serviceable and appropriately registered when assessments are conducted.
- (b) If requested by an Applicant, I must not refuse to conduct an Assessment in a vehicle provided by an Applicant if that vehicle is:
- (i) of a type permitted under the Assessment Procedures; and
  - (ii) roadworthy, mechanically serviceable and appropriately registered and otherwise complying with the criteria specified in the Assessment Procedures.

### 9. SECURITY OF LOG BOOKS AND CERTIFICATES

I must at all times ensure that Assessor's log books and all Certificates are kept under strict security and comply with any other direction in relation to the log books and certificates that are specified in the Assessment Procedures or otherwise notified to me by the RTA.

### 10. RECORD KEEPING, REPORTING AND AUDITING

#### 10.1 Records

- (a) I must maintain the Records and keep them at the location specified in item 6 of the Contract Details subject that I may, if

approved in writing by the RTA, keep Records that are more than 6 months old at other premises approved by the RTA.

- (b) I must make the Records available to the RTA for inspection when requested to do so by the RTA.
- (c) I must maintain all Records under strict security and confidentiality.
- (d) I must notify the RTA immediately of any loss or destruction of any Records.
- (e) I must keep each of the Records for at least seven years from the date that the last entry was made in that Record.

#### 10.2 Providing access to the RTA

I must at all reasonable times give the RTA access to:

- (a) the FCA route and any premises used by me in connection with the provision of Assessments;
- (b) the Vehicles used by me to provide Assessment under the agreement (whether those vehicles are owned by me or another person); and
- (c) the Records and any other information maintained by me or an Assessor in connection providing Assessments or otherwise required pursuant to the agreement,

to allow the RTA to audit, inspect and monitor my and each Assessor's performance under the agreement.

#### 10.3 Auditing

- (a) I will allow the Auditor and, if the consent of any other person is required, procure the other person's consent for the Auditor to:
- (i) travel the FCA route and enter any premises used by me in connection with providing Assessments;
  - (ii) inspect and enter the Vehicles used by me to provide the Assessment; and
  - (iii) inspect the Records and other records in my possession or control relating to Assessments,

at all reasonable times for the purposes of reviewing my performance of my or any Assessor's obligations under the agreement.

- (b) Without limiting clause 10.3(a), I will allow the review undertaken by the Auditor to include:
- (i) an "Assessment drive" during which the Auditor drives my vehicle and the Assessor conducts an Assessment of the Auditor;
  - (ii) undertaking a repeat Assessment drive of an Applicant conducted by the Auditor in my vehicle during which an Assessor may or may not be present according to the decision of the Auditor; and
  - (iii) any other reasonable means of assessing my or any Assessor's competence.
- (c) When a review as contemplated in clauses 10.3(a) or 10.3(b) is undertaken:
- (i) I will be compensated by the RTA for lost time and for use of my Vehicle unless the RTA or the Auditor determines that I or an Assessor is in breach of the agreement; and
  - (ii) an Applicant will not be charged by the RTA or me for the time and cost of any repeat Assessment required by the Auditor.
- (d) I agree to allow a suitably licensed Auditor to drive or to be the accompanying driver whilst an Applicant drives a Vehicle in connection with an Assessment.

## 11. OBLIGATIONS OF PROVIDER

### 11.1 General Obligations

Without limitation to any of my obligations under the agreement, I must:

- (a) monitor, supervise, direct and assess the performance of Assessors by reference to the Assessment Procedures;
- (b) undertake all action necessary to improve the performance of my obligations under the agreement including advising each of my Assessors, as necessary, of methods to overcome difficulties or problems in carrying out the Assessment; and
- (c) contribute to the improvement of driver assessment for a heavy vehicle drivers licence including:
  - (i) giving the RTA written notice of any error or ambiguity in any of the RTA

Materials as soon as practicable after I become aware of the error or ambiguity;

- (ii) giving the RTA written notice of any improvements or other matter that can assist the RTA in the development of the Assessment Procedures or the administration of driver Assessment for the Licence in New South Wales; and
  - (iii) identifying areas which are reasonably likely to cause difficulties or delays in carrying out the Assessment.
- (d) at all times act in a lawful manner in connection with Assessments and when conducting my business.

### 11.2 Representations

I must not:

- (a) make any misrepresentations or false or misleading statements and must procure that the Provider Representative and each Assessor does not make any misrepresentations or false or misleading statements in relation to:
  - (i) the function of the RTA in relation to driver Assessment;
  - (ii) the consequences of an Applicant successfully completing the Assessment; or
  - (iii) the effect of a completed Learner's log book; or
- (b) do anything that exposes or might reasonably be expected to expose the RTA to any claim or liability or political or public embarrassment.

## 12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

### 12.1 Confidential Information

- (a) I must treat as confidential all information which comes into my possession, pursuant to or as a result of or in the performance of the agreement, whether such information relates to the business, sales, marketing or technical operations of the RTA or otherwise.
- (b) Without limiting clause 12.1(a), I must not provide any part of the Guide or Assessment Procedures to an Applicant or any other person except as permitted

under the agreement, the Assessment Procedures or the Guide.

#### 12.2 No Disclosure of Confidential Information

- (a) I and the Assessors must not, without the prior written permission of the RTA, disclose the Confidential Information to another person (except to my own employees, agents and subcontractors and then only to those who need to know the information for the purposes of the agreement) and must not use the Confidential Information except as necessary for the purposes of the agreement.
- (b) Where I am required to collect confidential or Personal Information in connection with the agreement, I must comply with privacy legislation. I will obtain the consent of the persons giving such information to being collected on behalf of and being made available to the RTA or the Auditor for the purposes of reviewing the Assessment or my and Assessor's compliance with the agreement.

#### 12.3 Employees, Agents and Subcontractors

I must ensure that my employees, agents and subcontractors are aware of and comply with the obligations imposed by this clause 12.

#### 12.4 Intellectual Property Rights

- (a) I acknowledge that all copyright and other intellectual property rights in the Authorised Description and the RTA Material remains with the RTA at all times.
- (b) I must only use the Authorised Description and the RTA Material in the manner specified in the agreement.
- (c) I must not make any other representation without the prior written approval of the RTA (which approval may be given or withheld in the absolute discretion of the RTA).

#### 12.5 Continuation of Obligations

The operation of this clause will continue following the expiry or termination of the agreement.

### 13. WARRANTIES, EXCLUSIONS AND INDEMNITIES

#### 13.1 Warranties

I and each Assessor warrant on entering into the agreement and at all times during the Term that:

- (a) the Provider Representative, each Assessor and I are not subject to a prohibition under the Driving Instructors' Act 1992 (NSW),
- (b) each Assessor holds a current drivers licence for the requisite licence class for the Assessment being conducted;
- (c) each Assessor who conducts an Assessment has successfully completed a course conducted or approved by the RTA for conducting that Assessment; and
- (d) the Assessments will be conducted in a diligent manner to the standard of skill and care expected of a provider experienced in providing driver assessments of the type the subject of the Assessment,

subject that each Assessor gives these warranties only in relation to the Assessor.

#### 13.2 Bribery

- (a) I warrant on entering into the agreement and at all times during the Term that I must not and must procure that my Personal Representative and each Assessor does not engage in or condone any bribery, corruption or collusion in the delivery of Assessments.
- (b) Each Assessor must not engage in or condone any bribery, corruption or collusion in the delivery of Assessments.
- (b) I and each Assessor must immediately report any evidence or suspicion of bribery, corruption or collusion to the RTA or Independent Commission Against Corruption.

#### 13.3 Conflict of Interest

- (a) I warrant that no conflict of interest exists at the date I enter into the agreement.
- (b) I must immediately inform the RTA upon my becoming aware of the existence or possibility of a conflict of interest during the Term.

<p><b>13.4 Exclusion of Implied Terms</b></p> <p>I agree that, to the extent permitted by applicable laws, all implied terms, conditions, warranties, guarantees and undertakings are excluded from the agreement. Nothing in this clause constitutes an acknowledgment by the RTA that the Trade Practices Act 1974 (Cth) applies to the RTA.</p> <p><b>13.5 Indemnity</b></p> <p>I will indemnify and keep indemnified the RTA in respect of all loss, damage, costs and expenses directly or indirectly incurred or suffered by the RTA in connection with my or an Assessor's failure to comply with any terms of the agreement.</p> <p><b>14. INSURANCE</b></p> <p><b>14.1 Obtaining and Maintaining Insurance</b></p> <p>Before the Commencement Date, I must obtain on terms approved by the RTA, such approval not to be unreasonably withheld, and then maintain the policies of insurance listed in item 7 of the Contract Details for at least the amounts, on the terms of and for the risk identified in Schedule B.</p> <p><b>14.2 Variation of Insurances</b></p> <p>I must not vary any of the insurances required pursuant to clause 14.1 without the prior written consent of the RTA (which consent will not be unreasonably withheld by the RTA).</p> <p><b>14.3 Proof of Insurances</b></p> <p>Upon request by the RTA, I must provide to the RTA certificates of currency issued by each insurer for each of the insurances I am required under the agreement to obtain and maintain.</p> <p><b>14.4 Subcontractors' insurance</b></p> <p>Without limiting the RTA's requirements pursuant to clause 14.1, if I subcontract any of my obligations then I must ensure that the subcontractor obtains, on terms approved by the RTA, such approval not to be unreasonably withheld, professional indemnity insurance and motor vehicle comprehensive or third party property damage insurance for at least the amount, on the terms of and for the risks specified in Schedule B.</p>	<p><b>15. FORCE MAJEURE</b></p> <p><b>15.1 No Liability for Force Majeure</b></p> <p>No party will be liable for any loss, damage or delay arising out of, or be in breach of our obligations under the agreement for any reason beyond our respective control including but not limited to power failures, strikes, labour disputes, war, shortage of materials or transportation, government regulation, fire or acts of God.</p> <p><b>15.2 Suspension of Performance</b></p> <p>If a delay or failure to perform a party's obligations is caused or anticipated due to any reason beyond its control, the performance of that party's obligations will be suspended.</p> <p><b>15.3 Termination for Force Majeure</b></p> <p>If a delay or failure to perform a party's obligations due to any reason beyond its control exceeds 60 days, either party may immediately terminate the agreement by issuing a written notice to the other party.</p> <p><b>16. TERMINATION AND SUSPENSION</b></p> <p><b>16.1 Termination Without Cause</b></p> <p>The RTA or me may terminate the agreement at any time without cause by giving at least 60 days' written notice of such termination to the other.</p> <p><b>16.2 Termination by the RTA for Cause</b></p> <p>Without prejudice to any other rights the RTA may have under the agreement or at law or in equity, the RTA may terminate the agreement immediately by issuing a written notice to me if:</p> <ul style="list-style-type: none"> <li>(a) I or an Assessor is in breach of any of my or an Assessor's obligations under the agreement and the breach is not remedied within 14 days of my receipt of a written notice from the RTA requiring the remedy of the breach; or</li> <li>(b) I have breached the agreement three times in any six month period; or</li> <li>(c) an Insolvency Event occurs in respect of me.</li> </ul> <p><b>16.3 Consequences of Termination by the RTA or Me</b></p> <p>If the agreement is terminated under clauses 16.1 or 16.2, I must from the date of termination:</p>
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- (a) cease conducting Assessments;
- (b) cease representing that I or an Assessor is authorised to conduct Assessments, and
- (c) return all RTA Materials and confidential information to the RTA or, if required by the RTA, destroy the RTA Materials and Confidential Information and provide a statutory declaration (signed by me or my duly authorised officer or representative) to the RTA confirming that I have destroyed the RTA Materials and Confidential Information.

#### 16.4 Suspension by the RTA

- (a) Without limitation to any other right of the RTA under the agreement, the RTA may suspend the operation of the agreement and/or an Assessor from conducting Assessments with immediate effect by issuing a written notice to me if:
  - (i) I or an Assessor have breached the agreement; or
  - (ii) the RTA considers that I or an Assessor may be in breach of the agreement.
- (b) The notice issued by the RTA under clause 16.4(a) must specify the nature of the breach or the suspected breach and give me sufficient information to allow me to investigate the alleged breach. The RTA will conduct a review of my conduct following issue of the notice.
- (c) If a notice is given to me pursuant to clause 16.4(a), I must:
  - (i) submit a written response to the RTA within 10 Working Days of the date of the notice issued by the RTA;
  - (ii) participate in any discussions required by the RTA;
  - (iii) provide any additional information or documentation required by the RTA; and
  - (iv) cease conducting Assessments and representing that I am authorised to conduct Assessments until the RTA has reviewed the response submitted by me under clause 16.4(b) and determines that the operation of the agreement should resume.
- (d) On completion of the review conducted by the RTA, the RTA will issue a written notice stating that:

- (i) the operation of the agreement will resume from a specified date and any course of action that I must undertake prior to the resumption;
- (ii) the agreement will terminate with effect from a specified date;
- (iii) an Assessor is suspended from the specified date from conducting or being otherwise involved in Assessments from a specified date and the course of action that the Assessor must take prior to the resumption.

- (e) If the operation of the agreement resumes under clause 16.4(d)(i), I will reimburse to the RTA all costs, expenses and damages incurred or suffered by the RTA as a consequence of the suspension and resumption of the agreement.
- (f) If the agreement is terminated under clause 16.4(d)(ii), I must comply with clause 16.3.
- (g) I acknowledge that where it is established I or an Assessor have breached a term of the agreement, the agreement with respect to me or the Assessor may be suspended for the following periods or as otherwise specified by the RTA:
  - (i) 1st breach, 3 months;
  - (ii) 2nd breach, 1 year; and
  - (iii) 3rd breach, 5 years.

#### 16.5 Carryover Of Breach Penalties

For the purposes of clauses 16.1 to 16.4 inclusive, any breach and any resultant action taken by the RTA under any previous HVCBA agreement, or any current or previous MCDT&A agreement involving the RTA and me, may, at the RTA's absolute discretion, be carried over and counted as a breach for the purpose of determining any penalty, suspension or any other action that may be imposed for a breach of the terms of this agreement.

#### 17. ASSIGNMENT

Except as permitted in the agreement, I cannot assign or sublicense the agreement or deal with the agreement in any other way without the RTA's prior written consent.

#### 18. DISPUTES

##### 18.1 Mediation

If a dispute arises out of the agreement or the breach, termination, suspension or invalidity of

the agreement and we cannot settle the dispute by negotiation, we agree in good faith to try to settle the dispute:

- (a) firstly, by mediation administered by a mutually acceptable review officer nominated by the RTA and if the dispute is not settled by this process, then;
- (b) secondly, by mediation administered by a mutually accepted external mediator.

## 18.2 Availability of Dispute Resolution

Either of us may resort to another dispute resolution procedure if:

- (a) the dispute has not been settled within 20 Working Days (or such other period as may be agreed in writing by us) after the appointment of the mediator referred to in clause 18.1(b); or
- (b) we cannot agree on a mutually acceptable mediator under clause 18.1(a) or 18.1(b).

## 18.3 Urgent Relief

Nothing in this clause will prevent either of us from seeking urgent equitable relief before an appropriate court.

## 19. WAIVER

- (a) No variation, modification or waiver of any provision of the agreement will be of any effect unless it is confirmed in writing signed by us and then such variation, modification, waiver or consent will be effective only to the extent for which it was made or given.
- (b) A waiver by the RTA pursuant to clause 19 (a) will not prejudice its rights in respect of any subsequent breach of the agreement by me.
- (c) Subject to clause 19.1(a), any failure by the RTA to enforce any clause of the agreement, or any forbearance, delay or indulgence granted by the RTA to me, will not be construed as a waiver of the RTA's rights under the agreement.

## 20. NOTICES

### 20.1 Method of giving Notices

All notices must be in writing and must be given by any one of the following means:

- (a) by delivering it to a party's Address;

- (b) by sending it to a party's Address by ordinary post; or

- (c) by sending it by facsimile transmission to a party's Address.

### 20.2 Time of Receipt

A notice will be deemed to be given and received:

- (a) if given in accordance with clause 20.1(a), on the working day of delivery in the place of delivery;
- (b) if given in accordance with clause 20.1(b), three clear working days after the day of posting in the place of delivery;
- (c) if given in accordance with clause 20.1(c), on the next working day after transmission in the place of delivery.

## 21. GOVERNING LAW

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

## 22. GENERAL

### 22.1 Rights of the RTA

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

### 22.2 Severability

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

### 22.3 Statutory Rights

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

### 22.4 Survival of Obligations

The covenants, conditions and provisions of the agreement which are capable of having effect after the expiration or termination of the agreement will remain in full force and effect

following the expiration or termination of the agreement.

**SCHEDULE A: DEFINITIONS  
AND INTERPRETATION****23.1 Definitions**

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

"Address" means the address specified in item 2 of the Contract Details;

"Applicant" means a person who satisfies the Application Criteria for the Licence and who requests or has engaged me to provide an Assessment;

"Application Criteria" means the application criteria specified in the Assessment Procedures;

"Assessment" means the procedure conducted by me to assess the skills and ability of the Applicant in accordance with the Assessment Procedures;

"Assessment Procedures" means the RTA's Heavy Vehicle Competency Based Assessment Procedures, a copy of which as at the date of the agreement has been provided to me;

"Assessor" means me or any employee of or sub contractor engaged by me:

- (a) to provide Assessment of Applicants as set out in item 5 of the Contract Details or as appointed in accordance with clause 6.3; and
- (b) who has agreed to be bound by the agreement;

"Auditor" means a person authorised by the RTA to audit the performance of me under the agreement;

"Authorised Description" means RTA Approved Provider of Heavy Vehicle Competency Based

"Assessment Certificates" means the certificates of competency which pursuant to clause 4.4 are issued to Applicants who successfully complete the Assessment;

"Commencement Date" means the date specified in item 3(a) of the Contract Details;

"Confidential Information" means the information described in clause 12.1(a), the Assessment Procedures, the Guide and such other material as the RTA may advise is "confidential information".

"Contract Details" means the document signed by the RTA and me referring to this document (Terms and Conditions) and which is part of the agreement;

"FCA" means the final completion assessment as specified in the Assessment Procedures;

"Guide" means the RTA's Guide to Heavy Vehicle Competency Based Assessment, a copy of which as at the date of the agreement has been provided to me;

"Initial Term" means the period specified in item 3(b) of the Contract Details;

"Insolvency Event" means:

- (a) the suspension or cessation of the my business activities;
- (b) my liquidation, insolvency or bankruptcy;
- (c) the appointment of a receiver or trustee in respect of any of my property;
- (d) the assignment of any rights or other property by me for the benefit of my creditors;
- (e) the making of any arrangements by me with its creditors; or
- (f) any other act which in the reasonable opinion of the RTA shows or tends to show that I am insolvent;

"Licence" means a licence of the type that an Applicant may apply for as specified in the Assessment Procedures;

"Log Books" means Assessor's log books and the Learner's log books as described in the Assessment Procedures;

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

"Provider" or "me" or "I" means the person whose name and address is specified in item 1 of the Contract Details and "my" has a corresponding meaning;

"RTA" means the Roads and Traffic Authority of New South Wales;

"RTA Materials" means the log books and any other materials provided to me by the RTA for the purposes of the agreement;

"Records" means the records that I am required to maintain under the agreement including as required under the Assessment Procedures and the Driving Instructors Act (NSW) 1992;

"Renewal Term" means the period specified in item 3(c) of the Contract Details;

"Provider Representative" means the person nominated in item 4(a) of the Contract Details as substituted pursuant to clause 5.2;

"Term" means the Initial Term and, subject to clause 3.2, each Renewal Term;

"Vehicles" means the vehicles as specified in clause 8.5;

"we" or "us" means the RTA and the Provider;

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

### 23.2 Interpretation

In the agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (c) a reference to gender includes all genders;
- (d) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to the agreement;
- (e) a recital, schedule, annexure or the description of the parties forms part of the agreement;
- (f) where an expression is defined, another part of speech or grammatical form has a corresponding meaning.
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, notated, supplemented or replaced from time to time; and
- (h) a reference to a statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it as at the date of the agreement and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.
- (i) headings are for convenience of reference only and do not affect interpretation.
- (j) no provision of the agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the provision or the agreement.

### 23.3 Precedence of Documents

If there is any inconsistency between the Contract Details, the Terms and Conditions and the following documents, the inconsistency will be resolved by reference to the documents in the following order of precedence:

- (a) the Contract Details;
- (b) the Terms and Conditions;
- (c) the Assessment Procedures; and
- (d) the Guide.

### 23.4 Multiple parties

If more than one person is identified in Item 1 as the Provider:

- (a) an obligation of those persons is joint and several;
- (b) a right of the Provider is held by each of those persons severally; and
- (c) any other reference to the Provider is a reference to each of those persons separately, so that, for example:
  - (i) a representation, warranty or undertaking is given by each of them separately; and
  - (ii) a reference to the Provider or that term for the purposes of an "Insolvency Event" is a reference to each of those persons separately.

INSURANCES  
(clause 14.1)

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
i	Broadform Public Liability effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$10 million for any single occurrence and unlimited in the aggregate as to the number of occurrences	From the Commencement Date for the Term	(a) lists me and all subcontractors for their respective rights, interests and liabilities as named insureds. (b) lists RTA as an additional named insured as defined in Definitions and Notes clause 2 below. (c) a cross liability and waiver of subrogation clause as defined in Definitions and Notes clause 3 below. (d) Liability arising out of the use of unregistered vehicles. (e) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below.	
ii	Motor Vehicle Comprehensive effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$5 million for any single occurrence and unlimited in the aggregate as to the number of occurrences	From the Commencement Date for the Term	(a) all plant, equipment and motor vehicles owned or used by me or any permitted subcontractors directly or indirectly engaged in performance of Assessments. (b) lists me and all permitted subcontractors for their respective rights, interests and liabilities as named insureds. (c) lists the RTA as an additional named insured as defined in Definitions and Notes clause 2 below. (d) a cross liability and waiver of subrogation clause as defined in Definitions and Notes clause 3 below. (f) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below.	
	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	COMMENTS (STATE IF INSURANCE IS NOT REQUIRED)
iii	Workers Compensation* effected with an approved insurer as defined in Definitions and Notes clause 1 below. * Workers Compensation is not required for a self provider	As per the Act	From Commencement Date for the Term	To cover all persons directly or indirectly engaged in performance of Assessments for loss, damage, claims and all direct and associated costs and expenses arising under any statute relating to workers or accident compensation or at common law.	

	as defined in Definitions and Notes clause 5 below.				
iv	Professional Indemnity effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$5 million per occurrence and in the aggregate annually	From the Commencement Date for the Term plus 7 years following termination of the agreement The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the Commencement Date	(a) a description of the risk covered by the policy (b) one automatic restatement per period of insurance (c) is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 4 below.	

## Definitions and Notes:

## 1. Approved insurer means:

- (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
- (b) Lloyd's Underwriters; or
- (c) if there is any placement of the risk overseas, a related general insurance company in Australia which is approved by the APRA and who has accepted the insurance transfer; or
- (d) in respect of NSW workers compensation insurance, an insurance company which has been granted the licence of the NSW Work Cover Authority to undertake workers compensation insurance in NSW; or
- (e) a Treasury Managed Fund insurance scheme with the NSW State Government; or
- (f) the Comcover insurance scheme for the Australian Federal Government.

## 2. RTA as an additional named insured for liability arising out of my activities. This extension includes liability::

- (a) For injury to any RTA employee;
- (b) Arising from work undertaken away from my premises;
- (c) For damage to the RTA's property not in my physical or legal control.

## 3. Cross Liability and Waiver of Subrogation Clause

Cross liability clause means the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance has been issued to each of them (subject always to the overall insured sum).

## 4. Insurances to be subject to Australian jurisdiction and law of New South Wales

All insurances held by me to provide that the insurer consents to the jurisdiction of all States and Territories of Australia and is subject to the law of New South Wales

## 5. Self Provider for the purposes of Workers Compensation

I am a self provider for the purposes of the requirement to obtain Workers Compensation insurance only if I am both the legal owner of the business as per Item 1 and the only Assessor as per Item 5. If from time to time there is more than one Assessor or an Assessor other than me, Workers Compensation insurance is required.

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ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES ("RTA")  
HVCBA SERVICE PROVIDER  
ADDITION OF ASSESSOR/S TO AGREEMENT

## ATTACHMENT A

<b>Item 1</b>	<b>Details of Provider</b> <i>Name:</i> _____ <i>Trading As:</i> _____ <i>ACN:</i> _____ <i>Address:</i> _____ <i>Phone:</i> _____ <i>Facsimile:</i> _____
<b>Item 2</b>	<b>Details of Proposed Assessor</b> <i>Full name:</i> _____ <i>Postal Address:</i> _____ <i>Phone:</i> _____ <i>Facsimile:</i> _____ <i>Assessor number:</i> _____ <i>Assessor Type:</i> _____ <i>Employee/Contractor of Provider:</i> _____
<b>Item 3</b>	<b>Proposed date that appointment will commence</b> <i>Commencement date:</i> _____

The RTA has developed, in consultation with relevant industry representatives, an Assessment process for drivers who wish to qualify for a heavy vehicle drivers licence. This document is required to be lodged by the Provider where the Provider proposes to appoint a new Assessor.

By signing this document:

- (a) the Provider acknowledges that the Provider proposes to appoint the Assessor, subject to the terms of the HVCBA Service Provider Agreement; and
- (b) the Assessor acknowledges that the Assessor agrees to be appointed by the Provider and has read, understood and agrees to be bound by the terms of the HVCBA Agreement.

<p><b>SIGNED BY THE ASSESSOR</b> in the presence of:</p>   <p>_____ Assessor (signature)</p> <p>_____ Assessor (Name printed)</p> <p>_____ Witness (signature)</p> <p>_____ Witness (Name printed)</p> <p>_____ Date:</p>	<p><b>SIGNED FOR AND ON BEHALF OF THE PROVIDER</b> by its authorised representative in the presence of:</p>   <p>_____ Authorised Representative (signature)</p> <p>_____ Authorised Representative (Name printed)</p> <p>_____ Witness (signature)</p> <p>_____ Witness (Name printed)</p> <p>_____ Date:</p>
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*ATTACHMENT B*

# **WARNING**

## **CRIMINAL CONDUCT**

### **BRIBES AND CORRUPT PRACTICES**

Most people involved in issuing and obtaining licences are honest. However, money, gifts and other favours could be offered or asked for to obtain a heavy vehicle driver's licence without passing the competency assessments.

#### **THESE PRACTICES ARE ILLEGAL**

Penalties are severe and include fines and imprisonment. All cases of corruption will be investigated and strong action will be taken against all those involved.

#### **AS A HEAVY VEHICLE ASSESSOR INSTRUCTOR YOU ARE**

- acting as an agent of the Roads and Traffic Authority in signing off the "Competency Assessment Progress" in the Heavy Vehicle Learner's Log Book
- exposed to potential bribery and corruption
- subject to similar requirements of honest and fair conduct as RTA employees
- subject to similar penalties for corrupt conduct as RTA employees and if you engage in corrupt conduct you will be placed in breach of this agreement with the RTA

All instances of corrupt conduct must be reported. If you know or believe that anyone has obtained or is about to obtain a NSW licence by offering or responding to a request for a bribe - or if you suspect or know of any corrupt practice - telephone the RTA on 1800 043 642. This is a free call.

#### **EVERYONE MUST HELP STAMP OUT CORRUPT PRACTICES**

**NSW ICAC  
EXHIBIT**

**ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES ("RTA")  
HVCBA SERVICE PROVIDER**

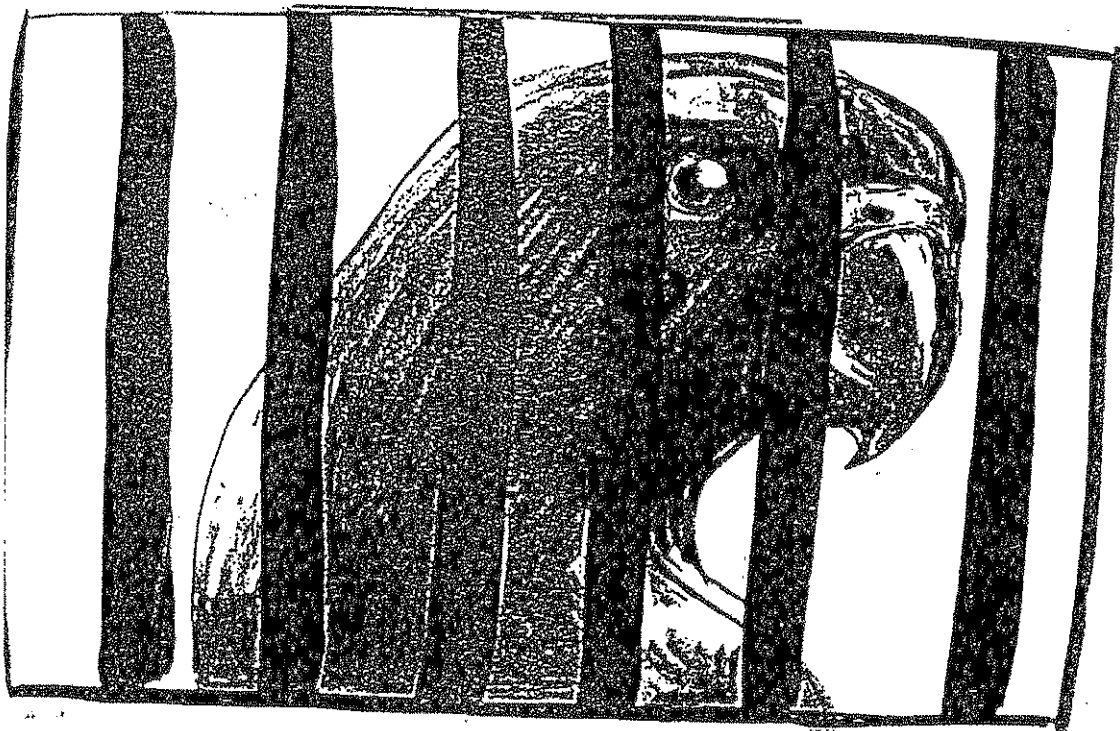
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ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES ("RTA")  
HVCBA SERVICE PROVIDER

NSW ICAC  
EXHIBIT



**Do not offer bribes.**



**It is against the law.**

**ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES ("RTA")  
HVCBA SERVICE PROVIDER**

**NSW ICAC  
EXHIBIT**

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FORM TO NOTIFY OF CHANGE OF ADDRESS FOR  
PROVIDER OR ASSESSOR

*This form is to be completed and faxed to the Driver Testing Section on (02) 9843 3820 no more than 7 days after the change of address.*

1	Provider/Assessor's Name:		
2	Provider/Assessor's: Previous Address:		Postcode:
3	Provider/Assessor's New Address:		Postcode:
4	Provider/Assessor's New Contact Numbers:	Work:	( )
		Home:	( )
		Mobile:	