

Authorised Agents and Delegates

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Terms and conditions of Deed of Agency

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Government of South Australia
Department for Infrastructure
and Transport



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Definitions

- 1.1 **the Act** means the *Motor Vehicles Act 1959*;
- 1.2 **Auditable items** means the forms, plates and other items which have been given an auditable number by the Registrar of Motor Vehicles as set out in the user manual;
- 1.3 **Authorised Agent** means the entity described as such in the Deed of Agency;
- 1.4 **Authorised Agent Representative** means the person specified as such in writing by the Authorised Agent to the Minister;
- 1.5 **Authorised Agent Account** or **AAA** means the Authorised Agency Account approved and accepted by the Minister pursuant to clause 7 of these terms and conditions;
- 1.6 **Business Day** means any day that is not a Saturday or Sunday or a public holiday in South Australia;
- 1.7 **Business Hours** means 9.00am – 5.00pm on a business day;
- 1.8 **Confidential Information** means information disclosed by or on behalf of a party to this Deed that:
- is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
 - is designated by the disclosing party as confidential or identified in terms connoting its confidentiality, but does not include information which is or becomes public knowledge other than by a breach of this Deed or information which is included in this Deed.
- 1.9 **Customer** means any person who makes a payment to the Registrar under the Act;
- 1.10 **Deed** means the Deed of Agency entered between the Minister and the Authorised Agent and includes these terms and conditions;
- 1.11 **Direct Debit Arrangement** or **DDA** means the arrangement by which the Authorised Agent authorises the Minister to debit money from the AAA in accordance with this Deed;
- 1.12 **Direct Debit Request Form** or **DDR** means a direct debit request form provided by the Minister and completed by the Authorised Agent to authorise the Minister to make direct debit from the AAA in accordance with the provisions of this Deed;
- 1.13 **Document** means any embodiment of any text or image however recorded;
- 1.14 **Delegate** means an employee or agent nominated by the Authorised Agent and advised in writing to the Registrar and approved by the Registrar to whom has delegated powers or functions pursuant to the Act;
- 1.15 **Fees** means any fees, charges or other amounts payable to the Registrar under the Act;
- 1.16 **Goods Securities Act** means the *Goods Securities Act 1986*;
- 1.17 **Insolvency Administration** in relation to the Authorised Agent means:
- an administrator is appointed to the Authorised Agent or action is taken to make such an appointment;
 - the Authorised Agent resolves to be wound up;

- an application is made to a court for an order or an order is made that the Authorised Agency be wound up (whether on grounds of insolvency or otherwise);
- the Authorised Agent ceases to carry on business;
- a receiver or a receiver and manager of property of the Authorised Agent is appointed whether by a court or otherwise;
- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Authorised Agent or one of them is appointed, whether or not under an order;
- the Authorised Agent enters into a compromise or arrangement with its creditors or a class of them; or
- the Authorised Agent is or states that it is unable to pay its debts when they fall due.

1.18 **Insolvency Administration** in relation to a Delegate means:

- the Delegate has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the Delegate is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the Delegate's estate;
- a creditors' petition has been presented against the Delegate;
- the Delegate has presented to the official receiver a declaration of intention to present a debtor's petition;
- the Delegate becomes a bankrupt;
- a meeting of creditors of the Delegate is convened; or
- the Delegate lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs.

1.19 **Minister** means the Minister for Infrastructure and Transport, a body corporate pursuant to the *Administrative Arrangements Act 1994*;

1.20 **Password** means a unique password used by the Delegate;

1.21 **the Registrar** means the Registrar of Motor Vehicles;

1.22 **Source Documents** means any application for registration, special plates and any other document which provides information necessary to perform a transaction;

1.23 **Terms and Conditions of Deed of Agency** means these terms and conditions;

1.24 **Database** means the service made available by the minister at www.service.sa.gov.au that enables the Authorised Agency and/or Delegate to process transactions;

1.25 **Transaction** means one of the various transactions under the Act or the Goods Securities Act, which may or may not require the payment of money by a customer, in relation to which the Delegate has been delegated the power or function to perform pursuant to the Act and for which the Authorised Agent has been appointed to collect fees in relation to this Deed;

1.26 **User Id** means the unique identification given to a Delegate by the Registrar to be used by the Delegate in accordance with the user manual and these terms and conditions;

1.27 **User Manual** means the manual approved by the Registrar and published on the database and subject to variation at the Registrar's absolute discretion.

Interpretation

In these terms and conditions, unless a contrary intention is evident:

- 2.1 a reference to this Deed is a reference to this Deed as amended, varied, novated or substituted;
- 2.2 words denoting individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
- 2.3 a reference to a party includes that party's administrators, successors and permitted assigns;
- 2.4 if any act pursuant to this Deed would otherwise be required to be done on a day which is not a business day then that act may be done on the next business day;
- 2.5 a reference to two or more persons is a reference to those persons jointly and severally;
- 2.6 the clause headings are for convenient reference only and they do not form part of this Deed;
- 2.7 the word "or" is not exclusive.

Term

- 3.1 The term of this Deed commences upon the date this Deed is executed by the parties and expires on the date upon which the Minister serves notice of termination on the Authorised Agent pursuant to these terms and conditions (the term).

Contract administration

- 4.1 The Minister appoints the Registrar as his representative.
- 4.2 The Registrar has authority to exercise all of the powers and functions of the Minister under this Deed.
- 4.3 The Authorised Agent must comply with the reasonable instructions given by the Registrar.

Access to system

- 5.1 Access to the database by the Authorised Agent and/or the Delegate is conditional upon compliance by the Authorised Agent with these terms and conditions and upon acceptance and compliance by the Authorised Agent and/or Delegate with the terms and conditions of use of, and notices and disclaimers contained on, the database.
- 5.2 You should install anti-virus software to protect your computer against malicious software and ensure you keep it updated. You should regularly scan your software for viruses.
- 5.3 It is recommended that:
 - your firewall is kept enabled

- your operating system, browser and software updates are kept up to date with software fixes (also known as “patches” or “security updates”)
- your antivirus software is kept up to date
- your antispyware technology is kept up to date

5.4 Access to the system from a place other than the place of employment is strictly prohibited. Under no circumstances is the system to be accessed under Working from Home arrangements.

Authorised agent may collect money payable to the Registrar

- 6.1 The Authorised Agent may accept payment of fees from customers for transactions during the term.
- 6.2 Payments may be accepted at any time, whether within ordinary business hours or not.
- 6.3 The Authorised Agent must produce to the customer a receipt for the amount received from the customer for any payment by the customer for a transaction.
- 6.4 If the Authorised Agent accepts a payment from a customer in full or part payment of a fee and that payment is dishonoured, lost, misplaced or stolen or is not met by the relevant financial institution, then the costs and fees associated with the dishonoured or misplaced or stolen payment, or failure by the financial institution to meet the payment, must be borne by the Authorised Agent.
- 6.5 The Authorised Agent must keep sufficient details in relation to a payment by a customer of the amount payable to the Registrar to identify the customer and the transaction to which that payment is related.

Transactions

- 7.1 The Authorised Agent may perform transactions electronically by accessing the database.
- 7.2 If the Authorised Agent elects to perform transactions electronically by accessing the database, and elects to pay for the transactions using **DDA**, then the provisions of clauses 8, 9 and 10 of this agreement apply.

Direct debit

- 8.1 The Minister may on ten (10) business days written notice, change the **DDA**.
- 8.2 The Authorised Agent:
- must prior to the commencement of this Deed, provide to the Minister a completed **DDR**.
 - may, provided that a new **DDR** has been completed by the Authorised Agent to the satisfaction of the Minister, and with the prior written consent of the Minister, which consent may be refused or be subject to conditions, change the **AAA**.
 - must ensure that it has sufficient funds available at all times in the **AAA** to meet the value of the transactions processed by the Authorised Agent.
 - may cancel the direct debit authorisation upon five (5) business days written notice to the Minister.

- 8.3 Access to use the database will not be granted until the **AAA** is nominated by the Authorised Agent for the purpose of payment of fees by direct debit and the necessary details are provided in writing to the Minister for direct debiting to occur.
- 8.4 The Authorised Agent must notify the Registrar immediately in writing if any of its banking/account details change in relation to **AAA**.

Dispute resolution in relation to Direct Debit

- 9.1 The Authorised Agent must direct all queries, request for cancellation of a **DDA**, requests to stop individual debit items and disputed debit items to the Minister in writing together with full written details to the address specified in the DDR.

Transfer of funds

- 10.1 The Authorised Agent must pay by way of direct debit from the **AAA** to the Minister, each day during the term, an amount equal to the value of the transactions in respect of which the Authorised Agent has collected fees, processed by the Authorised Agent on that day.
- 10.2 The Authorised Agent authorises the Minister to remove by way of direct debit from the **AAA** the total amount of the fees in relation to the transactions processed that day.
- 10.3 The Authorised Agent must pay to the Minister any fees associated with the failure of the Authorised Agent to have sufficient funds available in the **AAA** at the time when a direct debit is attempted to be processed by the Minister.
- 10.4 If the whole of the amount due to the Registrar under this clause 10 is not paid to the Minister in accordance with this clause, then:
- the amount not debited or paid to the Minister together with any fees associated with that dishonour is due as a debt to the Minister;
 - the Authorised Agent's rights to collect any money on behalf of the Registrar are immediately terminated upon that dishonour; and
 - any delegation or authorisation from the Registrar to the Delegate is immediately revoked.

Confidentiality of data

- 11.1 The Authorised Agent must keep, and must ensure that the Delegate keeps, all confidential information of the Registrar or Minister and any information provided by any person to the Delegate or the Authorised Agent for the purpose of processing a transaction, confidential.
- 11.2 If a Delegate ceases to be an employee or agent of the Authorised Agent, or it is no longer necessary for that person to have access to the confidential information for the purpose of processing transactions, the Authorised Agent must immediately retrieve all confidential information held by the Delegate.
- 11.3 The Authorised Agent must promptly cease to use or cease to allow a Delegate to use all confidential information held by the Authorised Agent and the Delegate immediately upon the

Authorised Agent receiving a notice to that effect from the Minister or the confidential information is no longer required by the Authorised Agent for the purpose of processing transactions.

- 11.4 The Authorised Agent must ensure that the confidential information is stored in such a manner that access is restricted to the Authorised Agent and the Delegate, and is clearly identified and marked as “CONFIDENTIAL”.
- 11.5 The Authorised Agent must maintain complete, accurate and up-to-date records of all use, copying (including the number of copies made and destroyed or erased), and disclosure of the confidential information, and must immediately produce those records to the Registrar upon request.

Ownership of data, information

- 12.1 The Crown in right of the State of South Australia owns all source documents and auditable items provided to the Authorised Agent and/or Delegate for the purpose of processing a transaction.
- 12.2 The Authorised Agent must:
 - keep a record of the sale (i.e. bill of sale) that includes customer and vehicle details;
 - keep all source documents confidential;
 - in the case of Agents contracted by agreement (i.e. Service Agents and Commissioned Agents), forward all source documents to the Registrar at the end of each month during the term.
 - in the case of a Motor Vehicle Dealer, retain all source documents in a safe place to the satisfaction of the Minister for a period of at least two (2) years; and
 - confidentially destroy all source documents after the above stated period.
- 12.4 The Authorised Agent must return all source documents and auditable items to the Registrar forthwith upon expiry or earlier termination of the Deed or upon demand.

Duty to keep identification for use of system secure and confidential

- 13.1 The Authorised Agent must ensure that the Delegate keeps the Delegate’s User Id and Password and any other identifying information confidential and must not disclose the same to any other person.
- 13.2 The Minister may change the User Id and Password from time to time.
- 13.3 Only the natural persons nominated as the Delegate by the Authorised Agent and approved by the Registrar are authorised to have access to the database for the purpose of processing transactions.
- 13.4 The Authorised Agent is fully responsible for all activities that occur when the Delegate uses the User Id and Password to access the database and if and when any other person uses the User Id of the Delegate to access the database.

13.5 The Authorised Agent agrees to:

- immediately notify the Registrar of any unauthorised use of the Delegate's User Id or password and /or the password of persons authorised by the Authorised Agent to have access to the database or any other breach of security;
- ensure that the Delegate's User Id and/or password is not disclosed to any person other than persons authorised to have access to the database under this Deed;
- ensure that the password of any person authorised to have access to the database is not disclosed to any person;
- ensure that the Delegate and/or persons authorised by the Authorised Agent exit from the database at the end of each session; and
- advise the Registrar when a person nominated by the Authorised Agent or the Delegate does not require further access to the database.

Disclaimer

The Minister is not liable for:

- any losses resulting from transactions which are undertaken by the Authorised Agent and/or any persons authorised by the Authorised Agent;
- any failure or delay of the Minister or the Registrar and /or the database to provide information or perform operations as requested;
- any consequential loss or damage suffered as a result of using the database; or
- the unavailability of the database and events beyond the control of the Minister.

Consent to security checks

15.1 Prior to employing or engaging any person who it is intended will process transactions, the Authorised Agent shall provide to the Minister the following written items and information:

- a Deed in relation to confidentiality in a form specified by the Minister;
- a police record report;
- a consent to obtain personal particulars in relation to credit information;
- information that confirms that any person who processes transactions for or on behalf of the Authorised Agent, the Delegate, or any director of the Authorised Agent:
 - is an undischarged bankrupt or has been subject to any form of Insolvency Administration during the immediately preceding five (5) years;
 - has been suspended or disqualified from practicing or carrying on an occupation, trade or business under a law of this State or any other State;

- has during the immediately preceding five (5) years been a director of a body corporate subject to any form of Insolvency Administration;
 - has been charged with any criminal offence relating to fraud or dishonesty.
- 15.2 The Authorised Agent hereby consents and agrees to obtain the consent of any person employed or engaged in the processing of transactions to obtain personal particulars in relation to a police record and any other information including credit information during the term.
- 15.3 The Authorised Agent shall advise the Minister of any change in the information supplied to or obtained by the Minister pursuant to this clause 15.
- 15.4 The Authorised Agent shall pay to the Minister the cost of anything or item which belongs to the Registrar or the Minister which is lost or stolen by any employee or agent of the Authorised Agent.
- 15.5 The Minister may, without providing to the Authorised Agent any reasons for such opinion or decision, advise the Authorised Agent if the Minister considers that any person in the employ of the Authorised Agent for the purpose of processing the transactions is in the Minister's opinion unsuitable to do so, and the Authorised Agent shall not employ such person for the purpose of processing the transactions.

Notice of change

- 16.1 The Authorised Agent must notify the Registrar in writing within fourteen (14) days providing full details of any change in any of the following:
- registered office of the Authorised Agent
 - registered name or business name of the Authorised Agent
 - principal place of business of the Authorised Agent
 - name or names under which the Authorised Agent carries on business; and
 - ownership, either beneficial or legal of a majority of the issued shares of the Authorised Agent (if applicable).

Employment with authorised agent

- 17.1 If during the term, the Authorised Agent becomes aware, or should reasonably have become aware, of any matter which would affect the Registrar's decision to delegate his powers and/or functions to the Delegate, the Authorised Agent must immediately notify the Registrar in writing of the nature of the matter.
- 17.2 The Authorised Agent must immediately notify the Registrar in writing:
- if the Delegate acts improperly in relation to the source documents, the Auditable Items or breaches its confidentiality obligations;
 - if the Delegate ceases to be employed or engaged by the Authorised Agent.

Comply with the user manual

- 18.1 The Authorised Agent must at all times comply with, and ensure that the Delegate complies with, the user manual.
- 18.2 The Authorised Agent must ensure that the Delegate is able to support every transaction and attempted transaction by reference to a source document.

Termination

- 19.1 The Minister may terminate this Deed at any time in his absolute discretion without notice.
- 19.2 The Authorised Agent may terminate this Deed upon five (5) business days written notice to the Minister.
- 19.3 **Preservation of Remedies**
Termination of this Deed does not affect any accrued right or liability of either party nor will it affect the coming into force or the continuation in force of any provision of this Deed that is expressly or by implication intended to come into force or continue in force on or after the termination.

Survival of clauses

- 20.1 The terms and conditions of this Deed which are capable of having effect after the expiration of the agreement shall remain in full force and effect following the expiration of this Deed.

Audit

- 21.1 Nothing in this Deed derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987 (South Australia)*.
- 21.2 The Authorised Agent hereby grants a licence to the Minister, his agents and employees to enter onto the Authorised Agent's premises to inspect the same and any records, source documents, auditable items, books or other material on the site and remove the same.
- 21.3 The Authorised Agent must immediately notify the Minister if any source document or auditable item has become lost or destroyed.

Assignment

- 22.1 The Authorised Agent must not assign its rights or sub-contract its obligations under this Deed.

Entire Deed

- 23.1 This Deed contains the entire Deed between the parties with respect to its subject matter and supersedes any prior Deed, understanding or representation of the parties on the subject matter.
- 23.2 Any modification to this Deed must be in writing and signed by each party.

Privacy

- 24.1 The Minister will use all reasonable endeavours to protect the privacy of any personal information supplied by the Authorised Agent. Some information may be given to financial institutions involved in the event of a dispute in relation to a direct debit, or to verify that the Minister has received a **DDR** from the Authorised Agent. Some information supplied by the Authorised Agent may be stored by the Minister.

Proper law and jurisdiction

- 25.1 The laws in force in South Australia, including laws with respect to capacity to contract and the manner of performance, apply to this Deed.
- 25.2 The courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this Deed.
- 25.3 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.
- 25.4 The Authorised Agent must comply with the laws in force in South Australia in the course of performing this Deed.

Notices

- 26.1 A **notice** means:
- a notice in writing; or
 - a consent, approval or other communication required to be in writing under this Deed.
- 26.2 A notice must be signed by or on behalf of the sender addressed to the recipient and:
- delivered to the recipient's address; or
 - sent by pre-paid mail to the recipient's address; or
 - transmitted by facsimile to the recipient's address; or
 - sent by email to the recipient's email address.

26.3 A notice given to a person in accordance with this clause is treated as having been given and received:

- on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
- if sent by pre-paid mail, on the third Business Day after posting; or
- if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission: on that day if the report states that transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day, provided that:
 - if the recipient receives by facsimile transmission a notice that is illegible, the recipient must notify the sender immediately and the sender must continue to retransmit the notice until the recipient confirms that it has received a legible notice. The rules in relation to transmission reports as stated above apply.
- if sent by email, upon receipt by the sender of confirmation that the message has been delivered.

26.4 The address and facsimile number and email address of a person are those notified to the other party in writing.

Waiver

27.1 Any waiver of any provision of this Deed is ineffective unless it is in writing and signed by the party waiving its rights.

27.2 A waiver by either party in respect of a breach of a provision of this Deed by the other party is not a waiver in respect of any other breach of that or any other provision.

27.3 The failure of either party to enforce at any time any of the provisions of this Deed must not be interpreted as a waiver of that provision.

Severance

28.1 Each word, phrase, sentence, paragraph and clause of this Deed is severable.

28.2 If a court determines that a part of this Deed is unenforceable, invalid, illegal or void that court may sever that part.

28.3 Severance of a part of this Deed will not affect any other part of this Deed.

Contact

Delegate Support Helpdesk

Service SA, Department for Infrastructure and Transport

Phone: 1300 399 692

Email: delegatesupport@sa.gov.au

www.service.sa.gov.au