

Transport Accident Commission Funding Standard Terms and Conditions

TAC Local Government Grant Program

Infrastructure Projects (for projects between \$30,000 and \$100,000 ex GST)

Date: 29 April 2020

These Transport Accident Commission (TAC) Funding Standard Terms and Conditions are to be read in conjunction with, and form part of, the TAC Funding Agreement between the TAC and the Applicant (Agreement).

1. DEFINED TERMS

Terms used in the Agreement are set out in clause 22.

2. TERM

The Agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with clause 17 (Term).

3. PROVISION OF FUNDING

3.1 Application of Funding

- (a) The Applicant must ensure that the Funding:
- (i) is applied solely in undertaking the Project; and
 - (ii) is not used for any other purpose.

3.2 Provision of Funding

- (a) Subject to clauses 3.4 and 3.5, and to the TAC being satisfied that the Applicant is in compliance with its obligations under the Agreement, the TAC will provide Funding to the Applicant in accordance with the Payment Schedule.
- (b) Each payment of Funding referred to in the Payment Schedule will be made within twenty (20) Business Days of receipt by the TAC of:
- (i) a Tax Invoice issued by the Applicant for the amount prescribed in the Payment Schedule;
 - (ii) the corresponding Progress Report or Final Report, approved by the TAC in its absolute discretion under clause 6; and
 - (iii) any supporting material requested by the TAC.

3.3 Fair Payments

The TAC will, on written demand by the Applicant, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

3.4 Preconditions to Funding

The TAC is not required to provide Funding to the Applicant in accordance with clause 3.2 unless the following preconditions are satisfied:

- (a) the performance by the Applicant of the activities and tasks approved by the TAC from the Project Plan;
- (b) the submission by the Applicant and approval by the TAC of the Progress Reports and Final Report, as the case may be;
- (c) the rectification of any non-compliances identified by an audit(s) conducted pursuant to clause 16; and
- (d) compliance by the Applicant with the Agreement, (together the **Preconditions to Funding**).

3.5 Applicant to Contribute Equal Funding

Without limiting clause 3.4 above, the TAC is not required to provide Funding to the Applicant in accordance with clause 3.2 unless the Applicant provides evidence to the TAC that it has contributed equal Funding for the Project.

3.6 Acknowledgements

The Applicant acknowledges and agrees that:

- (a) except for Funding provided to the Applicant under the Agreement, the TAC will not be liable to

compensate the Applicant or any other person for any Liabilities incurred in taking any action as a result of or in connection with the Project or the Agreement; and

- (b) it is not entitled to receive Funding unless and until it has complied with the Preconditions to Funding.

3.7 Repayment of improperly applied funding

The Applicant must repay to the TAC on demand, without deduction or set-off, any amount of Funding paid by the TAC to the Applicant which has been paid or applied in breach of the Agreement.

3.8 Repayment of unused Funding

- (a) If the Applicant has failed to apply any amount of Funding in the manner required by the Agreement (**Unused Funding**), the TAC will be entitled to reduce any subsequent payment by the amount of the Unused Funding, and the total Funding will be reduced by a corresponding amount.
- (b) Unless otherwise agreed, any Funding provided by the TAC to the Applicant which is not used by the Completion Date must be returned to the TAC within twenty (20) Business Days of request by the TAC.

3.9 Directions

The Applicant must comply with any lawful and reasonable direction of the TAC in connection with:

- (a) the Funding;
- (b) the Project; and
- (c) any of the transactions and activities contemplated by or arising from the Agreement.

4. ACCOUNTS AND RECORDS

4.1 Financial records

- (a) The Applicant must keep and maintain proper and accurate financial records in relation to all aspects of the Project and the Agreement during the Term and for a period of seven (7) years after the expiration of the Term or termination of the Agreement.

4.2 Access to accounts and records

- (a) The Applicant must during the Term and for up to seven (7) years after the expiry or termination of the Agreement, upon five (5) Business Days written notice given by the TAC, grant the TAC, its auditors or its nominee, access to the Applicant's accounts and records to enable the TAC to verify that the Funding has been used and applied by the Applicant only for the purposes listed in clause 3.1.
- (b) The Applicant must promptly provide to the TAC, its auditors or nominee copies of any accounts and records requested, and cooperate with the TAC.

5. PROJECT

5.1 Project Plan

- (a) The Applicant must confirm their final Project Plan and provide it to the TAC within five (5) Business Days of the Commencement Date (unless otherwise agreed by the parties in writing).
- (b) The TAC will review the Project Plan and either approve the Project Plan or provide the Applicant with any amendments to the Project Plan the TAC reasonably considers appropriate.
- (c) The Applicant must implement the Project Plan on commencement of the agreed project start date.

5.2 Changes to the Project

- (a) The Applicant must not change the nature or scope of the Project without the TAC's prior written consent.
- (b) If the Applicant needs to modify the Project Plan they must notify the TAC in writing and provide a progress report outlining the nature of the modification to the

Project Plan within ten (10) Business Days of notifying the TAC.

5.3 Taxes and labour costs

- (a) The Applicant acknowledges that it will be wholly responsible for the labour costs, taxes and charges associated with the Project.

6. PROGRESS AND FINAL REPORTS

6.1 Progress Reports

- (a) The Applicant must prepare reports containing reasonable details of the operating activities of the Applicant relating to the Project (**Progress Report**) for each of the periods specified in Item 8.
- (b) The Progress Report must be in the form prescribed by the TAC.

6.2 Final Report

- (a) The Applicant must prepare a report containing reasonable details of the financial and operating activities of the Applicant relating to the Project, outcomes and the intended strategy to sustain the outcomes of undertaking the Project (**Final Report**).
- (b) The Final Report must be in the form prescribed by the TAC.

6.3 Timing, Content and Form of Progress Reports and Final Report

Each Progress Report and the Final Report must:

- (a) be presented to the TAC's Representative by the dates specified in Item 7; and
- (b) comply with and contain the information contained in in this clause 6, Item 8; and
- (c) be certified as to its accuracy in the case of the financial information contained in the Final Report, by the Applicant's chief financial officer.

6.4 Request for supporting information

The Applicant must, at the request of the TAC, provide the TAC within five (5) Business Days of the request with additional information, documents or other written evidence to support any statements or information contained or made in the Progress Report or the Final Report.

7. ANCILLARY OBLIGATIONS

7.1 Applicant's obligations

During the Term, the Applicant must:

- (a) undertake the Project in accordance with terms of the Agreement;
- (b) act diligently and in good faith in carrying out all of its obligations under the Agreement;
- (c) If the project captures Data the Applicant must provide access to the TAC and
- (d) meet all of its obligations under the Agreement.

7.2 The TAC's obligations

The TAC will:

- (a) liaise with the Applicant and monitor progress of the Project through the TAC Representative; and
- (b) provide the Applicant with reasonable access to its staff for any necessary discussions and consultations relating to undertaking the Project.

8. WARRANTIES AND REPRESENTATIONS

The Applicant represents and warrants on each day during the Term that:

- (a) it has lawful authority to execute this Agreement and to perform its obligations under this Agreement;
- (b) services provided under the Agreement (including performance of the Project) will be:
 - (i) provided in a proper, professional and businesslike manner; and
 - (ii) fit for the purpose for which they are provided; and
- (c) in providing the relevant services under the Agreement (including performance of the Project), it will not infringe any patent, trade mark, copyright or other Intellectual Property of any third party.

9. EXCLUSIONS AND LIMITATIONS OF LIABILITY

9.1 Release and discharge

The Applicant acknowledges and agrees that it:

- (a) implements the Project at its own risk; and
- (b) unconditionally and irrevocably releases and forever discharges the TAC from all Claims which the Applicant has or at any time in the future may have against the TAC, arising out of or related to (whether directly or indirectly) any activities undertaken by the Applicant.

9.2 Disclaimer

The TAC disclaims any responsibility or Liability to the Applicant or any third party for the consequences of any act or omission of the Applicant in the performance of its obligations under the Agreement.

9.3 Indemnity

The Applicant indemnifies and agrees to keep the TAC indemnified from and against any Liability or Claim suffered or incurred by the TAC arising from the Agreement or the performance and/or undertaking of the Project including as a result of:

- (a) any breach of the Agreement by the Applicant;
- (b) any false, misleading or deceptive statement or conduct of the Applicant or any of its employees, agents or consultants;
- (c) any breach of any statute of the Applicant or any of its employees, agents or consultants;
- (d) negligence of the Applicant or any of its employees, agents or consultants;
- (e) any infringement of a third party's intellectual property rights, including Moral Rights; or
- (f) any act giving rise to a civil or criminal liability of the Applicant or any of its employees, agents or consultants,

except to the extent that such Liability or Claim was directly caused by the negligence of the TAC.

9.4 Continuing obligation

The indemnity given under clause 9.3:

- (a) is a continuing obligation separate and independent from the other obligations of the Applicant; and
- (b) Survives termination of the Agreement.

9.5 Officers

- (a) Where the context permits, references in this clause 9 to the TAC or the Applicant include a reference to their respective officers, employees, agents and sub-licensees.
- (b) The TAC holds the benefit of the releases, agreements and indemnities in this clause 9 both on its own behalf and on trust for its officers, employees, agents and sub-licensees.

10. CONFIDENTIALITY

10.1 Use and disclosure of Confidential

Information by Applicant

Subject to clause 10.2, the Applicant agrees to:

- (a) use the Confidential Information for the sole purpose of undertaking the Project and otherwise performing its obligations under the Agreement;
- (b) not disclose or otherwise make available the Confidential Information to any third party other than to:
 - (i) the Applicant's employees who have a need to know the information in order to carry out the Applicant's obligations under the Agreement, but only to the extent that they need to know;
- (c) ensure that any employees who have access to the Confidential Information under clause 10.1(b) do not use the Confidential Information for any purpose other than implementing the Project and otherwise performing its obligations under the Agreement; and²

- (d) immediately notify the TAC if it becomes aware of a suspected or actual breach of this clause 10 by the Applicant. It must take reasonable steps required to prevent or stop the suspected or actual breach.

10.2 Disclosure required by law

The Applicant may disclose Confidential Information if compelled to do so by order of a court, subject to it consulting with the TAC before doing so.

10.3 Disclosure by the TAC

The Applicant consents to the TAC at any time using and disclosing its Confidential Information as may be required:

- (a) in the course of the TAC performing its statutory functions; and
- (b) to satisfy the requirements of parliamentary accountability, pursuant to policies of the government or by the Department of Treasury and Finance or any other government department or agency in Victoria.

10.4 Disclosure by the TAC to Road Safety

Partners

(a) The TAC may disclose the Progress Report or Final Report to its Road Safety Partners upon written notification to the Applicant.

10.4 FOI Act

The Applicant agrees, at the TAC's request, to cooperate with the TAC in connection with any request received by the TAC for the release of information under the *Freedom of Information Act 1982 (Vic)*.

11. PRIVACY

11.1 Compliance with Statute

- (a) The Applicant acknowledges and agrees that it must comply with the confidentiality and secrecy provisions of all applicable legislation, including, but not limited to, section 131A of the Act.
- (b) Any breach of these provisions is a breach of the Agreement entitling the TAC to terminate the Agreement without notice, and in any event may render the Applicant liable to prosecution and penalty.

11.2 Obligations in relation to Privacy

(a) The Applicant agrees to be bound by the Information Privacy Principles, the Health Privacy Principles and any applicable Code of Practice (**Principles**) with respect to any act done or practice engaged in by the Applicant for the purposes of this Agreement in the same way and to the same extent as the TAC would have been bound by the Principles in respect of that act or practice had it been directly done or engaged in by the TAC.

12. PUBLICITY

12.1 The Applicant must not make any public statements, including issue any media release, about the TAC or in connection with this Agreement or the Project without the prior written consent of the TAC.

12.2 The TAC may publicise (including by posting the information on any website of the TAC) the TAC's participation in the Project.

12.3 Reputation and adverse statements

- (a) The Applicant or its Personnel must not: do or omit to do anything which may:
- (i) damage, bring into disrepute or ridicule the TAC's name, messages or reputation; or
- (ii) attract public or media attention which may be prejudicial or otherwise detrimental to the TAC's name, messages or reputation (including, for example, any driving conviction of a person involved in the delivery of the Project), and the Applicant must notify the TAC immediately if it becomes aware of any information, matter or event relating to the Project or this Agreement which may affect clause 12.3.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 Ownership

- (a) Each party retains full title to ownership of its Background Intellectual Property. If the TAC makes any of its Background Intellectual Property available to the Applicant, the Applicant must:
- (i) only use it during the Term to conduct the Project;
- (ii) only use it in accordance with the TAC's instructions and conditions of use; and
- (iii) return it to the TAC immediately on request or destroy it and provide evidence of such destruction.
- (b) Any Intellectual Property created by the Applicant in the course of conducting the Project, or otherwise in connection with this Agreement, will be owned by the Applicant (**Project Intellectual Property**).

13.2 Background Intellectual Property licences

- (a) Subject to clause 10, the TAC grants to the Applicant a non-exclusive, royalty free, non-transferable licence to use the TAC's Background Intellectual Property during the Term solely for the purpose of performing the Project.
- (b) The Applicant grants to the TAC a non-exclusive, royalty free, perpetual, non-transferable, irrevocable licence to use the Applicant's Background Intellectual Property to the extent necessary for the TAC to use the Project Intellectual Property.
- (c) The Applicant grants to the TAC a non-exclusive royalty free, perpetual irrevocable licence (including the right to grant sub-licences) to use, reproduce, publish, communicate to the public or adapt at any time part or all of the Project Intellectual Property.
- (d) The Applicant waives its Moral Rights in relation to the TAC's use of the Applicant's Intellectual Property and undertakes not to enforce its Moral Rights against the TAC in relation to such use.
- (e) The Applicant warrants that the TAC's use of the Applicant's Background Intellectual Property and the Project Intellectual Property will not infringe the rights of a third party (including Intellectual Property rights and Moral Rights), and that it will obtain all the relevant consents (including Moral Rights consents) in relation to such Intellectual Property.

13.3 Use of TAC's Trade Marks

- (a) The Applicant:
- (i) may, subject to clause 13.3(a)(i) and 13.3(a)(iii), use the Trade Marks in a manner that appropriately recognises the support provided by the TAC in the context of this Agreement;
- (ii) must notify the TAC before it uses the Trade Marks and give the TAC a reasonable opportunity to provide instructions or conditions on the proposed use; and
- (iii) must only use the Trade Marks in accordance with the TAC's instructions and conditions of use, as communicated to the Applicant in writing.
- (b) The Applicant acknowledges and agrees that it has no right, title to or interest in the Trade Marks other than as expressly set out in this Agreement.

14. INSURANCE

14.1 Applicant to maintain insurance

- (a) The Applicant must at its own expense obtain and maintain at all times during the Term, and for a period of five (5) years following the expiration of the Term, the insurances specified in Item 9 and must provide the TAC with proof of valid insurance, within twenty (20) Business Days after the Commencement Date and otherwise upon demand by the TAC.

- (b) The Applicant must provide the TAC with a certificate of currency in respect of the insurance policies required under this clause 14 upon request.

14.2 Statutory compliance

The Applicant must (and must ensure that any subcontractors appointed under clause 15) comply with all relevant Laws concerning the statutory insurance cover for liabilities in relation to employees and subcontractors.

15. SUB-CONTRACTING

- (a) The Applicant may not subcontract any of its obligations under the Agreement without the prior written consent of the TAC.
- (b) The Applicant will not, as a result of any subcontracting arrangement, be relieved from its obligations or Liabilities in connection with the Agreement and will be liable for all acts and omissions of the sub-contractor as though they were the actions of the Applicant itself.

16. AUDIT

16.1 Audit of Project

If requested by the TAC, the Applicant must participate in:

- (a) a Compliance Audit; and/or
- (b) a Road Safety Audit, in respect to the Project.

16.2 The Applicant must provide the TAC (or any third party appointed by the TAC for the purpose of undertaking the audit), with assistance and documentation as reasonably required.

16.3 Cost of Audit

In respect of an Audit conducted under this clause 16:

- (a) each party will bear its own costs; and
- (b) the TAC will pay the costs of any auditor appointed to conduct the Audit.

16.4 Non-Compliance

- (a) If as a result of any Audit, the TAC acting reasonably considers the Project does not comply with the Application or the procedures set out in the "Austroads Guide to Road Safety Part 6: Road Safety Audit (2009)", the TAC may issue a notice to the Applicant setting out the details of the non-compliance and the corrective action which the TAC requires the Applicant to take to rectify the non-compliance.
- (b) The Applicant is not entitled to receive any Funding until such time as the identified non-compliances have been rectified and approved by the original auditor.

17. TERMINATION

17.1 Immediate termination by the TAC

The TAC may terminate the Agreement immediately by written notice if:

- (a) the Applicant uses or fails to use the Funding provided by the TAC in any way other than in accordance with clause 3.1; or
- (b) the Applicant breaches a material provision of the Agreement which is not capable of remedy; or where the breach is capable of remedy, the Applicant fails to remedy the breach within fifteen (15) Business days after receiving notice of the breach; or
- (c) The TAC considers that providing the Funding is no longer consistent with its policy or its functions under section 12(2) of the Act.

17.2 Consequences of termination

On expiry of the Term or termination of the Agreement for any reason:

- (a) the Applicant must repay to the TAC all Funding provided by the TAC to the Applicant other than

amounts applied by the Applicant in accordance with the Agreement;

- (b) the Applicant must cease, and cause any subcontractors to cease, undertaking the Project, except as directed by the TAC;
- (c) the Applicant's right to use the Confidential Information ceases (but the Applicant must continue to keep confidential that Confidential Information), and the Applicant must immediately at the TAC's option:
- (i) return to the TAC; or
- (ii) destroy and certify in writing to the TAC the destruction of; or
- (iii) destroy and permit the TAC to witness the destruction of, all Confidential Information in the Applicant's possession or control;
- (d) the Applicant must provide to the TAC all information reasonably required, including but not limited to, information concerning the Applicant's implementation and use of the Project; and
- (e) the TAC may in its absolute discretion transfer the Project to another Applicant in order that the Project may be completed.

17.3 Survival of obligations

Termination of the Agreement does not affect any rights that have accrued for the benefit of a party under the Agreement.

18. GST

18.1 Interpretation

Words or expressions used in this clause 18 which are defined in the GST Act or, if not so defined, then which are defined in the *Competition and Consumer Act 2010* (Cth), have the same meaning in this clause.

18.2 GST inclusive amounts

For the purposes of the Agreement where the expression **GST inclusive** or **inclusive of GST** is used in relation to an amount payable or other consideration to be provided for a supply under the Agreement, the amount or consideration will not be increased on account of any GST payable on that supply.

18.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with the Agreement, unless specifically described in the Agreement as **GST inclusive** or **inclusive of GST**, does not include an amount on account of GST.

18.4 Gross up of consideration

Despite any other provision in the Agreement, if a party (**Supplier**) makes a supply under or in connection with the Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in the Agreement as **GST inclusive** or **inclusive of GST**):

- (a) the consideration payable or to be provided for that supply under the Agreement but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the supply (**Supply Applicant**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Supply Applicant without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

18.5 Reimbursements (net down)

If a payment to a party under the Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the

payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

19. DISPUTE RESOLUTION

19.1 Notification of Dispute

A party claiming that a dispute, difference or question arising out of the Agreement (**Dispute**) has arisen must notify the other party giving full details of the Dispute (**Notification**).

19.2 Referral to Contract Representatives

Within five (5) Business Days (or any longer period agreed between the parties) after a Notification is given, the Executive Director of Health and Safety, the TAC and the Applicant's Director must personally or through a nominee attempt to resolve the Dispute.

19.3 Obligation to continue fulfilling obligations

The parties must continue to perform their respective obligations under the Agreement pending the resolution of a Dispute.

19.4 Consequences of breach

If, in relation to a Dispute, a party breaches any provision of this clause 19, the other party need not comply with those clauses in relation to that Dispute.

19.5 Costs

Each party must bear its own costs of complying with this clause 19.

19.6 Court proceedings

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 19.

20. General

20.1 Relationship

The Agreement does not create any relationship of agency, employment, partnership or joint venture between the parties. The Applicant must not represent that it is an agent, representative or employee of the TAC.

20.2 Waiver

The failure of either party at any time to require performance of any obligation under the Agreement is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless the party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under the Agreement.

20.3 Entire agreement

The Agreement:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

20.4 Governing law

The Agreement is to be governed by the laws of the State of Victoria and parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

20.5 Alteration

The Agreement may be altered only in writing signed by both parties.

20.6 Severability

Any provision of the Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the

extent necessary to make the Agreement enforceable, unless this would materially change the intended effect of the Agreement.

20.7 Assignment

The Applicant's rights and obligations under the Agreement are personal to the Applicant. The Applicant may not assign its rights under the Agreement without the prior written consent of the TAC.

21. COMMUNICATIONS

21.1 Representatives

- (a) The TAC Representative and Applicant Representative respectively are authorised to:
 - (i) give and receive any consent, approval, direction or notice under the Agreement; and
 - (ii) otherwise act on behalf of the TAC and Applicant respectively in relation to the Agreement and the transactions contemplated by it.
- (b) Each of the TAC and the Applicant must ensure that the TAC Representative and Applicant Representative respectively are reasonably contactable during the Term.
- (c) Each of the TAC and the Applicant must notify the other in writing of any change to the TAC Representative and/or the Applicant Representative respectively or to their contact details.

21.2 How to give a notice

- (a) A notice, consent or communication is only effective if it is given by or to (as context requires) the person set out in Item 12 at the address or fax number set out in Item 12.
- (b) Any notice, consent or communication under the Agreement must be:
 - (i) in writing, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) either:
 - (A) delivered or sent by pre-paid mail (by airmail, if addressee is overseas) to that person's address; or
 - (B) sent in electronic form (such as email).

21.3 When a notice is given

- (a) A notice, consent or communication that complies with this clause is regarded as given and received:
 - (i) if it is sent by mail:
 - (A) within Australia – three (3) Business Days after posting; or
 - (B) to or from a place outside Australia – five (5) Business Days after posting; or
 - (ii) if sent by email, when the email message enters the addressee's information system (provided the sender has not received an 'out of office' email from the addressee in response).

22. Defined terms & interpretation

22.1 Defined terms

In the Agreement:

Act means the *Transport Accident Act 1986 (Vic)*;

Agreement means the TAC Local Government Areas Grants Program Funding Agreement between the TAC and the Applicant (including these TAC Funding Standard Terms and Conditions).

Applicant Representative means an officer nominated by the Applicant as specified in Item 6;

Application for Funding means the Applicant's submission to the TAC for a grant of funding for the Project;

Audit means a Compliance Audit and/or a Road Safety Audit conducted in accordance with clause 16;

Background Intellectual Property means any pre-existing Intellectual Property owned by the Applicant;

Business Day means a day other than a Saturday, Sunday or public holiday appointed under the *Public Holidays Act 1993* (Vic) applying to the Melbourne metropolitan area;

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise;

Code of Practice means a code of practice as defined in, and approved under, the Privacy & Data Protection Act;

Commencement Date means the date specified in Item 2;

Completion Date means the date specified in Item 3;

Compliance Audit means an independent audit conducted as part of an infrastructure Projects against the Applicant, including the Project Plan at the completion of the Project;

Confidential Information means:

- (a) the terms of the Agreement and any Reports created under it;
- (b) any information provided by or on behalf of the TAC to the Applicant or any employee, agent, consultant or representative of the Applicant, which is designated confidential or which otherwise would be understood by a reasonable person in the position of the recipient to be confidential in nature; and
- (c) any material prepared by the Applicant for the TAC under or for the purposes of the Agreement including any data collected;
but does not include information which:
 - (d) at the time of disclosure is in the public domain; or
 - (e) after disclosure becomes part of the public domain other than as a result of disclosure in breach of the Agreement;

Data means any facts or statistics collected for reference or analysis

Final Report has the meaning given in clause 6.2.

Funding means any funds provided by the TAC to the Applicant and specified at Item 4 of the Agreement, together with interest accrued on those amounts;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time;

Health Privacy Principles means the Health Privacy Principles set out in the *Health Records Act 2001* (Vic);

Insolvency Event means where the Applicant:

- (a) becomes unable to pay its debts when they become due;
- (b) enters into any arrangement between itself and its creditors;
- (c) ceases to carry on business;
- (d) has a mortgagee enter into possession or dispose of the whole or any part of its assets or business;
- (e) enters into liquidation or any form of insolvency; or
- (f) has a receiver, receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or like person appointed to the whole or any part of its assets or business;

Intellectual Property means all intellectual property rights (whether or not such rights are capable of registration) including copyright, patents and patent applications, designs and design applications, trademarks and trade mark applications and confidential information (including trade secrets and Know-How);

Item means the item number set out in paragraph 2 ('Principal Information') of the Agreement;

Know-How means all information not in the public domain including drawings, designs, diagrams, computer programs, data, formulae, specifications, procedures, results, techniques and information;

Laws means the laws in force in the State of Victoria including, without limitation, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances or any legislative or regulatory measure and includes any amendment, modification or re-enactment of them;

Liabilities includes liabilities (whether actual, contingent or prospective), losses, damages, actions, costs, expenses,

charges, fees (including legal costs on a full indemnity basis) and outgoings of whatever description;

Materials means any documents, reports, papers, models, drawings or materials, data, transcripts, computer software and programs created by the Applicant (or any of its personnel) relating to or in performing the Project;

Moral Rights bears the same meaning as in the *Copyright Act 1968* (Cth);

Overdue Amount means a validly invoice amount (or part thereof) that is not disputed:

- (a) that is due and owing; and
- (b) which has been outstanding for more than twenty (20) Business Days from the date of the valid invoice or the date that the amount ceased to be disputed, whichever is the latter;

Payment Schedule means the payment schedule set out in Item 7;

Personal Information means information that is personal information as defined in the *Privacy Act 1988* (Cth) or that is information to which any other Privacy Laws apply;

Personnel means the Applicant's officers, employees, agents and contractors.

Preconditions to Funding has the meaning given in clause 3.3;

Privacy & Data Protection Act means the *Privacy & Data Protection Act 2014* (Vic);

Progress Report has the meaning given in clause 6.1;

Progress Report Requirements means the guidelines set out in Item 8;

Project means the approved Project Plan, to be undertaken by the Applicant set out in Annexure A of the Agreement;

Project Intellectual Property has the meaning given in clause 13.1(a);

Reports means Progress Reports and Final Reports;

Road Safety Audit means an audit conducted as part of an infrastructure Project during either detailed design or post construction (or both) in accordance with the procedures set out in the "Austroads Guide to Road Safety Part 6: Road Safety Audit (2009)";

TAC Representative means an officer nominated by the TAC as specified in Item 5;

Tax Invoice means a document that complies with the requirements of a tax invoice as specified in the GST Act and which is not disputed by the TAC;

Term means the term of the Agreement as provided in clause 2;

Trade Marks means any trade mark of the TAC (whether registered or not registered) provided to the Applicant by or on behalf of the TAC, including the trade marks set out in Item 12.

22.2 Interpretation

In the Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of the Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph of or schedule to the Agreement and a reference to the Agreement includes any schedules;
- (e) a reference to a document or agreement, including the Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (g) a reference to a party includes its executors, administrators, successors and permitted assigns;

- (h) words and expression importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (i) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable and includes any amendment, modification or re-enactment of such legislation or statutory instrument or regulation; and
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally.

