

| Date / /2024

Funding Agreement

Value-based Healthcare Grant Program

Transport Accident Commission

ABN 22 033 947 623

and

[INSERT]

ABN **[Insert]**

(Applicant)

For the Project entitled

[Insert Project Title]

Details

Date:

Parties

Name	Transport Accident Commission , a body corporate established under section 10 of the <i>Transport Accident Act 1986 (Vic)</i>
ABN	22 033 947 623
Short form name	TAC
Notice details	60 Brougham Street, Geelong, Victoria, 3220 Email: [Insert]@tac.vic.gov.au Attention: [Insert]
Name	Refer to Item 1, Schedule 1 Applicant

Background

- A The TAC is a body established and regulated by the *Transport Accident Act 1986 (Vic)* (Act). The TAC manages a transport accident compensation scheme that pays the reasonable costs or expenses incurred by those injured in transport accidents involving Victorian registered motor vehicles.
- B The TAC has established the Value-based Healthcare (VBHC) Grant Program to provide funds to organisations for projects that promote its objectives and functions (VBHC Grant Program).
- C The VBHC Grant Program aims to incentivise health service providers to implement innovative research projects that embrace the principles of VBHC and address an area of priority for people with transport accident injuries.
- D The Applicant has developed the Project and has applied to the TAC for funding under the VBHC Grant Program.
- E The TAC has agreed to provide the funds to the Applicant for the Project on the terms and conditions of this Funding Agreement (Agreement).

Transport Accident Commission Funding Terms and Conditions

Value-based Healthcare Grant Program

Date: {insert}

1. DEFINED TERMS

Terms used in the Agreement are set out in clause 23.

2. TERM

The Agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with clause 18 (Term).

3. DOCUMENTS FORMING THIS AGREEMENT

3.1 Documents

This Agreement consists of:

- (a) clauses 1 to 23 (inclusive of this document); and
- (b) the Schedules to this document.

3.2 Precedence

If there is any inconsistency between the provisions of the documents that together form this Agreement, the provisions of the earlier mentioned document in clause 3.1 will prevail to the extent of that inconsistency.

4. PROVISION OF FUNDING

4.1 Application of Funding

The Applicant must ensure that the Funding:

- (i) is applied solely in undertaking the Project;
- (ii) is applied for projects that will be funded as set out in the Grant Program Guidelines; and
- (iii) is not used for any other purpose including, but not limited to, other projects or research being undertaken by the Applicant.

4.2 Provision of Funding

- (a) Subject to clause 4.4 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 valid Tax Invoice issued by the Applicant for the amount prescribed in the Payment Schedule;
 - (ii) the corresponding Progress Report or Outcome Report, approved by the TAC in its absolute discretion under clause 7; and
 - (iii) any supporting material requested by the TAC.

4.3 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).

4.4 Preconditions to Funding

The TAC is not required to provide Funding to the Applicant in accordance with clause 4.2 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 Outcome Report, as applicable under Item 7; and
- (c) compliance by the Applicant with the Agreement, (together the **Preconditions to Funding**).

4.5 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.

4.6 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.

4.7 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.

4.8 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.

5. ACCOUNTS AND RECORDS

5.1 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.

5.2 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 to the Applicant, 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 4.1.
- (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.

6. PROJECT

6.1 Project Plan

- (a) The Applicant must comply with and commence implementation of the Project Plan within 10 Business Days of the Commencement Date.

6.2 Variation to Project Plan

- (a) Either party may from time to time propose variations to the Project by notifying the other party.
- (b) Any variation of the Project Plan must be agreed to in writing by both parties and will operate from the

date agreed by the parties.

6.3 Completion of the Project

- (a) The TAC will determine in its absolute discretion whether the Project has been satisfactorily completed.
- (b) If the TAC does not believe that the Project has been satisfactorily completed, the TAC will notify the Applicant which then must take all steps the TAC reasonably considers necessary to complete the Project (including amending and resubmitting the Outcome Report or undertaking additional activities relating to the Project).

7. REPORTING AND MEETINGS

7.1 Progress Meetings

The Applicant must attend progress meetings with the TAC as agreed by the parties in writing, at times and places reasonably requested by the TAC during the Term.

7.2 Progress Reports

- (a) The Applicant must prepare Progress Reports containing reasonable details of the operating activities of the Applicant relating to the Project on the dates specified in the Project Plan
- (b) The Progress Reports must include:
 - (i) the work done on the Project and the status of the Project including whether timelines are being met;
 - (ii) the financial (including expenditure of the funds) and operating activities of the Applicant in connection with the Project Plan up to and including the date of the Progress Report; and
 - (iii) details of any problems encountered by the Applicant in conducting the Project and solutions (including time frames) identified to overcome those problems.

7.3 Outcome Report

- (a) The Applicant must prepare an Outcome Report containing reasonable details of the operating activities of the Applicant relating to the Project, including a financial acquittal for all expended funds.
- (b) The Outcome Report must include:
 - (i) an executive summary (maximum 4 pages);
 - (ii) an introduction/background detailing the rationale, aims and objectives of the Project;
 - (iii) A brief description of the research methods;
 - (iv) the outcomes, achievements and implications of the Project;
 - (v) a copy of any products and resources produced as part of the Project;
 - (vi) a copy of any media releases relating to the Project;
 - (vii) details of any media coverage of the Project;
 - (viii) any problems or risks encountered by the Applicant in conducting the Project;
 - (ix) details of the involvement of other agencies in the Project and the extent of such involvement;
 - (x) a plan for further developing the Project after the End Date; and
 - (xi) a financial acquittal for all expended funds.

7.4 Timing, Content and Form of Reports

Each Report must:

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

7.5 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 Reports or the Outcome Report.

7.6 Presentation

The Applicant must, at the TAC's request, provide a presentation to the TAC relating to the Project, including sharing and explaining the outcomes of the Project with TAC stakeholders. The TAC will provide reasonable details to the Applicant of the timing, content and format of the presentation.

8. ANCILLARY OBLIGATIONS

8.1 Applicant's obligations

During the Term, the Applicant must:

- (a) undertake the Project in accordance with the terms of the Agreement;
- (b) ensure that its Personnel exercise skill, care and diligence and perform the Project to a high professional standard and in accordance with relevant best practice, including any State and industry standards;
- (c) maintain all qualifications, certifications, licences necessary to perform the Project;
- (d) comply, and ensure that its Personnel comply with, the Australia Code for the Responsible Conduct of Research (2018), the National Statement on Ethical Conduct in Human Research (2018) and other relevant legislation, standards, guidelines, codes and ethics in the course of undertaking the Project
- (e) act diligently and in good faith in carrying out all of its obligations under the Agreement; and
- (f) meet all of its obligations under the Agreement.

8.2 The TAC's obligations

The TAC will:

- (a) Nominate a TAC project manager as the key contact to liaise with the Applicant to assist with project related enquiries and monitor implementation of the project according to the agreed Project Plan; and
- (b) provide the Applicant with reasonable access to its staff for any necessary discussions and consultations relating to undertaking the Project.

9. 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) its performance of its obligations under the Agreement (including performance of the Project) will be in a proper, professional and business-like manner; and
- (c) in performing its obligations under this Agreement (including performance of the Project), it will not infringe any patent, trade mark, copyright or other Intellectual Property of any third party.

10. EXCLUSIONS AND LIMITATIONS OF LIABILITY

10.1 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.

10.2 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.

10.3 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 by the Applicant or any of its employees, agents or consultants;
- (c) any breach of any statute or Laws by the Applicant or any of its employees, agents or consultants;
- (d) negligence of the Applicant or any of its employees, agents or consultants; or
- (e) any act giving rise to a civil or criminal liability by 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.

10.4 Continuing obligation

The indemnity given under clause 10.3:

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

10.5 Officers

- (a) Where the context permits, references in this clause 10 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 10 both on its own behalf and on trust for its officers, employees, agents and sub-licensees.

11. CONFIDENTIALITY

11.1 Use and disclosure of Confidential Information by Applicant

Subject to clause 11.2, each party agrees to:

- (a) use the Confidential Information of the other party for the sole purpose of undertaking the Project and otherwise performing its obligations or exercising its rights under the Agreement;
- (b) not disclose or otherwise make available the Confidential Information to any third party other than to its employees who have a need to know the information in order to carry out their obligations or exercise their rights 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 11.1(b) do not use the Confidential Information for any purpose other than implementing the Project and otherwise performing its obligations or exercising its rights

- (d) under the Agreement; and immediately notify the other party if it becomes aware of a suspected or actual breach of this clause 11. Each party must take reasonable steps required to prevent or stop the suspected or actual breach.

11.2 Exceptions to the Disclosure of Confidential Information

- (a) The Parties may disclose Confidential Information if compelled to do so by order of a court, subject to it consulting with the other party before doing so; and
- (b) The TAC may disclose Confidential Information:
 - (i) in the course of the TAC performing its statutory functions; and
 - (ii) 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.

11.3 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).

12. TAC DATA

12.1 Access to TAC Data

The Applicant must provide to the TAC upon request access to any TAC Data that is in possession of the Applicant within a reasonable time of the request.

12.2 Use of TAC Data

The Applicant must:

- (a) Only use the TAC Data to the extent necessary to perform its obligations under this Agreement or the Project and for no other purpose;
- (b) Not, and must ensure its Personnel do not take any action or make any attempt to re-identify any de-identified TAC Data which contains Personal Information, Health Information or Sensitive Information;
- (c) Not assert that there exists any charge or lien or other ownership right over or including any part of the TAC Data (irrespective of any payment dispute); and
- (d) Use best endeavours to ensure that in the course of performing its obligations under this Agreement or the Project no errors (whether typographical, logical or otherwise) are introduced into the TAC Data.

12.3 Restrictions on use of TAC Data

The Applicant must not use, modify, access, copy, disclose, communicate, transmit, store or adapt any TAC Data other than as specified in the final Project Plan and in accordance with this clause 12.

12.4 Transfer of Data Between the TAC and Service Provider

TAC Data transferred between the TAC and the Applicant must be through a secure online transfer facility, unless otherwise agreed to in writing by the TAC.

12.5 Transfer of Data outside Australia

The Applicant must not without the prior written consent of the TAC:

- (a) take, transfer or transmit any TAC Data outside Australia;

- (b) allow any TAC Data to be taken, transferred or transmitted outside Australia; or
- (c) allow persons outside Australia to have access to TAC Data.

12.6 Data Storage

The Applicant must ensure all TAC Data is stored on a secure server located in Australia physically and logically separate from the data of any other person, unless otherwise agreed to in writing by the TAC.

13. PRIVACY

13.1 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 131 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.

13.2 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.

14. PUBLICITY

14.1 Public Statements by the Applicant

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.

14.2 Public Statements by the TAC

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

14.3 Reputation and adverse statements

- (a) The Applicant 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),
- (b) 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 14.3.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 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**).

15.2 Intellectual Property licences

- (a) Subject to clause 11, 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, world-wide, perpetual, irrevocable licence (including the right to grant sub-licences) to use, reproduce, publish, communicate to the public, adapt, modify, perform, distribute and exploit at any time the Project Intellectual Property and any of the Applicant's Background Intellectual Property so far as it relates to the Project Intellectual Property for any purpose.
- (c) The Applicant waives its Moral Rights in relation to the TAC's use of the Applicant's Background Intellectual Property and Project Intellectual Property and undertakes not to enforce its Moral Rights against the TAC in relation to such use.
- (d) The Applicant must, on the TAC's request, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 15.
- (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.

15.3 Use of TAC's Trade Marks

- (a) The Applicant:
 - (i) may, subject to clause 15.3(a)(ii) and 15.3(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.

16. INSURANCE

16.1 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 8.
- (b) The Applicant must provide promptly upon request certificates of currency, or such other documentary evidence establishing the validity and currency of the insurances required under clause 16.1.

16.2 Statutory compliance

The Applicant must (and must ensure that any sub-contractors appointed under clause 17) comply with all relevant Laws concerning the statutory insurance cover for

liabilities in relation to employees and subcontractors.

17. 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 sub-contracting 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.

18. TERMINATION

18.1 Immediate termination by the TAC

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

- (a) the Applicant uses or fails to use the Funding provided by the TAC in any way other than in accordance with clause 4.1; or
- (b) the Applicant is affected by an Insolvency Event; or
- (c) 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
- (d) the TAC considers that providing the Funding is no longer consistent with its policy or its function under section 12(2) of the Act.

The Applicant must notify the TAC immediately after suspecting or becoming aware that it may experience an Insolvency Event.

18.2 Termination for convenience

The TAC may in its absolute discretion terminate this Agreement for convenience, without cause, by giving the Supplier the period of notice stated in the Agreement Details.

18.3 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.

18.4 Survival of obligations

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

19. GST

19.1 Interpretation

Words or expressions used in this clause 19 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.

19.2 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.

19.3 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.

19.4 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**):

- (e) 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
- (f) 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.

19.5 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.

20. DISPUTE RESOLUTION

20.1 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**).

20.2 Referral to Contract Representatives

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

20.3 Obligation to continue fulfilling obligations

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

20.4 Consequences of breach

If, in relation to a Dispute, a party breaches any provision of this clause 20 the other party need not comply with those clauses in relation to that Dispute.

20.5 Costs

Each party must bear its own costs of complying with this clause 20.

20.6 Court proceedings

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 20.

21. GENERAL

21.1 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.

21.2 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.

21.3 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.

21.4 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.

21.5 Alteration

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

21.6 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.

21.7 Assignment

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

22. COMMUNICATIONS

22.1 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.

22.2 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 10 at the address or email address set out in Item 10.
- (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).

22.3 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).

23. DEFINED TERMS & INTERPRETATION

23.1 Defined terms

In the Agreement:

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

Agreement means the TAC Values-based Healthcare Program Funding Agreement between the TAC and the Applicant.

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;

Background Intellectual Property means any Intellectual Property owned by a party to the Agreement prior to the Commencement Date of the Agreement;

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;

Confidential Information means:

- (a) the terms of the Agreement;
- (b) any information or data (in any form) that is disclosed by or on behalf of a Party to the other Party in connection with this Agreement, 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; but does not include information which:
 - (c) at the time of disclosure is in the public domain; or
 - (d) after disclosure becomes part of the public domain other than as a result of disclosure in breach of the Agreement;

Funding means the funds specified at Item 4 of the Agreement, together with interest accrued on those amounts;

Grant Program Guidelines means the TAC Value-based Health Care Grant Program Guidelines;

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, trade marks and trade mark applications and confidential information (including trade secrets and Know-How);

Item means the item number set out in Schedule 1 ('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;

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

Outcome Report has the meaning given in clause 7.3;

Overdue Amount means an amount which is the subject of a valid Tax Invoice (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 Tax Invoice or the date that the amount ceased to be disputed, as the case may be;

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

Personal Information means information that is personal information as defined in the *Privacy and Data Protection Act 2014* (Vic) or that is information to which any other Privacy Laws apply;

Preconditions to Funding has the meaning given in clause 4.4;

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

Progress Report has the meaning given in clause 7.2;

Project means the Project Plan set out in Schedule 3 of the Agreement;

Project Intellectual Property has the meaning given in clause 15.1(b);

Reports means Progress Reports and Final Reports;

TAC Data means data or information made available by the TAC to the Applicant in connection with this Agreement and data or information collected, developed or modified by or on behalf of the Applicant as part of performing services under this Agreement;

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;

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 9.

23.2 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 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, substitutes 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.

Signing page

EXECUTED as an agreement.

Executed by a person authorised under section 22 of the *Transport Accident Act 1986 (Vic)* for the **TRANSPORT ACCIDENT COMMISSION** in the presence of:

_____	←	_____	←
Signature of witness		Signature of officer	
_____	←	_____	
Name of witness (print)		Name of officer (print)	
_____		_____	
		Office held	


Signed on behalf of **[Insert Applicant Name]** by an authorised representative in the presence of

_____	←	_____	←
Signature of witness		Signature of representative	
_____	←	_____	
Name of witness (print)		Name of representative (print)	
_____		_____	
		Position held	

Schedule 1

Principal Information

Item 1 Applicant	
Name: [Insert]	
ABN: [Insert]	
Notice details: [Insert]	
Attention : [Insert]	
Email: [Insert]	
Phone: [Insert]	
Item 2 (clause 2 & 23) Commencement Date	
[Insert]	
Item 3 (clause 2 & 23) Completion Date	
[Insert]	
Item 4 (clause 4 & 23) Funding	
\${Insert}	
Item 5 (clause 22 & 23): TAC Representative	
[Insert]	
Item 6 (clause 22 & 23) Applicant Representative	
[Insert]	
Item 7 (clause 7) Report & Payment Schedule	
<i>Project Initiation</i>	Upon execution of this Agreement, the TAC will pay the Applicant 50% of the Funding.
<i>Progress Report #1</i>	In accordance with the Project Plan and subject to satisfaction of the requirements of Clause 4, the TAC will pay the Applicant 20% of the Funding upon acceptance of the Progress Report.
<i>Progress Report #2</i>	In accordance with the Project Plan and subject to satisfaction of the requirements of Clause 4, the TAC will pay the Applicant 15% of the Funding upon acceptance of the Progress Report.
<i>Outcome Report (including financial acquittal)</i>	In accordance with the Project Plan and subject to satisfaction of the requirements of Clause 4, the TAC will pay the Applicant 15% of the Funding upon acceptance of the Outcome Report.
<i>Report Format</i>	The relevant report must be prepared in accordance with and contain the information specified in the Report Requirements set out in Clause 7. Report to be completed and submitted to TAC via research@tac.vic.gov.au .

Item 8 (clause 16.1) Insurance	
<p>(a) Professional indemnity insurance – \$5,000,000.00</p> <p>(b) Public liability insurance – \$10,000,000.00</p> <p>(c) Workers compensation insurance under the applicable legislation; and</p> <p>The Applicant must provide the TAC with a certificate of currency in respect of insurance policies on request.</p>	
Item 9 (clause 15.3 & 23) Trade Marks	
<p>TAC</p>  <p>Applicant</p> <p>[Insert if applicable]</p>	
Item 10 (clause 22.2) Notice	
TAC	Address: 60 Brougham Street, Geelong, Victoria, 3220 email: [Insert]@tac.vic.gov.au, Attention: [Insert]
Applicant	See Item 1
Item 11 Additional terms and conditions	
[Insert additional T&Cs if applicable]	
Item 12 Termination for Convenience	
20 (twenty) Business Days	

**Schedule 2 TAC Value-based Healthcare Grant
Program Guidelines 2024**

TEMPLATE

[Insert Project Plan]

TEMPLATE