

Maritime Dealer Vessel Registration Scheme Agreement (MDVRS)

(Version: February 2024)

Transport for NSW (TfNSW)

[Insert full name of Dealer including any ACN] (**Dealer**)

Parties

TfNSW	Name	Transport for NSW
	ABN	18 804 239 602
	Address	231 Elizabeth Street, Sydney NSW 2000
	TfNSW Representative	Sian Nivison- Delegate
Dealer	Name	
	ABN	
	ACN	
	Address	
	Dealer Representative	

Executed as an agreement:

SIGNED by the authorised delegate of
TRANSPORT FOR NSW in
the presence of:

Signature of Authorised Delegate

Witness' Signature

Name & Title/Position

Print Witness' Name

Date

- If checked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW), and the witness affixed their electronic signature to a counterpart of this document.
- If checked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

A. Standard Execution - Dealer is a normal company:

SIGNED by.....
[insert company name]
.....

in accordance with s.127(1) of the
Corporations Act 2001 (Cth) by
authority of its directors:

Signature of 1st Director

Signature of *2nd Director/*Company
Secretary [** delete whichever title doesn't apply*]

Print Name

Print Name

Date

B. Special Execution - Dealer is a sole director company:

SIGNED by

[insert company name]

.....
in accordance with s.127 of the Corporations Act 2001 (Cth) by its sole Director and Company Secretary who hereby states that he/she occupies both those two offices and that there is no other person holding the position of director or secretary:

Signature of Officer who is both sole Director and sole Company Secretary

Witness' Signature

Print Name

Print Witness' Name

Date

- If checked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW), and the witness affixed their electronic signature to a counterpart of this document.
- If checked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

C. Dealer is a sole trader:

SIGNED by

[insert name of sole proprietor of business]

Signature of Sole Trader Proprietor

in the presence of:

Witness' Signature

Name

Print Witness' Name

Date

- If checked, the witness confirms that they witnessed the signatory sign this document over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW), and the witness affixed their electronic signature to a counterpart of this document.
- If checked, the witness confirms that they witnessed the signatory sign this document in the physical presence of the witness, and the witness affixed their signature to either the same or a counterpart copy of this document.

counterpart copy of this document.

Table of contents

<i>Clause</i>		<i>Page</i>
1	Definitions and interpretation	7
1.1	Definitions	7
1.2	Interpretation	9
1.3	Priority of documents	9
2	Termination of any Existing Agreement	10
3	Authorisation	10
3.1	Authorisation	10
3.2	Acceptance of delegation	10
4	Scope of Dealer's authority	10
5	Performance of Authorised Transactions	11
6	Notification of changes and breaches	11
7	Financial accounting	12
7.1	Fees	12
7.2	Costs	12
7.3	Receipt of Fees	12
7.4	Errors and discrepancies	12
8	Control management	13
8.1	Full and accurate records	13
8.2	TfNSW audits	13
8.3	Independent audits	14
8.4	Lodging and accuracy of data	14
9	Engagement and management of Authorised Services Officers	15
10	Premises	16
11	Conflict of interest	16
12	Intellectual property rights	17
13	TfNSW Materials	17
14	Liability	17
14.1	Liability of TfNSW	17
14.2	Remedies	18
14.3	Dealer's indemnity	18
14.4	Dealer's warranty	19
15	Insurance	19
16	Term	20
17	Termination	20
17.1	Termination without cause by either party	20
17.2	Termination by TfNSW	20
17.3	Notice	21
17.4	Effect of termination	21

17.5	Consequences of termination	21
18	Confidentiality requirements	22
18.1	Protection of Confidential Information	22
18.2	Media releases and enquiries	22
18.3	Return or destruction of Confidential Information	22
19	Privacy obligations	23
20	Dispute resolution	24
21	Administrative matters	24
21.1	Notices	24
21.2	Variation to Agreement	25
21.3	Assignment of rights and obligations	25
21.4	Governing law	25
21.5	Non-waiver of rights	25
21.6	Limits to relationship	25
21.7	Severability of Agreement	25
21.8	Entire agreement	25
21.9	Survival	25
21.10	Approvals and consent	26
21.11	TfNSW powers	26
21.12	Administrative law	26
	Schedule 1 – Agreement Details	27
	Schedule 2 – Sub-delegation instrument	29
	Schedule 3 – Insurance	30
	Schedule 4 – Certificates of Currency	31
	Schedule 5 – Dealer Errors – Action Plan Process	32
	Schedule 6 – Authorised Transactions	33

MDVRS AGREEMENT

Background

- A. Transport for NSW (**TfNSW**) has established a scheme known as the Maritime Dealer Vessel Registration Scheme (**MDVRS**).
- B. Under that scheme TfNSW enables Dealers to carry out certain vessel registration functions and permits persons under the appropriate delegation (Authorised Services Officers) to perform the registration related Authorised Transactions referred to in Schedule 6 for New Vessels.
- C. In accordance with the How to Become an Authorised Dealer Document TfNSW requires that Dealers have their marine dealer business located within Australia and that they are engaged in the sale of New Vessels.
- D. Under section 31 of the *Transport Administration Act 1988* (NSW) and clause 20(1)(e) of the *Transport Administration (General) Regulation 2018* (NSW), TfNSW may delegate the functions related to the registration of vessels to persons with whom TfNSW has entered into an MDVRS agreement.
- E. This agreement is an “MDVRS agreement” for the purposes of clause 20(2) of the *Transport Administration (General) Regulation 2018* (NSW) between TfNSW and the Dealer.
- F. In consideration of TfNSW delegating certain vessel registration functions to Authorised Services Officers, the Dealer agrees to comply with the terms and conditions set out in this Agreement.

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means the terms and conditions of this agreement including the schedules to this agreement.

Anniversary Date means each anniversary of the Commencement Date.

Application Form means the application form submitted by the Dealer to TfNSW for authorisation to provide the Authorised Transactions.

Authorised Services Officer means an employee of the Dealer (including, the Dealer’s Representative) who has been authorised by TfNSW under clause 9(a).

Authorised Transaction has the meaning given in Schedule 6.

Business Day means any day other than a Saturday, Sunday, public or bank holiday in New South Wales.

Commencement Date means the commencement date listed in Item 3 of Schedule 1, and if no date is stated then on the later of the dates that it is executed by TfNSW and the Dealer.

Confidential Information means any information, including the TfNSW Materials,

disclosed by TfNSW (whether the information is oral or in writing) or obtained or created by the Dealer pursuant to or in connection with this Agreement or from information provided by TfNSW or by a customer to TfNSW, Personal Information and information concerning the practices, business dealings or affairs of TfNSW or its customers.

Consumer Guarantee means a consumer guarantee applicable to this Agreement under the Australian Consumer Law (being Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the Australian Consumer Law (New South Wales) or any other state as applicable).

Dealer means the entity whose details are provided in Item 1 of Schedule 1.

Dealer's Representative is the person whose details are set out in Item 6 of Schedule 1 or as otherwise notified to TfNSW under clause 6(a).

Fees means:

- (a) registration fees in amounts as directed by TfNSW from time to time; and
- (b) any other fees, taxes, duties or any other amounts which TfNSW directs the Dealer to collect from time to time.

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, Minister, commission, authority, tribunal, agency or entity in any part of the world.

How to Become an Authorised Dealer Document means the 'Maritime Dealer Vessel Registration Scheme: How to become an Authorised Dealer' document provided by TfNSW to the Dealer and includes any amendments or supplements to, or replacements of that document which TfNSW may make from time to time.

Intellectual Property Rights means all intellectual property rights or other proprietary rights including copyright, design rights, registered designs, rights in databases, trademarks (registered or unregistered) and rights to apply for registration of any of the foregoing anywhere in the world.

Law means any law, regulation, government policy or ministerial direction.

Loss means any costs, actions, demands, suits, claims, expenses (including legal costs or expenses), proceedings, damages, loss (whether direct, indirect or consequential) or loss of profits suffered or incurred by a party.

Maritime Dealer Guide means the 'Maritime Dealer Vessel Registration Scheme: Dealer Guide' available online at: [Dealer Guide](#) as updated by TfNSW from time to time.

New Vessel means a Vessel which:

- a) has not been used as a Vessel other than as necessary for manufacture and pre-delivery service; and
- b) has not previously been registered in NSW or elsewhere.

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

Personnel means employees, officers, secondees, contractors and agents of the Dealer.

Premises means the Dealer's premises for conducting the Authorised Transactions as listed in Item 2 of Schedule 1.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth), any applicable codes of conduct or directions

issued under the *Privacy and Personal Information Protection Act 1998* (NSW) or the *Privacy Act 1988* (Cth), and all other applicable Laws relating to Personal Information.

Purpose means submitting vessel information to TfNSW and receiving information from TfNSW as contemplated by this Agreement.

SNSW means Service NSW, ABN 37 552 837 401 of GPO Box 7057 Sydney NSW 2001.

Statement of Business Ethics means the TfNSW Statement of Business Ethics published by TfNSW on its website (as amended from time to time). A copy is downloadable at

https://www.transport.nsw.gov.au/system/files/media/documents/2022/statement-of-business-ethics_0.pdf

TfNSW means Transport for NSW, ABN 18 804 239 602, of 231 Elizabeth Street, Sydney NSW 2000.

TfNSW Materials means any materials and documentation provided by TfNSW to the Dealer to perform the Authorised Transactions.

Use includes access, amend, update, add to, reproduce, process or otherwise deal with.

Vessel means a recreational vessel as defined in the *Marine Safety Act 1998* (NSW) which is required to be registered under that Act.

1.2 Interpretation

- (a) The clause headings and subheadings in this Agreement do not form part of this Agreement and will not be used in its interpretation.
- (b) In this Agreement:
 - (1) a reference to a party includes its employees, officers, contractors and subcontractors;
 - (2) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Governmental Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (3) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
 - (4) a reference to a party includes that party's successors and assigns;
 - (5) a reference to an agreement other than this Agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing; and
 - (6) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind.
- (c) "Includes" or "for example" or similar expressions are not words of limitation.

1.3 Priority of documents

If there is any inconsistency between this Agreement, the How to Become an Authorised Dealer Document, the Maritime Dealer Guide or any TfNSW Materials,

they will, to the extent of any inconsistency, take effect in the following descending order of priority:

- (a) Item 8 of Schedule 1 (if applicable);
- (b) this Agreement;
- (c) the How to Become an Authorised Dealer Document;
- (d) the Maritime Dealer Guide; and
- (e) TfNSW Materials, with the most recent TfNSW Materials taking precedence.

2 Termination of any Existing Agreement

- (a) The parties acknowledge that any existing or previous agreement concerning the same subject matter terminates automatically on the Commencement Date without need for any further action.
- (b) Termination of the existing or previous agreement is without prejudice to accrued rights or liabilities of either party under the existing or previous agreement.

3 Authorisation

3.1 Authorisation

TfNSW permits Authorised Services Officers to perform Authorised Transactions as sub-delegates of TfNSW pursuant to section 31(2) of the *Transport Administration Act 1988* (NSW) and clause 20(1)(e) of the *Transport Administration (General) Regulation 2018* on the terms and conditions set out in this Agreement. The instrument of sub-delegation for the Dealer's Authorised Services Officers will be in the form set out at Schedule 2 in this Agreement.

3.2 Acceptance of delegation

In consideration of TfNSW delegating certain vessel registration functions to Authorised Services Officers, the Dealer agrees to comply with the terms and conditions set out in this Agreement.

4 Scope of Dealer's authority

- (a) The Dealer must not act outside the scope of the authority conferred by this Agreement.
- (b) The Dealer must not bind TfNSW in any way or hold itself out as having any authority to do so except to the extent authorised by this Agreement. Except as specifically permitted by this Agreement, the Dealer is not authorised to assume or create any obligations on behalf of TfNSW and the Dealer must not incur any liability on behalf of TfNSW or in any way pledge or purport to pledge TfNSW's credit.
- (c) The authority of the Dealer is limited to lawful acts required to perform or facilitate the vessel registration functions set out in in this Agreement, the How to Become an Authorised Dealer Document, the Maritime Dealer Guide or any TfNSW Materials.

- (d) The Dealer must not do anything which might adversely affect the reputation of TfNSW.
- (e) The Dealer acknowledges that:
 - (1) it is not the exclusive supplier of the Authorised Transactions; and
 - (2) TfNSW does not guarantee any minimum quantity of Authorised Transactions under this Agreement.

5 Performance of Authorised Transactions

- (a) Authorised Services Officers must perform the Authorised Transactions:
 - (1) diligently, accurately, competently, ethically, and honestly;
 - (2) to the standard of skill and care expected of an Authorised Services Officer experienced in the provision of the type of transactions specified in this Agreement;
 - (3) in a timely and expeditious manner so as to meet any specific requirements made known to the Dealer by TfNSW from time to time;
 - (4) in accordance with this Agreement;
 - (5) in accordance with the Maritime Dealer Guide;
 - (6) in accordance with TfNSW Materials;
 - (7) in accordance with the Statement of Business Ethics;
 - (8) in accordance with any other guidelines or directions issued by TfNSW; and
 - (9) in compliance with all Laws.
- (b) The Dealer must not subcontract the whole or any part of the performance of the Authorised Transactions.
- (c) The Dealer must regularly review the TfNSW website, and any TfNSW extranet to which the Dealer is given access, for updates to the Maritime Dealer Guide, How to Become an Authorised Dealer Document and Statement of Business Ethics or any other guidelines or directions issued by TfNSW from time to time.

6 Notification of changes and breaches

The Dealer must notify TfNSW:

- (a) of any change to the Dealer's Representative at least five Business Days before the change is implemented;
- (b) immediately, of any breach of this Agreement by the Dealer and advise of the action taken to remedy the breach;
- (c) immediately, if it becomes aware of any inaccuracy, incompleteness or change in the information in its Application Form, Schedule 1 or Schedule 2;
- (d) immediately, if it becomes aware of any suspected, alleged or actual corrupt or fraudulent conduct (including fraud by customers or Authorised

- Services Officers);
- (e) immediately,
 - (1) if any persons who between them beneficially own, at the date of this Agreement, more than 50% of the ordinary shares or other voting or economic interests in the Dealer, cease to hold or control more than 50% of such ordinary shares or other voting or economic interests; or
 - (2) if the Dealer is a partnership, of any change in the composition of the partnership; and
 - (f) immediately, if it ceases to meet the eligibility criteria set out in the Maritime Dealer Guide and How to Become an Authorised Dealer Document; and
 - (g) immediately of the name of any Authorised Services Officers listed in Schedule 2 who ceases to provide the Authorised Transactions for the Dealer.

7 Financial accounting

7.1 Fees

- (a) The Dealer acknowledges that Fees are received solely for and on behalf of TfNSW.
- (b) The Dealer must, in accordance with the Maritime Dealer Guide and the terms of this Agreement:
 - (1) receive Fees as agent for TfNSW;
 - (2) hold Fees received on trust for TfNSW;
 - (3) separately account for Fees received for TfNSW; and
 - (4) remit Fees received for TfNSW to TfNSW in accordance with the requirements of the Maritime Dealer Guide, Item 8 of Schedule 1 and clause 7.3.

7.2 Costs

- (a) Subject to clause 7.2(b), the Dealer is responsible for all costs incurred by it in performing its obligations under this Agreement.
- (b) TfNSW is responsible for any costs incurred by TfNSW in producing TfNSW Materials and providing them to the Dealer under this Agreement.

7.3 Receipt of Fees

Authorised Services Officers must issue a stamped Tax Invoice in accordance with GST Law to any person from whom payment is accepted on behalf of TfNSW.

7.4 Errors and discrepancies

If TfNSW detects any error or discrepancy in any of the Fees or documentation forwarded to it by the Dealer under clause 7.1(b)(4), it will notify the Dealer, and the Dealer must correct any such error or discrepancy within one Business Day.

8 Control management

8.1 Full and accurate records

- (a) The Dealer must create and maintain full and accurate records, including copies of all original documents as set out in the Maritime Dealer Guide, of the Authorised Transactions performed. Nothing in this clause precludes Authorised Services Officers from retaining copies of the documents required to perform Authorised Transactions as set out in the Maritime Dealer Guide.
- (b) Without limiting clause 8.1(d), the Dealer must maintain all records that:
 - (1) are reasonably required for the purposes of an audit or inspection referred to in clause 8.2; or
 - (2) are required by any relevant Law of which the Dealer is or should be aware.
- (c) The Dealer must ensure that all records maintained under clauses 8.1(a) and 8.1(b) are maintained in its custody and control and in an accessible and secure form and for the period that either the Dealer or TfNSW (whichever is the longer) is required by Law to retain them.
- (d) The Dealer must provide TfNSW with the records referred to in clauses 8.1(a) and 8.1(b) at TfNSW's request.

8.2 TfNSW audits

- (a) The Dealer must, on at least 24 hours' notice, provide TfNSW (or TfNSW's representative) free and unfettered access during the Dealer's usual business hours to:
 - (1) the resources, Authorised Services Officers, Premises and facilities used by the Dealer in connection with the supply of Authorised Transactions; and
 - (2) financial and operational records and other documentation including records maintained under clauses 8.1(a) and 8.1(b) relating to the provision of Authorised Transactions in the possession, custody or control of the Dealer,
 - (3) for the purpose of TfNSW assessing the Dealer's compliance with any Laws, any audit requirements or its obligations under this Agreement.
- (b) TfNSW or its representatives may inspect and take copies of any such records.
- (c) If the Dealer is not legally able to provide TfNSW with access to all of its Premises and facilities because of restrictions imposed by Law, a representative of the Dealer must, within the time notified by TfNSW, meet with TfNSW and provide TfNSW with satisfactory evidence of the Dealer's compliance with its obligations under this Agreement.
- (d) The Dealer must co-operate fully, and must ensure that all Authorised Services Officers co-operate fully, in any inspection including by answering all reasonable requisitions of TfNSW or its representative.
- (e) If an inspection reveals that the Dealer is not complying with any relevant

Law, any audit requirement or otherwise with this Agreement, the Dealer must promptly take such action as is necessary to remedy the non-compliance.

8.3 Independent audits

- (a) The Dealer must at its cost conduct annual audits (using a licensed financial auditor) for the purposes of auditing compliance with its obligations under this Agreement.
- (b) On the date specified in Item 4 of Schedule 1 each year during the term of this Agreement, the Dealer must provide to TfNSW a certification by the auditor referred to in clause 8.3(a) as to the following:
 - (1) that the Dealer has complied with all of the Dealer's obligations under this Agreement; or
 - (2) if the Dealer has failed to comply with all of the Dealer's obligations under this Agreement:
 - (A) details of any such failure;
 - (B) details of the steps undertaken by the Dealer to rectify and prevent the recurrence of any such failure; and
 - (C) that the Dealer has complied with the remainder of the Dealer's obligations under this Agreement.
- (c) The Dealer must ensure its independent auditor retains sufficient records so as to be able to justify its audit and certification if required.
- (d) Each party must bear its own respective costs associated with audits undertaken pursuant to clauses 8.2 and 8.3.

8.4 Lodging and accuracy of data

- (a) The Dealer must:
 - (1) ensure that all forms and/or other documents required under the Maritime Dealer Guide are correctly completed; and
 - (2) ensure that Authorised Services Officers forward the forms and/or other documents to TfNSW in accordance with Item 5 of Schedule 1 and the Maritime Dealer Guide.
- (b) The Dealer must notify TfNSW within one Business Day of it becoming aware of any inaccuracy in forms, documents or other data it has supplied to TfNSW.
- (c) If an Authorised Services Officer supplies incorrect forms, documents or other data then the Dealer must correct the forms, documents or other data at its own expense, within one Business Day or such longer period as directed by TfNSW.
- (d) It is an essential condition of this Agreement that Dealers ensure that all forms and other documents be completed by an Authorised Services Officer with at least 95% accuracy rates at all times and 100% accuracy in respect of customer identification.
- (e) Where the Authorised Services Officer fails to meet an accuracy rate as required by this clause then TfNSW may in its discretion follow the "Dealer Errors – Action Plan Process" in Schedule 5.
- (f) This clause 8.4 does not limit any right which TfNSW has under any other

clause including clauses 7, 14.2, 17, or 20.

9 Engagement and management of Authorised Services Officers

- (a) The Dealer may from time to time apply to TfNSW in accordance with the process set out in the Maritime Dealer Guide for an Authorised Services Officer to be delegated to perform the Authorised Transactions. The Dealer must ensure that only Authorised Services Officers perform the Authorised Transactions.
- (b) A list of these approved Authorised Services Officers will be recorded in the form set out at Schedule 2 to this Agreement and issued to the Dealer once approved by TfNSW ('**Sub-delegation instrument**'). In accordance with clause 6(g) above, the Dealer must inform TfNSW if any Authorised Services Officers are no longer able to perform the Authorised Transactions so that the Sub-delegation instrument can be amended for correctness and re- issued to the Dealer as required. The Dealer is responsible for ensuring the list of Authorised Services Officers remains current at all times.
- (c) For an individual to be delegated as an Authorised Services Officer, the Dealer must ensure that the individual completes the Authorised Services Officer delegation form or such other form as TfNSW may require from time to time.
- (d) The Dealer is responsible for training and supervising the Authorised Services Officers to enable them to perform their obligations as required under this Agreement
- (e) TfNSW may in its absolute discretion approve or reject any person nominated by the Dealer as an Authorised Services Officer.
- (f) TfNSW may, in its absolute discretion, terminate any delegation of an Authorised Services Officer immediately at any time, by giving notice to the Dealer.
- (g) The Dealer must:
 - (1) ensure that all Authorised Services Officers are appropriately qualified and experienced to provide Authorised Transactions in accordance with this Agreement, including for the avoidance of doubt, in accordance with the Maritime Dealer Guide;
 - (2) ensure that all Authorised Services Officers perform the Authorised Transactions in accordance with this Agreement; and
 - (3) ensure that all Authorised Services Officers:
 - (A) are provided with a copy of the Statement of Business Ethics; and
 - (B) carry out the Authorised Transactions in accordance with the Statement of Business Ethics.
- (h) TfNSW's delegation of an Authorised Services Officer does not in any way limit or affect the obligations of the Dealer under this Agreement. For the avoidance of doubt, a failure by an Authorised Services Officer to perform the Authorised Transactions in accordance with this Agreement is a breach of this Agreement by the Dealer.
- (i) If requested to do so, the Dealer must provide to TfNSW:

- (1) accurate information about the identity, qualifications, job history and character of each of the Authorised Services Officers; and
 - (2) a list of that Dealer's Authorised Services Officers, showing the full name, address and signature of each individual.
- (j) The Dealer must comply with any directions or guidelines issued by TfNSW from time to time in relation to the conduct of background, security, criminal or other checks on Authorised Services Officers or persons with access to Confidential Information. The Dealer acknowledges that these directions or guidelines may require the Dealer to conduct such investigations as TfNSW may reasonably request in relation to any Authorised Services Officers or persons with access to Confidential Information.
- (k) The Dealer must obtain from any Authorised Services Officer or person with access to Confidential Information any consent that is necessary to enable either the Dealer or TfNSW to:
- (1) comply with clause 9(j);
 - (2) conduct any investigations required by TfNSW under any direction or guideline; and
 - (3) to exchange information as contemplated in the relevant direction or guideline.
- (l) If the Dealer is unable to obtain that consent, then, unless TfNSW agrees otherwise, that person must not perform the Authorised Transactions or be given access to the Confidential Information.
- (m) An investigation request by TfNSW will not:
- (1) constitute waiver of any breach of this Agreement; or
 - (2) affect the Dealer's obligations and its sole responsibilities regarding provision of the Authorised Transactions in accordance with this Agreement.
- (n) The Dealer understands that an Authorised Transaction performed by a person other than a delegated Authorised Services Officer may be invalid at law, and may render the Dealer subject to liability or consequential damages as a result.
- (o) For the avoidance of doubt, a breach of any of these provisions under this clause 9 constitutes a breach of this Agreement.

10 Premises

- (a) The Dealer must not Use the Confidential Information and its Authorised Services Officers must not provide the Authorised Transactions at any location other than the Premises, except to the extent necessary to perform its obligations under this Agreement at SNSW.
- (b) If the Dealer wishes to change the location of its Premises, the Dealer must provide TfNSW with 20 Business Days prior notice.

11 Conflict of interest

The Dealer must ensure that an Authorised Services Officer does not perform

Authorised Transactions in relation to Vessels owned by that Authorised Services Officer, or a relative or a friend of that Authorised Services Officer.

12 Intellectual property rights

- (a) The Dealer acknowledges that this Agreement does not transfer to it any Intellectual Property Rights whatsoever, including any Intellectual Property Rights in TfNSW Materials.
- (b) If the Dealer becomes aware of any actual or suspected infringement of TfNSW's Intellectual Property Rights it must immediately notify TfNSW and must provide all reasonable assistance requested by TfNSW in relation to any action TfNSW takes.
- (c) The Dealer absolutely and unconditionally:
 - (1) assigns to TfNSW all present and future copyright it has in any Confidential Information immediately on its creation; and
 - (2) assigns to TfNSW all other Intellectual Property Rights in any Confidential Information without the need for any further assurance.

13 TfNSW Materials

- (a) TfNSW may provide the Dealer with TfNSW Materials required for the provision of the Authorised Transactions.
- (b) The Dealer must use TfNSW Materials only for the provision of Authorised Transactions and in accordance with this Agreement.
- (c) Title to TfNSW Materials will remain vested in TfNSW.
- (d) The Dealer must immediately notify TfNSW of any loss of TfNSW Materials.

14 Liability

14.1 Liability of TfNSW

- (a) The Dealer:
 - (1) acknowledges that TfNSW does not represent or warrant the accuracy, completeness or fitness for purpose of:
 - (A) TfNSW Materials; or
 - (B) any information or advice provided by or for TfNSW in connection with TfNSW Materials or this Agreement; and
 - (2) must make its own assessment of TfNSW Materials.
- (b) Subject to clause 14.1(c), TfNSW excludes all liability (in contract, tort including negligence, under statute or otherwise arising), to the Dealer in respect of any Loss arising out of or relating to the performance of the Authorised Transactions or TfNSW Materials or any act or omission of TfNSW in relation to this Agreement.
- (c) Except as set out in this paragraph 14.1(c), nothing in this Agreement excludes, restricts or modifies the application of, or liability in respect of,

any Consumer Guarantee that applies to this Agreement. The liability of TfNSW for any liability, loss, cost, expense or damage suffered or incurred by a Dealer because of a failure of TfNSW to comply with a Consumer Guarantee that applies to this Agreement is limited to TfNSW (at its election):

- (1) where the failure is in respect of goods:
 - (A) replacing the goods or supplying equivalent goods;
 - (B) repairing the goods;
 - (C) paying the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) paying the cost of having the goods repaired; or
- (2) where the failure is in respect of services:
 - (A) supplying the services again; or
 - (B) paying the cost of having the services supplied again,

except where it is not 'fair or reasonable' (as contemplated under section 64A of the Australian Consumer Law) for TfNSW to do so.

- (d) Without limiting clause 14.1(b), TfNSW will have no liability to the Dealer (in contract, tort including negligence, under statute or otherwise arising) in respect of any Loss which is indirect or consequential including any loss of profits, loss of revenue, loss of business, loss of reputation, loss of data integrity or loss of anticipated savings.
- (e) Except as otherwise expressly stated in this Agreement, all terms, conditions, warranties, undertakings, inducements or representation whether express or implied, statutory or otherwise relating to the Authorised Transactions, TfNSW Materials, this Agreement are excluded to the fullest extent permissible at law.

14.2 Remedies

The parties agree that:

- (a) monetary damages for a breach of this Agreement by the Dealer will be insufficient to compensate TfNSW for such a breach; and
- (b) in addition to any other remedy available at law, TfNSW is entitled to injunctive relief to prevent a breach of and to compel specific performance of the terms of this Agreement.

14.3 Dealer's indemnity

- (a) The Dealer must indemnify and keep indemnified TfNSW and the State of New South Wales against all Loss (on a full indemnity basis and whether incurred by, or awarded against, TfNSW or the State of New South Wales) that TfNSW or the State of New South Wales may sustain or incur as a result, whether directly or indirectly arising out of or in relation to:
 - (1) loss of, loss of use of or damage to TfNSW Materials while located on the Premises or being used for purposes of providing the Authorised Transactions;
 - (2) personal injury (including death) or illness to any person arising out of or relating to anything done or omitted to be done by Dealer, any

Authorised Services Officers or Personnel in the provision of the Authorised Transactions;

- (3) any claim for breach of confidence or privacy or misuse of Personal Information arising out of or in connection with this Agreement or provision or non-provision of the Authorised Transactions by the Authorised Services Officers;
 - (4) such share (as determined by TfNSW) of any compensation which TfNSW may decide to pay a person for Loss suffered by that person as a result of any breach of clause 19 by the Dealer, for which TfNSW would have been liable under Privacy Laws if such breach had been that of TfNSW, provided that TfNSW will give the Dealer 14 days' notice of any proposed payment (which will include an explanation of how that liability or expense was assessed and the Dealer's proposed share of that liability) and the Dealer must make the payment to TfNSW within that 14 days;
 - (5) any fraud or other unlawful activity committed by the Dealer, any Authorised Services Officers or Personnel;
 - (6) any discrepancy between the amount collected by Dealers from customers on behalf of TfNSW and the amount remitted by Dealers to TfNSW under clause 7;
 - (7) all charges for administration and legal costs incurred by TfNSW in recovering Fees from the Dealer;
 - (8) any difference between the fees the Dealer collects from a customer and the Fees due to TfNSW; and
 - (9) any act or omission of the Dealer, any Authorised Services Officers or Personnel arising out of or relating to this Agreement or the provision of the Authorised Transactions.
- (b) The Dealer's liability to indemnify TfNSW is reduced proportionally to the extent that a malicious or negligent act or omission of TfNSW or TfNSW's employees or agents (other than the Dealer) or a breach of this Agreement by TfNSW has contributed to the injury or Loss.

14.4 Dealer's warranty

The Dealer represents and warrants that as at the execution of this Agreement, the execution and delivery by it of this Agreement was properly authorised.

15 Insurance

- (a) The Dealer must effect and maintain all insurances referred to in Schedule 3 on such terms, for such amounts and for such periods as set out in Schedule 3.
- (b) The Dealer must provide certificates of currency to TfNSW of the insurances required under clause 15(a) on execution of this Agreement and at any time at the request of TfNSW. The certificates of currency must comply with the requirements of Schedule 4.
- (c) If the Dealer claims that it is exempt at law from holding Workers Compensation Insurance then the Dealer must provide TfNSW with such assurance as TfNSW may require (for example a Statutory Declaration) declaring the Dealer as exempt.

- (d) The Dealer must notify TfNSW within 2 Business Days of:
 - (1) the cancellation of any of the policies of insurance required under clause 15(a); or
 - (2) the variation in the sum insured or coverage of such insurance policies.

16 Term

- (a) This Agreement commences on the Commencement Date.
- (b) The Dealer's responsibilities and obligations as set out in this Agreement commence on the Commencement Date.
- (c) The Authorised Services Officers' delegation to perform Authorised Transactions as set out in this Agreement commences on the date the sub-delegation instrument is signed, subject to that date being the same as or later than the Commencement Date.
- (d) This Agreement and the right to perform Authorised Transactions will remain in force until this Agreement is terminated in accordance with clause 17.

17 Termination

17.1 Termination without cause by either party

This Agreement may be terminated at any time without cause by either party giving 7 days' written notice to the other.

17.2 Termination by TfNSW

TfNSW may terminate this Agreement immediately at any time by giving notice to the Dealer if:

- (a) the Dealer fails at any time to meet the eligibility criteria set out in the How to Become an Authorised Dealer Document;
- (b) an Authorised Services Officer, in the reasonable opinion of TfNSW, fails to perform Authorised Transactions to a satisfactory standard and that failure has not been remedied to the reasonable satisfaction of TfNSW within 4 days of TfNSW giving the Dealer notice of that failure;
- (c) the Dealer or any of its Authorised Services Officers refuse to comply with any lawful directions given to them by TfNSW;
- (d) the Dealer commits a breach of any of the provisions of this Agreement and:
 - (1) in the reasonable opinion of TfNSW, the breach is incapable of being remedied; or
 - (2) in the reasonable opinion of TfNSW, the breach is capable of being remedied, and the Dealer fails to remedy the breach to the reasonable satisfaction of TfNSW within 5 days of receiving notice from TfNSW of that breach;
- (e) the Dealer has received more than 3 notices issued under clause 17.2(d)(2) in a 12 month period;

- (f) without reasonable cause, the Dealer suspends the carrying out of Authorised Transactions;
- (g) the Dealer attempts to assign (by way of security or otherwise) any right or interest under this Agreement;
- (h) the Dealer becomes insolvent, within the meaning of section 95A of the *Corporations Act 2001* (Cth);
- (i) a receiver, receiver and manager, manager, trustee, administrator, controller (as defined in the *Corporations Act 2001* (Cth)) or similar official is appointed, or steps are taken for such appointment, over any of the equipment or undertakings of the Dealer;
- (j) the Dealer ceases or threatens to cease to carry on business;
- (k) an application or order is made for the liquidation of the Dealer or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Dealer otherwise than for the purpose of an amalgamation or reconstruction;
- (l) any of the directors, partners or employees of the Dealer involved in the provision of Authorised Transactions are found guilty of any offence involving fraud or dishonesty, or any other offence (except for a traffic offence) which is punishable by imprisonment (whether or not that person is imprisoned); or
- (m) the Dealer, or a director or employee of the Dealer are found liable for a civil or criminal penalty under Schedule 2 of the *Competition and Consumer Act 2010* (Cth), or similar legislation.

17.3 Notice

The Dealer must notify TfNSW immediately upon becoming aware of the occurrence of any of the circumstances in clauses 17.2(h) to 17.2(m).

17.4 Effect of termination

- (a) Subject to clause 17.4(b), termination of this Agreement is without prejudice to any accrued rights or remedies of the parties.
- (b) The Dealer is not entitled to claim any compensation or damages from TfNSW in relation to the termination of this Agreement.

17.5 Consequences of termination

On termination of this Agreement the Dealer must:

- (a) at TfNSW's discretion:
 - (1) promptly return to TfNSW; or
 - (2) allow to be recovered by TfNSW,
 all TfNSW Materials in its possession or control;
- (b) cease to use TfNSW Materials
- (c) comply with clause 18.3; and
- (d) cease to perform the vessel registration functions it is authorised to perform under the MDVRS.

18 Confidentiality requirements

18.1 Protection of Confidential Information

- (a) The Dealer must not, without the prior written consent of TfNSW, at any time advertise, publish or release to the public any Confidential Information or issue any statement or communication or make any representation directly or indirectly in connection with Confidential Information or this Agreement to any person not a party to this Agreement other than:
 - (1) as necessary for the Purpose;
 - (2) with respect to any information (excluding Personal Information) already within the public domain through no fault of the Dealer; or
 - (3) as required by applicable Law.
- (b) Without limiting clause 18.1(a), the Dealer must:
 - (1) keep the Confidential Information confidential;
 - (2) not disclose or permit the disclosure of the Confidential Information to any unauthorised person;
 - (3) take all steps and do all things necessary, prudent or desirable to safeguard the confidentiality of the Confidential Information in any collection, use or storage of such information; and
 - (4) comply with all directions of TfNSW relating to the Confidential Information.

18.2 Media releases and enquiries

- (a) Without limiting clause 18.1, the Dealer must seek TfNSW's written approval to any press release or advertisement or other release for publication concerning this Agreement and/or the TfNSW Materials.
- (b) The Dealer must refer any media enquiries concerning this Agreement and/or the TfNSW Materials to TfNSW's Strategy and Engagement team.

18.3 Return or destruction of Confidential Information

- (a) Immediately on request by TfNSW at any time during this Agreement and on termination, the Dealer must either:
 - (1) return the Confidential Information (including all copies containing or relating to Confidential Information) to TfNSW in the manner specified by TfNSW; or
 - (2) dispose of the Confidential Information in the manner approved in writing by TfNSW and cease to use that Confidential Information, as directed by TfNSW and provide TfNSW with a statutory declaration that the Dealer has complied with the requirements of this clause 18.3(a).
- (b) Notwithstanding clauses 18.3(a) or 18.3(c) where TfNSW agrees in writing, the Dealer may:
 - (1) retain such Confidential Information as has been integrated with information held by the Dealer; or

- (2) retain other Confidential Information for the Purpose or purposes approved by TfNSW,

provided that the Dealer ensures the ongoing security and confidentiality of that integrated information in accordance with this Agreement.

- (c) Subject to clauses 18.3(a) and 18.3(b), if the Dealer no longer requires use of Confidential Information in its possession or control, Dealer must notify TfNSW and request that TfNSW issue a request under 18.3(a).

19 Privacy obligations

The Dealer:

- (a) must comply with Privacy Laws (as if it was regulated by those laws), and any guidelines issued by TfNSW in relation to the collection, Use, storage and disclosure of Personal Information;
- (b) must not do any act or engage in any practice:
 - (1) that would breach any of its obligations; or
 - (2) which if done or engaged in by TfNSW, would breach any of TfNSW's obligations under any Privacy Law;
- (c) must ensure that it Uses, accesses, retains and discloses any Personal Information, obtained either directly or indirectly as a consequence of this Agreement only as authorised in this Agreement;
- (d) must Use, store and disclose Personal Information obtained either directly or indirectly as a consequence of this Agreement, only for the purpose for which such information was acquired;
- (e) must store Personal Information obtained either directly or indirectly as a consequence of this Agreement:
 - (1) securely;
 - (2) in a way that the information is protected from unauthorised access, Use or disclosure; and
 - (3) only in an area that is locked and only accessible by Authorised Services Officers;
- (f) must dispose of Personal Information obtained either directly or indirectly as a consequence of this Agreement securely by shredding;
- (g) must notify TfNSW immediately upon:
 - (1) becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 19, by the Dealer or any Personnel;
 - (2) receiving a complaint relating to privacy; or
 - (3) receiving a request from an individual for access to, alteration, amendment or correction of Personal Information used by the Dealer in connection with this Agreement;
- (h) must comply with all reasonable directions of TfNSW in relation to the care, protection of, access to, and disposal of, Personal Information held in connection with this Agreement; and

- (i) must ensure that any other Agreement with any agent, contractor or subcontractor who may be handling Personal Information, contains the same or equivalent obligations to this clause 19 which are enforceable by the Dealer against the agent, contractor or the subcontractor, as applicable.

NOTE: Dealers should familiarise themselves with the Information Protection Principles in Part 2 of the *Privacy & Personal Information Protection Act 1998* (NSW). These are very similar to the Australian Privacy Principles in the *Privacy Act 1988* (Cth). Those Acts are available online at <https://legislation.nsw.gov.au/view/html/inforce/current/act-1998-133> and <https://www.oaic.gov.au/privacy/the-privacy-act/>

20 Dispute resolution

- (a) If a dispute or difference arises out of, or in connection with, this Agreement then prior to commencing any litigation:
- (1) the parties agree to use all reasonable endeavours to resolve the dispute speedily by good faith negotiation between the TfNSW Principal Manager Product Services, NSW Maritime or such other person as notified by TfNSW to the Dealer from time to time, and the Dealer's representative (**First Stage Discussions**);
 - (2) if the dispute has not been resolved within 20 Business Days after commencement of First Stage Discussions, the TfNSW General Manager Service Delivery and Education, NSW Maritime or such other person as notified by TfNSW to the Dealer from time to time and the Dealer's principal officer must promptly hold good faith discussions to attempt to resolve the dispute (**Second Level Discussions**); and
 - (3) subject to clause 20(b), each party must continue to perform its obligations under this Agreement despite the existence of a dispute or the operation of this dispute resolution process.
- (b) Nothing in this clause 20 prevents TfNSW terminating this Agreement under clauses 8.4(e), 17.1 or 17.2 or seeking an urgent injunction to restrain any breach or potential breach of this Agreement by the Dealer.

21 Administrative matters

21.1 Notices

- (a) Any notice given under this Agreement must be in writing and delivered in person or sent by registered post to:
- (1) in the case of the Dealer: the Dealer Representative at the address for service of notices set out in Item 7 of Schedule 1; and
 - (2) in the case of TfNSW: the address for service of notices set out in Item 7 of Schedule 1,
- or to such other address as a party notifies to the other party as its address for notices.

- (b) Any notice will be deemed to have been served:
 - (1) where the notice is delivered in person, on the date it is delivered; or
 - (2) where the notice is posted, on the third Business Day after the notice has been posted.

21.2 Variation to Agreement

- (a) The Dealer agrees that TfNSW may vary the terms and conditions of, or replace, this Agreement from time to time by letter, by giving no less than 7 days' notice to the Dealer, and that any such variation or replacement will be binding on both parties.
- (b) The Dealer may (in accordance with clause 21.1) request that TfNSW vary this Agreement. TfNSW may in its absolute discretion agree or refuse the request. No variation is effective unless TfNSW has agreed in writing.

21.3 Assignment of rights and obligations

The Dealer must not assign or otherwise transfer any or all of its rights or obligations under this Agreement.

21.4 Governing law

This Agreement will be governed by and construed in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of New South Wales.

21.5 Non-waiver of rights

No delay, neglect or forbearance by either party in enforcing any provision of this Agreement will be deemed to be a waiver of or in any way prejudice any rights of that party.

21.6 Limits to relationship

Nothing in this Agreement will create, or be deemed to create, a partnership or fiduciary or other relationship between the parties, other than the relationship expressly created by this Agreement. Except to the extent expressly authorised by TfNSW, the Dealer has no authority to make any representation on behalf of TfNSW and must not hold itself out as having any authority to do so.

21.7 Severability of Agreement

If any aspect of this Agreement is found to be invalid, illegal or unenforceable it will not affect the validity of any other part of this Agreement. In such case this Agreement will be construed and enforced as if it did not contain the invalid, illegal or unenforceable provision or part thereof.

21.8 Entire agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all previous agreements and understandings between the parties with respect to the subject matter.

21.9 Survival

The following clauses in this Agreement impose continuing rights and obligations

on the relevant parties and survive termination or expiry of this Agreement: 8, 12, 13, 14, 15, 18, 19, 20 and 21.1.

21.10 Approvals and consent

Subject to any express provision to the contrary, a party may conditionally or unconditionally give or withhold any consent contemplated by this Agreement and is not obliged to give its reasons for doing so. Any consent must be in writing.

21.11 TfNSW powers

Nothing in this Agreement restricts or limits the discretion or obligations of TfNSW in enforcing and administering the *Transport Administration Act 1988* (NSW), *Transport Administration (General) Regulation 2018* (NSW), *Marine Safety Act 1998* (NSW) and *Marine Safety Regulation 2016* (NSW).

21.12 Administrative law

The parties acknowledge as follows:

- (a) this Agreement is a commercial service agreement between the parties;
- (b) no licence or right has been issued to the Dealer by TfNSW, nor does the Dealer have a legitimate expectation of any licence or right;
- (c) other than in respect of any legislative delegation, the rules of contract law apply; and
- (d) the rules of administrative law (including those of principles of natural justice) are not applicable to this Agreement or its termination.

Schedule 1 – Agreement Details

ITEM 1. DEALER DETAILS (cl 1.1):

Legal Name: _____

Address: _____

ACN: _____ ABN: _____

ITEM 2. DEALER PREMISES (cl 1.1):

Trading Name	Address	Contact Details
Notes: <ul style="list-style-type: none">• each of the named businesses below must be owned by the Dealer• the premises must be within Australia• the Dealer may request that the Premises be updated at any time under clause 10(b).		
1.		Phone: Fax: Email:
2.		Phone: Fax: Email:
3.		Phone: Fax: Email:

ITEM 3. COMMENCEMENT DATE (cl 1.1):

[Insert Commencement Date of Agreement - Official use only]

ITEM 4. ANNUAL DATE DEALER IS TO PROVIDE AUDITOR CERTIFICATION (cl 8.3):

[Insert Date - Official use only]

ITEM 5. LODGEMENT OF DOCUMENTS AND REGISTRATION FEES (cl 7.1 AND 8.4):

Service NSW PO Box 6487 Silverwater NSW 1811

ITEM 6. DEALER'S REPRESENTATIVE (must be an Authorised Services Officer) (cl 1.1):

Name	Position	Signature
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ITEM 7. ADDRESS FOR SERVICE OF NOTICES (cl 21.1)

Dealer address: _____
[insert Dealer address for notices]

Note: the Dealer must immediately notify TfNSW, of any change to its above address for service, via SNSW at maritimedvrsenquiries@service.nsw.gov.au or PO Box 6487 Silverwater NSW 1811.

TfNSW address: PO Box K659, Haymarket NSW 1240

ITEM 8. SPECIAL CONDITIONS:

[insert any additional limitations or if none insert "nil"]

Schedule 2 – Sub-delegation instrument



DELEGATION

Transport Administration (General) Regulation 2018 (NSW) – cl 20(1)(e)
Marine Safety Act 1998 (NSW) – s 30(1)

I, Sian Nivison, Director Maritime Insights and Operations, a delegate of Transport for NSW authorised to sub-delegate under section 31(2) of the *Transport Administration Act 1988*, **DELEGATE** to the person or persons named in Schedule 1 of this delegation, all functions related to the issuing of initial vessel registration for new vessels set out in the Maritime Dealer Vessel Registration Scheme (MDVRS) Agreement between Transport for NSW and the dealership named in Schedule 2 of this delegation.

The persons so delegated are Authorised Services Officers in accordance with the relevant MDVRS agreement.

This delegation with respect to any individual person is revoked in the event that the person ceases to hold employment in the dealership in the position specified in Schedule 1. Any such revocation occurs without further notice and does not affect the delegation of any other person.

This delegation is not transferrable and may be revoked by Transport for NSW at any time.

SCHEDULE 1

Full Name	Date of Birth	Position

SCHEDULE 2

[insert Dealer Name]

TfNSW use only below.

Date: _____ Name and Title: _____

TfNSW Delegate

This schedule repeals all previous versions.

Schedule 3 – Insurance

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE
i	Public and Products Liability or Broadform Liability	<p>\$20 million for any single occurrence and unlimited in the aggregate as to the number of occurrences.</p> <p>The total aggregate liability during any one period of insurance for all claims arising out of the Dealer's products shall not exceed \$20 million.</p>	For the term of this Agreement.
ii	Workers Compensation	As per the <i>Workers Compensation Act 1987</i> (NSW) and <i>Workplace Injury Management and Workers Compensation Act 1998</i> (NSW).	For the term of this Agreement.

NOTES:

1. *Approved Insurer: All policies must be with an Approved Insurer. An Approved Insurer means:*

- (a) *An Australian registered insurance company which is approved by the Australian Prudential Authority (APRA) to conduct general insurance business in Australia; or*
- (b) *Lloyds Underwriters;*

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then the Dealer may arrange for its insurer to obtain a 'fronting' policy issued by an Approved Insurer (this is a kind of re-insurance policy issued under a "fronting arrangement" between the two insurers.

2. *Jurisdiction & Laws: Insurance policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.*

3. *Workers Compensation Exemption: If a Dealer pays \$7,500 or less in annual wages, does not employ an apprentice or trainee and is not a member of a group for premium purposes, then that Dealer may be an "Exempt Employer" and not required to effect Workers Compensation Insurance. The exemption applies both to companies and non-companies. Dealers claiming Exempt Employer status must provide a Statutory Declaration to TfNSW advising of their exempt status otherwise TfNSW cannot waive the requirement for the Dealer to demonstrate a policy is in place. For more information on this exemption see the icare website at <https://www.icare.nsw.gov.au/employers/who-needs-workers-insurance/who-needs-a-policy#qref>.*

Schedule 4 – Certificates of Currency

Certificates of currency must be issued by the Insurer and must include the following:

- The type of cover;
- The amount of cover;
- The period of cover;
- The name of the insurer;
- Confirmation that the insurance is subject to the jurisdiction of the courts of an Australian state or territory; and
- Confirmation that the policy is subject to the laws of NSW or another Australian jurisdiction.

Schedule 5 – Dealer Errors – Action Plan Process

Clause 8.4(e)

Without prejudice to TfNSW's right to terminate this Agreement, TfNSW may initiate the following process where there is any ongoing or repeated failure of the Dealer to comply with the Dealer's obligation to ensure its Authorised Services Officers meet the accuracy rates specified in clause 8.4(d):

1. An action plan to resolve the issue is to be negotiated by the responsible Manager of SNSW and the Dealer's Representative, the action plan is to be implemented and monitored.
2. If the issue is not resolved after 20 Business Days the responsible Manager of SNSW and the Dealer's Representative are to revise the action plan.
3. If after a further 20 Business Days there is no significant improvement in accuracy rates by the Dealer, the responsible Manager of SNSW will refer the matter to TfNSW and TfNSW may either:
 - (a) initiate the Dispute Resolution procedure under clause 20; or
 - (b) issue a termination notice under clause 17.2(b).

Schedule 6 – Authorised Transactions

The Authorised Transactions to be provided by the Authorised Services Officers are:

- *Checking applicant's POI and any evidence of eligibility for concession;*
- *Issuing proof of registration entitlement;*
- *Collecting the registration fee from applicants and issuing a Maritime receipt;*
- *Obtaining and issuing an interim registration number;*
- *Completing an Application for Vessel Registration form;*
- *Ensuring HIN (Boatcode) Certificate is included;*
- *Lodging application and remitting fees to TfNSW within 14 days; and*
- *Ensuring vessel has not previously been registered.*