

## Funding Agreement

Best Client Outcomes Grant Program

**Transport Accident Commission**  
ABN 22 033 947 623  
(**TAC**)

and

[Insert]  
ABN [Insert]  
(**Grantee**)

For the Project entitled:

***[Insert Project title and TAC project number starting with "T" here in bold and italics]***

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## Details

## Parties

Name	<b>Transport Accident Commission</b>
ABN	22 033 947 623
Short form name	<b>TAC</b>

Name	Refer to Item 1, Schedule 1 <b>Grantee</b>
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## Background

- A. The TAC is a statutory corporation established under and regulated by the Act.
- B. 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.
- C. Under section 11(c) of the Act, one of the TAC's statutory objectives is to ensure that the transport accident scheme emphasises accident prevention and effective rehabilitation.
- D. In furtherance of this statutory objective, the TAC has established the Best Client Outcomes Grant Program which aims to improve the quality of, and equity of access to, rehabilitation services for people injured in transport accidents.
- E. The Grantee has developed the Project and has applied to the TAC in accordance with the Grant Program Guidelines for funding under the Best Client Outcomes Grant Program.
- F. The TAC has agreed to provide the funds to the Grantee for the Project in accordance with the Grant Program Guidelines on the terms and conditions of this Agreement.

## Funding Terms and Conditions

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### 1. DEFINED TERMS & INTERPRETATION

#### 1.1 Defined terms

In this Agreement:

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

**Agreement** means this Best Client Outcomes Grant Program Funding Agreement as described at clause 3 (including any additional terms or conditions specified in Item 11 of Schedule 1 between the TAC and the Grantee);

**AI Guidelines** means the Administrative Guidelines for the safe and responsible use of Generative Artificial Intelligence in the Victorian Public Sector (as amended from time to time) available at <https://www.vic.gov.au/administrative-guideline-safe-responsible-use-gen-ai-vps>.

**AI System** means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.

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

**Best Client Outcomes Grant Program** means the TAC's Best Client Outcomes Grant Program described in the Grant Program Guidelines;

**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 of Schedule 1;

**Completion Date** means the date specified in Item 3 of Schedule 1;

**Completion Report** has the meaning specified in clause 7.4.3;

**Confidential Information** means:

- (a) the terms of this 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 this Agreement;

**Conflict of Interest** includes any perceived or actual conflict between:

- (a) the duties of the Grantee or any of its Personnel under this Agreement; and
- (b) any personal, business, financial or other interest that the Grantee or any of its Personnel may have in relation to the Project.

**Consequential Loss** means any of the following loss or damage caused by a breach of contract, or arising in tort (including negligence), under statute or on any other basis at law or in equity:

- (a) loss of, or diminution in, reputation or goodwill;
- (b) loss of, or diminution in, profits, revenue, overhead recovery, savings or anticipated savings;
- (c) loss of, or denial of, opportunity, anticipated or future business or anticipated or future contract or custom; or
- (d) loss not arising naturally and not arising according to the usual course of things, from the relevant breach or acts or omissions;

**End of Project Reports** has the meaning specified in clause 7.4.1;

**Financial Acquittal Report** has the meaning specified in clause 7.4.4;

**Funding** means the funds specified at Item 4 of Schedule 1 of this Agreement, together with interest accrued on those amounts;

**Funding Terms and Conditions** means operative clauses 1 to 24.9 of this Agreement;

**Grant Program Guidelines** means the TAC's Best Client Outcomes Grant Guidelines set out in Schedule 2;

**Grantee Representative** means an officer nominated by the Grantee as specified in Item 6 of Schedule 1;

**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);

**Information Privacy Principles** means the information privacy principles set out in the Privacy and Data Protection Act;

**Insolvency Event** means where:

- (a) the Grantee becomes insolvent;
- (b) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Grantee or the Grantee enters into a scheme of arrangement with its creditors or is wound up;

- (c) the Grantee assigns any of its property for the benefit of creditors or any class of them;
- (d) an encumbrance takes any step towards taking possession or takes possession of any assets of the Grantee exercises any power of sale; or
- (e) the Grantee has a judgment or order given against it in an amount exceeding \$1,000 (or the equivalent in another currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being given;

**Intellectual Property** means all present and future, Australian and international intellectual and industrial property rights conferred by statute, at common law or in equity wherever those rights might arise, including (without limitation) copyright (including Performer's Rights), patent rights, plant breeder's rights, designs, technical or commercial know how, trade marks, circuit layouts, trade secrets, rights in relation to databases and domain names, inventions, innovations, rights to have confidential information kept confidential and all other results of intellectual effort in the scientific, industrial, literary or artistic fields whether or not registered or capable of registration, including any application or registration or right to apply for registration of any of the aforesaid rights, and including any variations, modifications, adaptations and derivatives of any of the aforesaid rights;

**Item** means the item number set out in Schedule 1 ('Principal Information') of this Agreement;

**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;

**Liability** includes liabilities (whether actual, contingent or prospective), losses, damages, actions, costs, expenses, charges, fees (including reasonable legal costs on a full indemnity basis) and outgoings of whatever description, but excludes Consequential Loss;

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

**Outcome Report** has the meaning given in clause 7.4.2;

**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
  - (i) which has been outstanding for more than twenty (20) Business Days from the date of the valid Tax Invoice; or
  - (ii) 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 of Schedule 1;

**Personal Information** means information that is personal information as defined in the Privacy & Data Protection Act or that is information to which any other privacy laws apply;

**Personnel** means employees, agents, contractors or subcontractors including representatives.

**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 7.3;

**Project** means the project described in the Project Plan and to be undertaken by the Grantee;

**Project Intellectual Property** has the meaning given in clause 17.1.2;

**Project Plan** means the project plan set out in Schedule 3 of this Agreement;

**Reports** means Progress Reports and End of Project Reports;

**Schedule** means a schedule to this Agreement;

**Small Business Identification Tool** means the tool used to identify a small business under the Payment Times Reporting Scheme pursuant to the *Payment Times Reporting Act 2020* (Cth).

**TAC Data** means data, information, statistics, analysis and other materials embodied in any form which is owned by or on behalf of the TAC;

**TAC Representative** means an officer nominated by the TAC as specified in Item 5 of Schedule 1;

**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 this Agreement set out at clause 2; and

**Trade Marks** means any trade mark of the TAC (whether registered or not registered) provided to the Grantee by or on behalf of the TAC, including the trade marks set out in Item 9 of Schedule 1.

## 1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this 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 this Agreement and a reference to this Agreement includes any schedules;
- (e) a reference to a document or agreement, including this 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.

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## **2. TERM**

This Agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with clause 20 (**Term**).

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## **3. DOCUMENTS FORMING THIS AGREEMENT**

### **3.1 Documents**

This Agreement consists of the:

- 3.1.1 Funding Terms and Conditions; and
- 3.1.2 Schedules.

### **3.2 Priority of Documents**

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

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## **4. PROVISION OF FUNDING**

### **4.1 Application of Funding**

The Grantee must ensure that the Funding is:

- 4.1.1 applied solely in undertaking the Project;
- 4.1.2 applied in a manner that is consistent with the Grant Program Guidelines; and
- 4.1.3 not used for any other purpose including, but not limited to, other projects or research being undertaken by the Grantee.

### **4.2 Provision of Funding**

- 4.2.1 Subject to clause 4.4 and to the TAC being satisfied that the Grantee is in compliance with its obligations under this Agreement, the TAC will provide the Funding to the Grantee in accordance with the Payment Schedule.

4.2.2 Each payment of Funding referred to in the Payment Schedule will be made within twenty (20) Business Days of receipt by the TAC (or ten (10) Business Days if the Grantee has opted in for registration with the Small Business Identification Tool) of:

- (a) a valid Tax Invoice issued by the Grantee for the amount prescribed in the Payment Schedule;
- (b) the corresponding Progress Report or End of Project Reports, approved by the TAC in accordance with clause 7.2.2; and
- (c) any supporting material requested by the TAC.

#### **4.3 Fair Payments**

The TAC will, on written demand by the Grantee, 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 Grantee in accordance with clause 4.2 unless the following preconditions are satisfied:

- 4.4.1 the performance by the Grantee of the activities and tasks approved by the TAC from the Project Plan;
- 4.4.2 the submission by the Grantee and approval by the TAC of the Progress Reports and End of Project Reports, as applicable under Item 7 of Schedule 1; and
- 4.4.3 compliance by the Grantee with this Agreement, (together the **Preconditions to Funding**).

#### **4.5 Acknowledgements**

The Grantee acknowledges and agrees that:

- 4.5.1 except for the Funding provided to the Grantee under this Agreement, the TAC will not be liable to compensate the Grantee or any other person for any Liabilities incurred in taking any action as a result of or in connection with the Project or this Agreement; and
- 4.5.2 it is not entitled to receive the Funding unless and until it has complied with the Preconditions to Funding.

#### **4.6 Repayment of improperly applied Funding**

The Grantee must repay to the TAC on demand, without deduction or set-off, any amount of the Funding paid by the TAC to the Grantee in error (such as due to an administrative error) or paid by the TAC to the Grantee which arose due to the Grantee's breach of this Agreement (such as by the Grantee's false, misleading or deceptive statements).

#### **4.7 Repayment of unused Funding**

- 4.7.1 If the Grantee has failed to apply any amount of Funding in the manner required by this 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.

- 4.7.2 Unless otherwise agreed, any Funding provided by the TAC to the Grantee which is not used by the Completion Date must be returned to the TAC within twenty (20) Business Days of a request by the TAC.

#### **4.8 Directions**

- 4.8.1 The Grantee must comply with any lawful and reasonable directions 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 this Agreement,

provided that such compliance is not unreasonable in the circumstances or require the Grantee to commit funds, time or resources over and above those agreed in the Project Plan.

- 4.8.2 For the avoidance of doubt, any change to the Project Plan must be agreed by written variation in accordance with clause 24.5 and signed by both parties.

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### **5. ACCOUNTS AND RECORDS**

#### **5.1 Financial records**

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

#### **5.2 Access to accounts and records**

- 5.2.1 The Grantee must during the Term and for up to seven (7) years after the expiry or termination of this Agreement, upon five (5) Business Days written notice given by the TAC to the Grantee, grant the TAC, its auditors or its nominee, access to the Grantee's accounts and records to enable the TAC to verify that the Funding has been used and applied by the Grantee only for the purposes listed in clause 4.1.

- 5.2.2 The Grantee must promptly provide to the TAC, its auditors or nominee copies of any accounts and records requested, and cooperate with the TAC.

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### **6. PROJECT**

#### **6.1 Project Plan**

The Grantee must promptly commence the project implementation in accordance with the Project Plan upon signing this Agreement.

#### **6.2 Variation to Project Plan**

- 6.2.1 Either party may, from time to time, propose variations to the Project by providing notice to the other party in accordance with clause 23.2.

6.2.2 In accordance with clause 24.5 of this Agreement, 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**

6.3.1 The TAC will determine in its absolute discretion (acting reasonably) whether the Project has been satisfactorily completed including by having regard to the Grantee's satisfaction of the agreed Project milestones.

6.3.2 If the TAC does not believe that the Project has been satisfactorily completed, the TAC will notify the Grantee who must then take all steps the TAC reasonably considers necessary to complete the Project (including amending and resubmitting some or all of the End of Project Reports or undertaking additional activities relating to the Project).

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## **7. REPORTING AND MEETINGS**

### **7.1 Progress Meetings**

The Grantee must attend progress meetings with the TAC in accordance with the Project Plan from the Commencement Date, or as otherwise agreed by the parties in writing, at the times and places reasonably requested by the TAC during the Term.

### **7.2 Reports**

7.2.1 The Grantee must prepare and submit to the TAC the Reports specified in this Agreement including the Project Plan.

7.2.2 The TAC may, acting reasonably, approve a Report or require the Grantee to revise and resubmit a Report, in which case the Grantee will revise and resubmit the Report promptly and in accordance with the TAC's reasonable directions.

### **7.3 Progress Reports**

7.3.1 The Grantee must prepare progress reports containing reasonable details of the operating activities of the Grantee relating to the Project in accordance with the Project Plan (for the period specified in Item 7 of Schedule 1 (**Progress Reports**)).

7.3.2 The Progress Reports must be in the format and contain the content required by the TAC and must include details of:

- (a) the work done on the Project and the status of the Project including whether timelines are being met;
- (b) the financial (including expenditure of the Funding) and operating activities of the Grantee in connection with the Project Plan up to and including the date of the Progress Report; and
- (c) details of any problems encountered by the Grantee in conducting the Project and solutions (including proposed timeframes) identified to overcome those problems.

## **7.4 Outcome, Completion & Financial Acquittal Reports**

7.4.1 The Grantee must prepare the following reports for the Project (collectively the **End of Project Reports**):

- (a) an Outcome Report;
- (b) a Completion Report; and
- (c) a Financial Acquittal Report.

7.4.2 The Outcome Report must be in the format and contain the content required by the TAC and must include:

- (a) an executive summary (maximum 4 pages);
- (b) an introduction/background detailing the rationale, aims and objectives of the Project;
- (c) a brief description of the research methods;
- (d) the outcomes, achievements and implications of the Project;
- (e) a copy of any products and resources produced as part of the Project;
- (f) details of any dissemination and translation activities planned and / or completed in relation to the Project;
- (g) a copy of any media releases relating to the Project;
- (h) details of any media coverage of the Project;
- (i) any problems encountered by the Grantee in conducting the Project;
- (j) details of the involvement of other government agencies in the Project and the extent of such involvement; and
- (k) a plan for further developing the Project after the Completion Date.

7.4.3 The Completion Report must be in the format and contain the content required by the TAC and must include details of:

- (a) the extent to which the Project aims, objectives and deliverables were met;
- (b) any Project issues and / or risks that were encountered; and
- (c) any benefits that were realised from the Project.

7.4.4 The Financial Acquittal Report must be in the format and contain the content required by the TAC and must contain information which evidences all Funding expenditure.

## **7.5 Timing, Content and Form of Reports**

Each Report must:

- 7.5.1 be presented to the TAC's Representative by the dates specified in Item 7 of Schedule 1);
- 7.5.2 comply in form and substance with the requirements of this clause 7; and
- 7.5.3 be certified as to its accuracy in the case of any financial information contained in the End of Project Reports, by an authorised officer of the Grantee.

## **7.6 Request for supporting information**

The Grantee must, at the TAC's request, provide to the TAC within five (5) Business Days any additional information, documents or other written evidence to support any statements made or information contained in the Progress Reports or the End of Project Reports.

## **7.7 Presentation**

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

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## **8. CONFLICT OF INTEREST**

### **8.1 Notice**

The Grantee must promptly notify the TAC if, at any time during the Term, an actual or potential Conflict of Interest arises relating to the conduct of any part of the Project by the Grantee or any of its Personnel under this Agreement.

### **8.2 Rights of the TAC**

If the Grantee notifies the TAC under clause 8.1 of an actual or potential Conflict of Interest, or the TAC otherwise becomes aware of an actual or potential Conflict of Interest, the TAC will consult with the Grantee to determine an appropriate course for managing the Conflict of Interest and the Grantee must implement any course of action that the TAC determines appropriate as soon as possible.

### **8.3 Termination**

The TAC may terminate this Agreement under clause 20.1.3 if a Conflict of Interest is not managed or resolved by the Grantee to the TAC's reasonable satisfaction within a reasonable timeframe.

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## **9. ANCILLIARY OBLIGATIONS**

### **9.1 Grantee's obligations**

During the Term, the Grantee must:

- 9.1.1 undertake the Project in accordance with the terms of this Agreement;
- 9.1.2 ensure that its Personnel exercise due 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;

- 9.1.3 maintain all qualifications, certifications, licences necessary to perform the Project;
- 9.1.4 comply with, and ensure that its Personnel comply with, the Australian Code for the Responsible Conduct of Research (2018), the National Statement on Ethical Conduct in Human Research (2023) and other relevant legislation, standards, guidelines, codes and ethics in the course of undertaking the Project;
- 9.1.5 act diligently and in good faith in carrying out all of its obligations under this Agreement; and
- 9.1.6 meet all of its obligations under this Agreement.

## **9.2 The TAC's obligations**

The TAC will:

- 9.2.1 nominate a TAC Representative as the key contact to liaise with the Grantee to assist with Project related enquiries and monitor implementation of the Project according to the agreed Project Plan; and
- 9.2.2 provide the Grantee with reasonable access to its staff for any necessary discussions and consultations relating to undertaking the Project.

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## **10. WARRANTIES AND REPRESENTATIONS**

### **10.1 Warranties and representations**

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

- 10.1.1 it has lawful authority to execute this Agreement and to perform its obligations under this Agreement;
- 10.1.2 its performance of its obligations under this Agreement (including performance of the Project) will be in a proper, professional and business-like manner; and
- 10.1.3 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.

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## **11. EXCLUSIONS AND LIMITATIONS OF LIABILITY**

### **11.1 Release and discharge**

The Grantee acknowledges and agrees that it:

- 11.1.1 implements the Project at its own risk; and
- 11.1.2 unconditionally and irrevocably releases and forever discharges the TAC from all Claims which the Grantee 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 Grantee in relation to this Agreement.

## 11.2 Disclaimer

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

## 11.3 Indemnity

The Grantee indemnifies and agrees to keep the TAC and its Personnel (together the '**Indemnified**') indemnified from and against any Liability or Claim suffered or incurred by the Indemnified (including any Liability or Claim incurred or sustained in connection with a third party Claim) arising out of, or in connection with, this Agreement or the performance and/or undertaking of the Project and:

- 11.3.1 any breach of this Agreement or any Law by the Grantee or any of its Personnel in relation to this Agreement;
- 11.3.2 any false, misleading or deceptive statement or conduct of the Grantee or any of its Personnel in relation to this Agreement;
- 11.3.3 any negligent, fraudulent, unlawful, reckless or wilfully wrongful act or omission of the Grantee or any of its Personnel in relation to this Agreement; or
- 11.3.4 any Claim that the TAC's use of the Project Intellectual Property or the Grantee's Background Intellectual Property as permitted by this Agreement infringes the Intellectual Property Rights of any third party,

except that the Grantee's obligation to indemnify the Indemnified under this clause 11.3 will be proportionately reduced to the extent that a negligent act, omission or breach of this Agreement by the Indemnified has directly caused the relevant Liability or Claim.

## 11.4 Mitigation of loss

The Indemnified must take all reasonable steps to mitigate any loss they may suffer or incur as a result of the events specified in clauses 11.3.1 to 11.3.4.

## 11.5 Continuing obligation

The indemnity given under clause 11.3:

- 11.5.1 is a continuing obligation separate and independent from the other obligations of the parties;
- 11.5.2 does not limit any other right the Indemnified may have or require the Indemnified to incur expense or make a payment before enforcing the right of indemnity; and
- 11.5.3 survives termination of this Agreement.

## 11.6 Consequential Loss

Notwithstanding any other provision of this Agreement, neither party will have any liability to make a payment to the other party, by way of indemnity, damages or otherwise, in respect of any Consequential Loss incurred or suffered by the other party as a result of any act, omission or negligence of the first party.

## 11.7 Trust

The TAC holds the benefits of the releases, agreements and indemnities in this clause 11 both on its own behalf and on trust for its officers, employees, agents and sub-licensees.

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## 12. CONFIDENTIALITY

### 12.1 Use and disclosure of Confidential Information

Subject to clause 12.2, each party agrees to:

- 12.1.1 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 this Agreement;
- 12.1.2 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 this Agreement, but only to the extent that they need to know;
- 12.1.3 ensure that any employees who have access to the Confidential Information under clause 12.1.2 do not use the Confidential Information for any purpose other than implementing the Project and otherwise performing its obligations or exercising its rights under this Agreement;
- 12.1.4 immediately notify the other party if it becomes aware of an actual or suspected breach of this clause 12; and
- 12.1.5 take all reasonable steps to prevent or stop an actual or suspected breach of this clause 12.

### 12.2 Exceptions to the Disclosure of Confidential Information

- 12.2.1 The parties may disclose Confidential Information if compelled to do so by order of a court, subject to consulting with the other party before doing so.
- 12.2.2 The TAC may disclose Confidential Information:
  - (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.

### 12.3 FOI Act

The Grantee agrees, at the TAC's written 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).

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### 13. TAC DATA

#### 13.1 No Access to TAC Data

The TAC is not required to provide, and the Grantee will not request, that the TAC provides any TAC Data to the Grantee under this Agreement.

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### 14. AI System

**14.1** The Grantee must not (and must ensure that its Personnel do not), disclose or input any Confidential Information into an AI System without the prior written approval of the TAC.

**14.2** The TAC may grant approval in its absolute discretion, including subject to specific conditions, limitations or additional controls. The Grantee must only use an AI System in accordance with such approval from the TAC.

**14.3** No approval by the TAC in accordance with clauses 14.1 and 14.2 will limit the Grantee's obligations under this clause 14.

**14.4** If the Grantee wishes to obtain the TAC's approval under clauses 14.1 and 14.2 to disclose or input any Confidential Information, into an AI System:

- (a) the Grantee must provide the TAC:
  - (i) the purpose of disclosing or inputting the Confidential Information into the AI System;
  - (ii) to the extent known, its matter of input;
  - (iii) the nature of Confidential Information that the Grantee intends to input into the AI System;
  - (iv) confirmation that it has complied with clause 14.4; and
  - (v) all information reasonably requested by the TAC in relation to the AI System,

**(AI System Proposal).**

- (b) for the purpose of the TAC assessing the Grantee's use of an AI System, the Grantee must (at its own cost) conduct:
  - (i) a privacy impact assessment (with such tests, audits and inspections necessary) to verify that it is complying with the privacy requirements set out in this Agreement, the AI Guidelines and otherwise required by Law; and
  - (ii) a security technology assessment of risk (with such tests, audits and inspections necessary) to verify that it is complying with the security requirements set out in this Agreement and the AI Guidelines,in respect of the proposed use of the AI System; and
- (c) the TAC may review the assessments provided under clause 14.4(b) and, acting reasonably, require the Grantee to repeat or supplement either or

both assessments (at the Grantee's cost) if the TAC considers the assessment incomplete, inaccurate or insufficient for the purposes of assessing the AI System Proposal.

- 14.5** Without limiting any other clause in this Agreement, the Grantee acknowledges that it and the TAC are bound by the AI Guidelines. If using an AI System in accordance with this clause 14, the Grantee will not do any act or engage in any practice that contravenes or breaches the AI Guidelines or would give rise to any contravention by the TAC of the AI Guidelines.

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## **15. PRIVACY**

### **15.1 Compliance with Statute**

The Grantee 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.

### **15.2 Obligations in relation to Privacy**

The Grantee 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 Grantee 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.

### **15.3 Consequences of breach**

Any breach of this clause 14 will constitute an irremediable breach of this Agreement entitling the TAC to terminate this Agreement immediately by notice to the Grantee under clause 20.1.3 and, in any event, may render the Grantee liable to prosecution and penalty.

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## **16. PUBLICITY**

### **16.1 Public Statements**

Subject to clause 16.2, both parties must not make any public statements, including issue any media release, about the other party or in connection with this Agreement or the Project without the prior written consent of that other party, except to the extent it is required to do under any applicable Law or, in the case of public statements made by the TAC, to satisfy the requirements of parliamentary accountability pursuant to Government policies or to comply with the requirement of the Department of Treasury and Finance or any other Government department or agency in Victoria.

### **16.2 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.

### **16.3 Reputation and adverse statements**

16.3.1 The Grantee must not do or omit to do anything which may:

- (a) damage, bring into disrepute or ridicule the TAC's name, messages or reputation; or
- (b) 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).

#### **16.4 Notification**

Both parties must immediately notify the other party of any actual or potential breach of this clause 16 or any matter of which it becomes aware which may be prejudicial or otherwise detrimental to the other's name, messages, reputation or interests, whether or not relating to anything done or omitted to be one by that party.

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## **17. INTELLECTUAL PROPERTY RIGHTS**

### **17.1 Ownership**

17.1.1 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 Grantee, the Grantee must:

- (a) only use it during the Term to conduct the Project;
- (b) only use it in accordance with the TAC's instructions and conditions of use; and
- (c) return it to the TAC immediately on request or destroy it and provide evidence of such destruction.

17.1.2 Any Intellectual Property created by the Grantee in the course of conducting the Project, or otherwise in connection with this Agreement, will be owned by the Grantee (**Project Intellectual Property**).

### **17.2 Intellectual Property licences**

17.2.1 Subject to clause 12, the TAC grants to the Grantee 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.

17.2.2 The Grantee 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 Grantee's Background Intellectual Property so far as it relates to the Project Intellectual Property for any purpose.

17.2.3 The Grantee waives its Moral Rights in relation to the TAC's use of the Grantee's Background Intellectual Property and Project Intellectual Property and undertakes not to enforce its Moral Rights against the TAC in relation to such use.

17.2.4 The Grantee must, on the TAC's request, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 17.

- 17.2.5 The Grantee warrants that the TAC's use of the Grantee'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.

### **17.3 Use of Trade Marks**

- 17.3.1 The Grantee:
- (a) may, subject to clause 17.3.1(b) and 17.3.1(c), use the Trade Marks in a manner that appropriately recognises the support provided by the TAC in the context of this Agreement;
  - (b) 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
  - (c) must only use the Trade Marks in accordance with the TAC's instructions and conditions of use, as communicated to the Grantee in writing.
- 17.3.2 The Grantee 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.

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## **18. INSURANCE**

### **18.1 Grantee to maintain insurance**

- 18.1.1 The Grantee 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 of Schedule 1.
- 18.1.2 The Grantee must provide promptly, upon request, certificates of currency, or such other documentary evidence establishing the validity and currency of the insurances required under this clause 18.1.

### **18.2 Statutory compliance**

The Grantee must (and must ensure that any sub- contractors appointed under clause 19) comply with all relevant Laws concerning the statutory insurance cover for liabilities in relation to employees and subcontractors.

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## **19. SUB-CONTRACTING**

### **19.1 Sub-contracting**

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

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## **20. TERMINATION**

### **20.1 Termination by the TAC**

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

- 20.1.1 Grantee uses or fails to use the Funding provided by the TAC in any way other than in accordance with clause 4.1;
- 20.1.2 Grantee is affected by an Insolvency Event;
- 20.1.3 Grantee breaches a material provision of this Agreement which is not capable of remedy, or where the breach is capable of remedy, the Grantee fails to remedy the breach within fifteen (15) Business Days after receiving notice of the breach; or
- 20.1.4 TAC considers that providing the Funding is no longer consistent with its policy or statutory objectives.

### **20.2 Immediate notification of Insolvency Event**

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

### **20.3 Termination by the Grantee**

The Grantee may terminate this Agreement immediately by written notice to the TAC if the TAC breaches a material provision of this Agreement which is not capable of remedy, or where the breach is capable of remedy, the TAC fails to remedy the breach within fifteen (15) Business Days after receiving notice of the breach.

### **20.4 Consequences of termination**

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

- 20.4.1 the Grantee must repay to the TAC all Funding provided by the TAC to the Grantee other than amounts applied by the Grantee in accordance with this Agreement;
- 20.4.2 the Grantee must cease, and cause any subcontractors to cease, undertaking the Project, except as reasonably directed by the TAC;
- 20.4.3 each party's (**User**) right to use the Confidential Information of the other party (**Owner**) ceases (but the User must continue to keep confidential that Confidential Information), and the User must immediately at the Owner's option:
  - (a) return to the Owner;
  - (b) destroy and certify in writing to the Owner the destruction of;
  - (c) destroy and permit the Owner to witness the destruction of,all Confidential Information in the User's possession or control;
- 20.4.4 the Grantee must provide to the TAC all information reasonably required, including but not limited to, information concerning the Grantee's implementation and use of the Project; and

20.4.5 the TAC may, in its absolute discretion, transfer the Project to another Grantee in order that the Project may be completed.

## 20.5 Survival of obligations

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

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## 21. GST

### 21.1 Definitions

Words or expressions used in this clause 21 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.

### 21.2 GST inclusive amounts

For the purposes of this 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 this Agreement, the amount or consideration will not be increased on account of any GST payable on that supply.

### 21.3 Consideration is GST exclusive

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

### 21.4 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):

21.4.1 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

21.4.2 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.

### 21.5 Reimbursements (net down)

If a payment to a party under this 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.

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## **22. DISPUTE RESOLUTION**

### **22.1 Notification of Dispute**

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

### **22.2 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 Grantee's Representative must personally, or through a nominee, attempt to resolve the Dispute.

### **22.3 Obligation to continue fulfilling obligations**

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

### **22.4 Consequences of breach**

If, in relation to a Dispute, a party breaches any provision of this clause 22, the other party need not comply with those clauses set out in this clause 22 in relation to that Dispute.

### **22.5 Costs**

Each party must bear its own costs of complying with this clause 22.

### **22.6 Court proceedings**

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 22.

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## **23. COMMUNICATIONS**

### **23.1 Representatives**

23.1.1 The TAC Representative and Grantee Representative respectively are authorised to:

- (a) give and receive any consent, approval, direction or notice under this Agreement; and
- (b) otherwise act on behalf of the TAC and Grantee respectively in relation to this Agreement and the transactions contemplated by it.

23.1.2 Each of the TAC and the Grantee must ensure that the TAC Representative and Grantee Representative respectively are reasonably contactable during the Term.

23.1.3 Each of the TAC and the Grantee must notify the other in writing of any change to the TAC Representative and/or the Grantee Representative respectively or to their contact details.

## **23.2 How to give a notice**

23.2.1 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 of Schedule 1 at the address or email set out in Item 10 of Schedule 1.

23.2.2 Any notice, consent or communication under this Agreement must be:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if addressee is overseas) to that person's address; or
  - (ii) sent in electronic form (such as email).

## **23.3 When a notice is given**

23.3.1 A notice, consent or communication that complies with clause 23.2.2 is regarded as given and received:

- (a) if it is sent by mail:
  - (i) within Australia – three (3) Business Days after posting; or
  - (ii) to or from a place outside Australia – five (5) Business Days after posting; or
- (b) 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).

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## **24. GENERAL**

### **24.1 Relationship**

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

### **24.2 Waiver**

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

- 24.2.1 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
- 24.2.2 at any other time to require performance of that or any other obligation under this Agreement.

### **24.3 Entire agreement**

This Agreement:

- 24.3.1 constitutes the entire agreement between the parties as to its subject matter; and
- 24.3.2 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.

### **24.4 Governing law**

This 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.

### **24.5 Variation**

This Agreement may be varied only in writing signed by both parties.

### **24.6 Severability**

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

### **24.7 Assignment**

- 24.7.1 The Grantee's rights and obligations under this Agreement are personal to the Grantee. The Grantee may not assign its rights or novate its obligations under this Agreement without the prior written consent of the TAC (acting reasonably).
- 24.7.2 The TAC may assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the Grantee to any State government department, administrative office or other entity in the event of a State government restructure or other reorganisation. The Grantee must execute such documents and do such things as the TAC may reasonably require to give effect to any such assignment, novation or transfer by the TAC.

### **24.8 Electronic Signature**

Each party acknowledges and agrees that subject to any Law that requires otherwise, this Agreement may be signed by any method of electronic signature that a party uses (at its discretion), including signing on an electronic device or by digital signature. Without limiting this term, 'electronic signature', whether digital or encrypted, will include scanned and transmitted versions (e.g via pdf) of an original signature. An electronic signature is sufficient to indicate a party's approval of the terms of this Agreement and its agreement to be so bound by its electronic signature and the terms of this Agreement.

### **24.9 Electronic Exchange**

The parties agree that this Agreement may be exchanged by hand, post or any electronic method that evidence that party's execution of the Agreement, including by a party forwarding a copy of its executed counterpart by hand, post or electronic means to the other party.

# 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:

<p>_____ Signature of witness ←</p> <p>_____ Name of witness (print)</p> <p>_____ Date</p>	<p>_____ Signature of officer ←</p> <p>_____ Name of officer (print)</p> <p>_____ Office held</p> <p>_____ Date</p>
--	---

**SIGNED** for and on behalf of [*Insert Grantee Name and ABN*] by an authorised representative in the presence of:

<p>_____ Signature of witness ←</p> <p>_____ Name of witness (print)</p> <p>_____ Date</p>	<p>_____ Signature of representative</p> <p>_____ Name of representative (print)</p> <p>_____ Position held</p> <p>_____ Date</p>
--	---

**EXECUTED** by [*Insert full legal name of Grantee*] ACN [*Insert ACN*] in accordance with section 127 of the *Corporations Act 2001* (Cth):

<p>_____ Signature of director</p>	<p>_____ Signature of director / company secretary (Please delete as applicable)</p>
--	--

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director / company secretary (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXECUTED** by **[Insert full legal name of Grantee] ACN [Insert ACN]** in accordance with section 126 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Authorised Agent Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXECUTED** by **[Insert full legal name of the trustee company] ACN [Insert ACN]** as trustee for the **[Insert full name of the trust] ABN [insert ABN of the trust]** in accordance with section 127 of the *Corporations Act 2001*(Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director / company secretary (Please delete as applicable)

\_\_\_\_\_  
Name of director (print)


\_\_\_\_\_  
Name of director / company secretary (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 1 Principal Information

Item	Description	Details
1.	<b>Grantee</b>	
	Name: [Insert] ABN: [Insert] Notice details: [Insert] Attention: [Insert] Email: [Insert] Phone: [Insert]	
2.	<b>Commencement Date</b>	
	[Insert]	
3.	<b>Completion Date</b>	
	[Insert Month, Year]	
4.	<b>Funding</b>	
	[\$Insert (excluding GST)]	
5.	<b>TAC Representative</b>	
	Name: [Insert] Email: [Insert] Phone: [Insert]	
6.	<b>Grantee Representative</b>	
	Name: [Insert] Email: [Insert] Phone: [Insert]	
7.	<b>Report &amp; Payment Schedule</b>	
	<i>Project Initiation</i>	Upon execution of this Agreement - [\$Insert] (excluding GST) [Insert %] of total Funding
	<i>Progress Report # 1</i>	[Insert Month, Year] – [\$Insert] (excluding GST) [Insert %] of total Funding

	<i>Progress Report #2</i>	[Insert Month, Year] – [\$Insert] (excluding GST) [Insert %] of total Funding
	<i>Outcome Report</i>	[Insert Month, Year] – [\$Insert] (excluding GST) [Insert %] of total Funding
	<i>Completion Report and Financial Acquittal</i>	[Insert Month, Year] Nil payment
	<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 the TAC via <a href="mailto:research@tac.vic.gov.au">research@tac.vic.gov.au</a>
8.	<b>Insurance</b>	
	(a) Professional indemnity insurance – \$5,000,000.00 (b) Public liability insurance – \$10,000,000.00 (c) Workers' compensation insurance under the applicable legislation	
	The Grantee must provide the TAC with a certificate of currency in respect of insurance policies on request.	
9.	<b>Trade Marks</b>	
	TAC 	<b>Grantee</b> [Insert]
10.	<b>Notice</b>	
	TAC	Address: 60 Brougham Street, Geelong, Victoria, 3220 email: [Insert]@tac.vic.gov.au Attention: [insert]
	<i>Grantee</i>	See Item 1
11.	<b>Additional Terms and Conditions</b>	
	[TAC to insert, if applicable, before providing to Grantee]	

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Schedule 2 **Grant Program Guidelines**

TEMPLATE

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## Schedule 3 **Project Plan**

[Insert Project Plan]

TEMPLATE