

Boating Safety and Facilities Program 2017 – 2018

Parties

Head, Transport for Victoria



and

<Recipient Name>

(<ABN or ACN> <number>)

**CONTENTS**

CONTENTS	1
1 DEFINITIONS AND INTERPRETATION	3
2 TERM OF AGREEMENT	7
3 PROJECT DELIVERY	7
4 GRANT	8
5 CONFLICT OF INTEREST	9
6 RECORDKEEPING.....	9
7 ASSETS	10
8 REPORTING	10
9 AUDIT AND PERFORMANCE REVIEW	11
10 ASSIGNMENT AND SUBCONTRACTING	11
11 DISPUTE RESOLUTION	12
12 SUSPENSION.....	12
13 CESSATION.....	13
14 TERMINATION OF AGREEMENT	13
15 TRANSITION OF PROJECT	14
16 INTELLECTUAL PROPERTY	15
17 PRIVACY, DATA PROTECTION AND PROTECTED DISCLOSURES	15
18 CONFIDENTIAL INFORMATION	16
19 INDEMNITY.....	17
20 INSURANCE AND RISK MANAGEMENT	17
21 VARIATION.....	18
22 TfV's CONSENT	18
23 STATUS OF RECIPIENT.....	19
24 NOTICES.....	19
25 WAIVER	20
26 SURVIVAL	20

Background

- A. The Recipient and TfV acknowledge their partnering approach to working together in good faith to achieve the objectives of this Agreement.
- B. The Recipient and TfV share a vision to improve the outcomes for people in Victoria. Through this Agreement, the Recipient and TfV will engage with each other cooperatively and collaboratively to achieve this vision.
- C. TfV will provide the Grant to the Recipient to deliver the Project.
- D. The Recipient will accept the Grant and use it for the delivery of the Project in accordance with the terms of this Agreement.

DRAFT

Terms and Conditions

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement:

Term	Definition and interpretation
Agreement	means these Terms and Conditions, the Details and the Schedule (including the Category Specific Terms and Conditions).
Applicable Department and TfV Policies	means any applicable Department or TfV policies and guidelines, as amended or replaced from time to time, including those set out in the Schedule.
Asset	means a non-consumable item of tangible property (including an Asset that becomes a fixture) that has a service life greater than one (1) year purchased, created or otherwise brought into existence whether wholly or in part with the use of the Grant.
Asset Register	means the register the Recipient will maintain under clause 7.1 [Assets].
Auditor-General	has the meaning set out in section 3 of the <i>Audit Act 1994</i> (Vic).
Australian Accounting Standards	means the accounting standards made by the Australian Accounting Standards Board in accordance with section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
Australian Auditing Standards	means the auditing standards made by the Auditing and Assurance Standards Board in accordance with section 227B of the <i>Australian Securities and Investment Commission Act 2001</i> (Cth).
Background Intellectual Property	means the Intellectual Property of a party which was either created: <ul style="list-style-type: none"> (a) Before the Start Date; or (b) independently of this Agreement, and all improvements to such Intellectual Property by the party.
Business Day	means a day other than a Saturday, Sunday or public holiday appointed under the <i>Public Holidays Act 1993</i> (Vic).
Category Specific Terms and Conditions	Means the Category Specific Terms and Conditions, if any, set out in item 7 of the Schedule.
Change in Control	means any change during the Term in any person(s) who directly or indirectly exercises effective control over the Recipient (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Recipient) by holding the majority of voting shares, units or other interests in the Recipient or by any other means, but does not include a change in respect of a council if that change is due to an election.
Completion Date	means the date set out in Item 4 of the Details.

Term	Definition and interpretation
Confidential Information	means information or data (including Personal Information and Health Information), whether or not in a material form, that is confidential to a party or should reasonably be considered confidential. Confidential Information does not include information that is already in the public domain, unless the reason it is in the public domain is as a result of a breach of this Agreement.
Conflict of Interest	means a situation, or a risk of a situation, where an officer, board member, employee, member, volunteer, subcontractor, representative or agent of the Recipient has duties or interests arising as a result of holding a position, possessing property, engaging in a business or occupation or from contractual obligations and those duties or interests are in conflict with or might appear to be in conflict with their duties and interest under this Agreement.
Day	(as opposed to "Business Day" as defined above) includes public holidays appointed under the <i>Public Holidays Act 1993 (Vic)</i> , and weekends.
Department	means the Department of Economic Development, Jobs, Transport and Resources.
Details	means the part of the Agreement titled 'Details'.
Dispute	means any dispute: (a) arising out of this Agreement; (b) concerning the performance or non-performance by either party of its obligations under the Agreement; or (c) concerning any decision of a party or interpretation of any clause of this Agreement.
Dispute Resolution Officer	means the person assigned to the position listed in item 5 of the Details or as notified in writing from time to time by TfV.
Facility	means facility or facilities at the Project Site.
Grant	means the money TfV provides (or arranges for the Department to provide) to the Recipient under this Agreement.
Grant Amount	Means the total amount of the Grant for the Activity set out in item 2 of the Schedule.
Health Information	has the meaning set out in the <i>Health Records Act 2001 (Vic)</i> .

Term	Definition and interpretation
Insolvency Event	<p>means where:</p> <ul style="list-style-type: none"> (a) the Recipient is unable to pay its debts as and when they fall due; (b) in the case of an individual, the individual enters into a scheme of arrangement with creditors or becomes bankrupt; (c) in the case of a legal entity that is not an individual: <ul style="list-style-type: none"> (i) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Recipient other than the appointment of an administrator to a council under s 219(2) of the <i>Local Government Act 1989</i> (Vic); (ii) the Recipient enters into a scheme of arrangement with its creditors; or (iii) the Recipient is wound up; (d) the Recipient assigns any of its property for the benefit of creditors or any class of creditors; or (e) a person with a legal right over any assets of the Recipient takes any step towards taking possession or takes possession of those assets or exercises any power of sale.
Intellectual Property	<p>includes:</p> <ul style="list-style-type: none"> (a) all copyright (including rights in relation to all documents, reports, charts, drawings, data bases, software, source codes, models, systems, slides, tapes and specifications); (b) all copyright and all rights in relation to inventions (including registered and registrable patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, and know-how; and (c) all other rights resulting from intellectual Project in the industrial, scientific, literary or artistic fields.
Laws	<p>includes:</p> <ul style="list-style-type: none"> (a) Acts of the Commonwealth and the State(s) and Territory(ies) in which the Project will be delivered, and any other relevant State or Territory; (b) ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a); and (c) lawful directions by any person exercising statutory powers regarding the Project.
Licence	<p>means a non-exclusive, world-wide, everlasting, irrevocable, royalty free licence to TfV to exercise all rights in relation to the Intellectual Property it applies to as if the licensee were the owner, including the right to sub-license. A Licence does not include the right to transfer or assign the Intellectual Property, or to seek or enforce remedies for infringements of the Intellectual Property against a third party.</p>
Material Breach	<p>means:</p> <ul style="list-style-type: none"> (a) a breach which constitutes a substantial failure in the performance of the Project and the Agreement by the Recipient; or (b) a series of minor breaches which together constitute a substantial failure in the performance of the Project and the Agreement of the Recipient.
Ombudsman	<p>means the person appointed under section 3 of the <i>Ombudsman Act 1973</i> (Vic).</p>

Term	Definition and interpretation
Personal Information	has the meaning set out in the <i>Privacy and Data Protection Act 2014</i> (Vic).
Project	means the Project described in the Schedule.
Project Site	means the site or sites in Victoria where the Project is to be undertaken.
Project Intellectual Property	means all Intellectual Property (excluding Background Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from TfV) by the Recipient under the Agreement.
Public Sector Data	has the meaning set out in the <i>Privacy and Data Protection Act 2014</i> (Vic).
Recipient	means the entity described in item 2 of the Details.
Recipient's Primary Contact	means the person listed in item 6 of the Details or as notified in writing from time to time by the Recipient.
Record	<p>means any document within the meaning of the <i>Evidence Act 2008</i> (Vic), including:</p> <ul style="list-style-type: none"> (a) anything on which there is writing; (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or (d) a map, plan, drawing or photograph; <p>created, managed, maintained, brought into existence or otherwise acquired or used by the Recipient in relation to the Funding, the Project, or the performance of the Recipient's obligations under the Agreement.</p>
Schedule	means the schedule to the Agreement.
Services	means the Project described in the Schedule.
Start Date	means the date set out in item 3 of the Details.
Subcontracting	is when the Recipient engages another organisation or person (excluding employees of the Organisation), to deliver all or a material part of the Project in accordance with clause 10 [Assignment and Subcontracting].
Term	means the period of this Agreement as detailed in clause 2 [Term of Agreement].
Terms and Conditions	means this part of this Agreement.
TfV	means the Head, Transport for Victoria, being the statutory office described in item 1 of the Details.

Term	Definition and interpretation
TfV's primary contact	means the person listed in item 10 of the Details.

Interpretation

- 1.2 In this Agreement, unless it specifically states differently:
- (a) words implying one gender include the other gender;
 - (b) the plural includes any singular and vice versa;
 - (c) a reference to a statute, ordinance, code or other Law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
 - (d) references to the Agreement include the Details, the Terms and Conditions, the Schedule, and any annexures and attachments;
 - (e) "including" and "includes" when introducing an example, does not limit the meaning to that example or examples of that kind;
 - (f) where a term is defined, the definition includes all grammatical forms of that term;
 - (g) headings and references to headings contained in square brackets ("[]") are inserted for readability and do not affect the interpretation of this Agreement; and
 - (h) a reference to a person includes an entity recognised by Law including a body politic, and incorporated and unincorporated bodies.

Governing Law

- 1.3 The laws of the State of Victoria apply to the Agreement. The Recipient and TfV agree to the jurisdiction of the courts of the State of Victoria and courts entitled to hear appeals from those courts.

2 TERM OF AGREEMENT

- 2.1 The Agreement will start on the Start Date and will end on the Completion Date, unless the Agreement is terminated earlier under clause 14 [Termination of Agreement].
- 2.2 The Recipient and TfV agree that TfV is not obligated to continue to provide funding to the Recipient beyond the Grant set out in the Schedule [item 2] nor to renew the Agreement at the end of the Term.

3 PROJECT DELIVERY

- 3.1 The Recipient will deliver the Project in accordance with the Agreement to the reasonable satisfaction of TfV and will at all times:
- (a) deliver the Project in a proper, timely and efficient manner using the standard of care, skill, diligence and foresight that would reasonably be expected from an expert and experienced provider of the Project;
 - (b) act in accordance with the ethical standards that are generally accepted to apply in the area of professional practice relevant to the Project;
 - (c) demonstrate a commitment to ethical practices and behaviours, and make sure that ethical practices are implemented and ethical behaviours are promoted through appropriate staff training and monitoring;

- (d) inform TfV about all matters TfV should reasonably be made aware of and provide information about the delivery of the Project that may reasonably be required by TfV;
 - (e) obtain and maintain any accreditation or registration required for the delivery of all or part of the Project or requested in writing by TfV; and
 - (f) comply with:
 - (i) the Category Specific Terms and Conditions;
 - (ii) the standards and performance targets listed in the Schedule in respect of the Project;
 - (iii) all Applicable Department and TfV Policies; and
 - (iv) all applicable Laws including Laws relating to fire protection, industrial relations and employment, health, general safety and taxation.
- 3.2 TfV will provide the Recipient with access to all Applicable Department and TfV Policies and standards.

4 GRANT

- 4.1 If the Recipient meets its obligations under this Agreement to the reasonable satisfaction of TfV, TfV will pay or arrange for the Department to pay the Grant to the Recipient as set out in the Schedule.
- 4.2 The Recipient and TfV agree that payment of all or part of the Grant is not an admission by TfV that the Recipient has met its obligations under this Agreement to the reasonable satisfaction of TfV.

Use of the Grant

- 4.3 The Recipient agrees to use the Grant only for the Project and in accordance with the Agreement or as agreed by TfV in writing.
- 4.4 The Recipient will do all things necessary to make sure that all payments made by the Recipient from the Grant (including payments to subcontractors) are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all liabilities.
- 4.5 The Recipient will not use any of the following as security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest unless TfV consents in writing:
- (a) the Grant;
 - (b) the Agreement including any right, title or interest created under it; or
 - (c) any Asset or Project Intellectual Property.
- 4.6 The Recipient will not spend the Grant on donations to members of a State or Commonwealth Parliament or political parties.
- 4.7 Any amount of the Grant not expended or legally committed for expenditure by the Recipient in accordance with this Agreement, must be refunded to TfV or the Department (if nominated by TfV), within thirty (30) Days of the Completion Date.
- 4.8 If, in the reasonable opinion of TfV, the Recipient:
- (a) does not comply with the Agreement;
 - (b) does not deliver all or part of the Project to TfV's reasonable satisfaction; or
 - (c) has used, spent or committed all or part of the Grant other than in accordance with the Agreement,

TfV may in its absolute discretion give written notice to the Recipient requiring the Recipient to repay all or part of the Grant, or that part of the Grant and any GST paid to the Recipient which, in TfV's reasonable opinion, has not been applied in accordance with the Agreement and the Recipient will repay that amount to TfV (or the Department, if nominated by TfV) within thirty (30) Days, or such other time period as agreed, of receiving the written notice from TfV.

Goods and Services Tax (GST)

- 4.9 In this clause, italicised words or expressions have the same meaning as set out in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act)*.
- 4.10 The Grant set out in the Schedule is exclusive of GST. If GST is payable on all or part of the Project, it will be paid to the Recipient at the same time as the Grant set out in the Schedule.

Funding Acknowledgement

- 4.11 The Recipient will acknowledge any Grant support provided by the Victorian Government, as specified in any Applicable Department and TfV Policy and any Schedule.

5 CONFLICT OF INTEREST

- 5.1 The Recipient:
- (a) warrants that, to the best of its knowledge after making diligent inquiry, it has no actual or potential Conflict of Interest and no actual or potential Conflict of Interest is likely to arise during the Term; and
 - (b) will take all reasonable steps to ensure that no actual or potential Conflict of Interest arises during the Term.
- 5.2 If during the Term the Recipient becomes aware of any matter that gives rise to an actual or potential Conflict of Interest, the Recipient will:
- (a) immediately give written notice to TfV of the actual or potential Conflict of Interest and of the steps the Recipient proposes to take to resolve or manage the actual or potential Conflict of Interest;
 - (b) make full disclosure to TfV of all relevant information relating to the actual or potential Conflict of Interest; and take such steps as TfV may, if TfV chooses to, reasonably require to resolve or manage the actual or potential Conflict of Interest.
- 5.3 If the Recipient fails to notify TfV, or is unable or unwilling to resolve or deal with the Conflict of Interest as required by TfV, TfV may terminate this Agreement under clause 14 [Termination of Agreement].

6 RECORDKEEPING

Financial Records

- 6.1 The Recipient will keep full and accurate Records so that:
- (a) all financial transactions, including receipts and payments, from the Grant are clearly and separately identifiable;
 - (b) if required by Law or TfV, financial statements under the Australian Accounting Standards can be prepared;

- (c) if required by Law or TfV, the Recipient's accounts and Records can be audited in accordance with Australian Auditing Standards; and
- (d) all of the Recipient's taxation liabilities and payments can be clearly identified.

Recordkeeping

- 6.2 Subject to 6.3, the Recipient will deal with all its Records in accordance with its usual recordkeeping practices, unless agreed otherwise in writing with TfV.
- 6.3 The Recipient will:
 - (a) maintain and manage the Records:
 - (i) as specified by TfV and in accordance with any Applicable Department and TfV Policy; and
 - (ii) in such a way that will allow the Records to be quickly and easily accessed, retrieved, reviewed, used and kept by TfV and Victorian Government.
 - (b) retain the Records for a period of seven (7) years after the termination or expiry of the Agreement or the completion of the Project (whichever is the earlier).
- 6.4 In addition to any other obligation under clause 6 or clause 15 [Transition of Project], the Recipient will immediately provide access to Records at the Department's written request and in any of the following circumstances:
 - (a) in accordance with the requirements of all relevant Laws;
 - (b) if requested by the Auditor-General or Ombudsman in writing;
 - (c) to the Department or any third party nominated by TfV in accordance with any written request by TfV; or
 - (d) for the purposes of audit and performance monitoring under clause 9 [Audit and Performance Review].

Freedom of Information

- 6.5 The Recipient will provide access to the Records during such time as they remain in the Recipient's possession or control to TfV and any other person authorised by TfV exercising rights under the *Freedom of Information Act 1982* (Vic), or any other Laws that apply to the Records.

7 ASSETS

- 7.1 The Recipient will maintain an Asset Register listing and containing the details of each Asset in accordance with any Applicable Department and TfV Policies. The Recipient will provide TfV with a copy of the current Asset Register at TfV's request.
- 7.2 All Assets purchased with the Grant will be used to support the delivery of the Project.

8 REPORTING

- 8.1 The Recipient will provide TfV with information about and report on the Project in accordance with the Schedule and as and when requested by TfV.

- 8.2 The Recipient will provide TfV with any information or Record that relates to the delivery of the Project or shows how the Grant has been spent by the Recipient as and when requested by TfV.
- 8.3 The Recipient will prepare its financial Records in accordance with:
- (a) if required by TfV, any Applicable Department and TfV Policies; and
 - (b) if required by Law or TfV, the Australian Accounting Standards.
- 8.4 The Recipient will comply with the Department's financial accountability requirements and provide TfV with the information and documentation set out in any Applicable Department and TfV Policies including but not limited to:
- (a) a certification signed either in writing or electronically, in accordance with any Applicable Department or TfV Policy, by an authorised officer from the Recipient; and
 - (b) the Recipient's annual report containing financial statements, if applicable, or completed Department financial reporting forms.

9 AUDIT AND PERFORMANCE REVIEW

- 9.1 TfV may conduct, or TfV may engage a third party to conduct, a performance review or an audit of the Recipient at any reasonable time, at TfV's own expense:
- (a) for the purpose of monitoring and assessing the Recipient's performance of its obligations under this Agreement or delivery of the Project;
 - (b) if TfV has reasonable concerns that the Recipient may not be delivering, or may be unable to deliver, all or part of the Project in accordance with this Agreement;
 - (c) if the Recipient's Records give TfV reasonable concern about the Recipient's compliance, or ability to comply, with this Agreement;
 - (d) if TfV has reasonable concerns that the Recipient is not financially stable;
 - (e) if TfV has reasonable concerns that the Recipient has misused all or part of the Grant; or
 - (f) to confirm whether the Grant has been used for the correct purposes.
- 9.2 The Recipient will:
- (a) cooperate with and provide assistance to TfV or any third party engaged by TfV to conduct an audit or performance review;
 - (b) make available to TfV or any third party engaged by TfV all information and Records needed for the audit or performance review in accordance with any written request from TfV or third party engaged by TfV; and
 - (c) allow TfV or any third party engaged by TfV access to the Recipient's premises or place of business to carry out the audit or performance review.

10 ASSIGNMENT AND SUBCONTRACTING

- 10.1 The Recipient may not assign its rights or obligations under this Agreement without TfV's prior written consent.
- 10.2 The Recipient may only Subcontract all or part of the Project with TfV's prior written consent.
- 10.3 Without limiting clause 22 [TfV's Consent], TfV will only provide consent to a proposed subcontract if:
- (a) the Recipient satisfies TfV that the subcontractor can deliver the Project to be Subcontracted on the same terms and conditions as this Agreement;

- (b) the contract between the Recipient and the subcontractor is made on the same terms and conditions as this Agreement, including a term that expressly allows TfV to access the subcontractor's premises or place of business to conduct a performance review or audit of the subcontractor on the same terms and conditions as clause 9 [Audit and Performance Review]; and
 - (c) the Recipient agrees to comply with any conditions imposed by TfV as a condition of granting its consent.
- 10.4 The Recipient agrees that it is:
- (a) responsible for the delivery of the Project including any part of the Project that is Subcontracted; and
 - (b) accountable for any acts, omissions and mistakes of any subcontractor in performing all or part of the Project as though they were the Recipient's own acts, omissions and mistakes.

11 DISPUTE RESOLUTION

- 11.1 The Recipient and TfV will enter into good faith discussions to resolve any Dispute.
- 11.2 If a Dispute cannot be resolved under clause 11.1, it will be resolved in good faith as follows:
- (a) the party claiming that the Dispute has arisen will give written notice to the other party describing in full the details of the Dispute (the "First Notice");
 - (b) within fourteen (14) Days of receipt of the First Notice, the parties will meet to discuss and try to resolve the Dispute;
 - (c) if the Dispute remains unresolved twenty one (21) Days after receipt of the First Notice, then either party may give written notice (the "Second Notice") to the other party requesting that the Dispute be referred to the Dispute Resolution Officer for resolution;
 - (d) within fourteen (14) Days of receipt of the appointment of the Dispute Resolution Officer, the parties will either meet with the Dispute Resolution Officer to discuss the Dispute or provide written submissions regarding the Dispute; and
 - (e) within twenty-eight (28) Days of receipt of the appointment of the Dispute Resolution Officer, the Dispute Resolution Officer will provide their decision to the parties in writing. The parties agree that any decision of the Dispute Resolution Officer will be final and binding on the parties.
- 11.3 The parties will continue to perform their obligations under this Agreement despite the existence of any Dispute. Nothing in clause 11 affects the parties' abilities to exercise their rights under clauses 12 [Suspension], and 14 [Termination of Agreement].

12 SUSPENSION

Suspension of Project

- 12.1 At any time during the Term, TfV may by written notice, require the Recipient to immediately suspend delivery of the Project, or part of the Project if:
- (a) the Recipient has failed, or in TfV's reasonable opinion, is likely to fail, to deliver the Project in accordance with this Agreement;
 - (b) the Recipient has misused or is reasonably suspected to have misused the Grant, or has shown an inability to properly manage its Assets;
 - (c) the Recipient has breached this Agreement and notice has been given to the Recipient by TfV under clause 14.1 [Termination of Agreement]; or

- (d) the Recipient or its officer, board member, employee, member, volunteer, subcontractor, representative or agent has breached, or is reasonably suspected to have breached, any Law material to the Project or the operation of the Recipient.
- 12.2 The Recipient will suspend delivery of all or part of the Project at the request of TfV under clause 12.1.
- 12.3 TfV may, by giving written notice to the Recipient, reduce the Project to be delivered under this Agreement to reflect any suspension of all or part of the Project under clause 12.2.
- 12.4 The Recipient agrees that TfV may fund a third party to deliver all or part of the Project that has been suspended under clause 12.2.

Suspension of Grant

- 12.5 TfV may immediately suspend payment of all or part of the Grant if any of the following occurs:
- (a) the Recipient has failed, or in TfV's reasonable opinion is likely to fail, to deliver the Project in accordance with this Agreement;
 - (b) the Recipient has misused or is reasonably suspected to have misused Grant, or has shown an inability to properly manage its Assets;
 - (c) the Recipient has breached the Agreement and notice has been given to the Recipient by TfV under clause 14.1 [Termination of Agreement];
 - (d) TfV has concerns on reasonable grounds that the Recipient is not financially stable;
or
 - (e) TfV has requested the Recipient to suspend all or part of the Project under clause 12.1.
- 12.6 TfV may, by giving written notice to the Recipient, reduce the Grant to be paid by TfV under this Agreement to reflect any suspension of all or part of the Grant under clause 12.5.

Department may vary Schedule

- 12.7 The Recipient acknowledges that TfV may vary the Schedule to reflect any reduction of the Project under clause 12.3 or reduction of the Grant under clause 12.6.

Parties may exercise rights

- 12.8 The Recipient and TfV may exercise any of their rights under clauses 12 [Suspension], and 14 [Termination of Agreement] at any time during a suspension of the Project or the Grant under this clause 12.

13 CESSATION

- 13.1 The Recipient and TfV agree that the Project will not be ceased other than in accordance with this Agreement.

14 TERMINATION OF AGREEMENT

Termination for Breach

- 14.1 If the Recipient or TfV is in breach of this Agreement, the party in breach will remedy the breach within thirty (30) Days of that party receiving written notice requiring it to fix the breach.
- 14.2 If notice has been given under clause 14.1 and the breach is not satisfactorily remedied within thirty (30) Days, the party who gave notice may immediately terminate this Agreement by giving written notice.

Termination by TfV

- 14.3 TfV may terminate this Agreement immediately by giving written notice to the Recipient:
- (a) if an Insolvency Event occurs in relation to the Recipient;
 - (b) if the Recipient is a natural person and becomes:
 - (i) mentally incapacitated;
 - (ii) dies;
 - (iii) is incapacitated through illness for more than thirty (30) Days; or
 - (iv) is convicted of a crime punishable by a term of imprisonment;
 - (c) if the Recipient has a Change in Control which TfV reasonably believes would negatively affect the Recipient's ability to comply with this Agreement;
 - (d) if, in the reasonable opinion of TfV, the Recipient commits a Material Breach of this Agreement which is not capable of remedy;
 - (e) if the Recipient behaves in a way that TfV believes that its continued association with the Recipient may be detrimental to the reputation of TfV or the Department;
or
 - (f) if the Recipient breaches an essential term of this Agreement as described in clause 14.4. The breach of an essential term is a repudiation of this Agreement.
- 14.4 The essential terms of this Agreement are clauses 4.3, 4.4, 4.5 and 4.6 [Use of the Grant].
- 14.5 If TfV does not receive sufficient funds from either the Victorian Parliament or the Commonwealth Government to finance the program or the Project, TfV will give written notice to the Recipient as soon as possible and may terminate this Agreement by giving reasonable notice.
- 14.6 If there is a change in Victorian Government policy which affects the program or the Project, TfV may terminate this Agreement by giving the Recipient at least three (3) months' written notice.
- 14.7 The Recipient will immediately comply with any directions in a notice given under clauses 14.3, 14.5 or 14.6.

15 TRANSITION OF PROJECT

- 15.1 On expiry or termination of this Agreement for any reason or if the Recipient ceases to deliver the Project, the Recipient will, unless otherwise stated in the Schedule:
- (a) hand over all material and Records held by the Recipient or any subcontractor engaged by the Recipient necessary for the delivery of the Project, regardless of the manner of storage, to TfV and/or to any third party nominated by TfV.
 - (b) provide (and require any subcontractor engaged by the Recipient to provide) all reasonable assistance, advice and information to TfV to transfer all or part of the Project, functions and operations provided by the Recipient under this Agreement to TfV or any third party nominated by TfV in a smooth and orderly way.

16 INTELLECTUAL PROPERTY

- 16.1 The Background Intellectual Property of each party remains the property of that party.
- 16.2 The Recipient will own all Project Intellectual Property unless clause 16.3(a) applies.
- 16.3 TfV will give written notice to the Recipient prior to the delivery of all the Project if TfV considers that:
- (a) all or part of the Project Intellectual Property arising from the delivery of the Project should be owned by TfV; or
 - (b) TfV requires a Licence to use all or part of the Project Intellectual Property for any purpose, including publication on the internet.
- 16.4 If TfV gives written notice to the Recipient under clause 16.3(a), the Project Intellectual Property specified in the notice is owned by TfV.
- 16.5 The Recipient grants, and TfV accepts:
- (a) a Licence over:
 - (i) the Project Intellectual Property not owned by TfV;
 - (ii) the Background Intellectual Property, if any; and
 - (iii) any Intellectual Property of a third party, if any,only to the extent needed to allow TfV to enjoy the full benefit of the Project and this Agreement; and
 - (b) if TfV gives written notice to the Recipient in accordance with 16.3(b) a Licence to use the Project Intellectual Property specified in the notice for TfV's purposes, including publication on the internet.
- 16.6 At the request of TfV, the Recipient will provide TfV with copies of all Licensed materials and Intellectual Property and in a way that allows TfV to exercise TfV's rights under the Licence.
- 16.7 The Recipient warrants that it has the right to grant the Licences referred to in clause 16.5.
- 16.8 The Recipient will obtain all consents needed for any Licence, including in relation to any Moral Right. For the purposes of clause 16.8, 'Moral Right' has the meaning set out in section 189 of the *Copyright Act 1968* (Cth).
- 16.9 The Recipient will properly manage the Project Intellectual Property to allow TfV to enjoy the full benefit of the Project and this Agreement, which may include taking any necessary action to:
- (a) register, maintain the registration of, protect, manage, exploit and (as appropriate) commercialise the Project Intellectual Property for the benefit of the Victorian public;
 - (b) maintain, improve, enhance and develop the Project Intellectual Property to the fullest extent reasonably necessary to maintain its usefulness and appropriateness to the Recipient and TfV for the delivery of the Project;
 - (c) use, reproduce, publish, adapt, disseminate, communicate to the public, broadcast, and perform the Project Intellectual Property for the benefit of the Victorian public; and
 - (d) comply with all applicable Department and TfV Policies or other Victorian government policies in respect of the Project Intellectual Property.
- 16.10 The Recipient will not accept co-fund, or involve any person in the delivery of the Project, on terms that would jeopardise or limit any Licence to be granted to TfV without obtaining TfV's prior agreement and consent in writing.

17 PRIVACY, DATA PROTECTION AND PROTECTED

DISCLOSURES

Privacy

- 17.1 The Recipient is bound by the Information Privacy Principles contained in the *Privacy and Data Protection Act 2014* (Vic) (PDP Act) and any applicable code of practice made under the PDP Act when performing its obligations under this Agreement in the same way and to the same extent that TfV would be bound if TfV were to perform the Recipient's obligations under this Agreement.
- 17.2 In performing this Agreement, the Recipient must:
- (a) collect, hold, use, manage, disclose and transfer Personal Information and Health Information obtained while delivering the Project, only for the purposes of providing the Project in accordance with this Agreement and in accordance with the PDP Act and the *Health Records Act* (HR Act) (as applicable);
 - (b) not to do anything that would breach a Health Privacy Principle contained in the HR Act or an Information Privacy Principle contained in the PDP Act;
 - (c) comply with the HR Act and any applicable code of practice made under the HR Act;
 - (d) comply with the PDP Act and any applicable code of practice made under Division 3 of Part 3 of the PDP Act;
 - (e) comply with any applicable direction, guideline, determination or recommendation made by the Victorian Commissioner for Privacy and Data Protection or the Victorian Health Services Commissioner; and
 - (f) unless the Recipient is excluded from the operation of the PDP Act by s 84(2) of that Act:
 - (i) not act or engage in any practice that contravenes a protective data security standard issued by the Victorian Commissioner for Privacy and Data Protection under s 86 of the PDP Act that applies to TfV in respect of Public Sector Data collected, held, used, managed, disclosed or transferred by the Recipient for the Department; and
 - (ii) comply with any provision of a protective data security plan developed by the Department under the PDP Act that applied to the Recipient.
- 17.3 The Recipient must also:
- (a) make sure that any person (including any subcontractor) who may deal with Personal Information, Health Information or Public Sector Data on behalf of the Recipient in relation to the Project or this Agreement is made aware of the obligations in this clause 17;
 - (b) immediately notify TfV if the Recipient becomes aware of a breach, or possible breach, of any of the obligations in clause 17.2, by the Recipient, or any person acting for or on behalf of the Recipient (including any subcontractor) in relation to all or part of the Project or this Agreement; and
 - (c) make sure that any Subcontract it enters into imposes the obligations in this clause 17 on the subcontractor.

Protected Disclosure Act

- 17.4 If the *Protected Disclosure Act 2012* (Vic) applies to the Recipient, the Recipient agrees to comply with and be bound by the provisions of that Act.

18 CONFIDENTIAL INFORMATION

- 18.1 The Recipient and TfV may disclose information (including on the internet) about the content of this Agreement unless the information is Confidential Information. For the avoidance of doubt, the name of the Recipient, description of the Project and the Grant are not Confidential Information.
- 18.2 Each party agrees to treat all Confidential Information as confidential and not to disclose it to any third party without the prior written consent of the other party, except in the following circumstances:
- (a) where the disclosure is required by Law or by this Agreement;
 - (b) where the disclosure is reasonably required by any persons performing their obligations under this Agreement;
 - (c) any disclosure to that party's own professional advisers, or its insurer; or
 - (d) if requested by the Auditor-General, the Ombudsman, or the Minister responsible for the portfolio under which the Project operates.
- 18.3 Subject to clause 18.2, each party will ensure that any third party to which it discloses Confidential Information is made aware of the confidential nature of the Confidential Information.

19 INDEMNITY

- 19.1 The Recipient indemnifies TfV against all Liability TfV may incur in respect of any Claim including Claims relating to:
- (a) loss of or damage to property;
 - (b) death or personal injury;
 - (c) a breach of any third party's Intellectual Property rights;
 - (d) a breach of privacy Law; and
 - (e) a breach of its obligations under clause 6 [Recordkeeping],
- arising in any way from:
- (i) the Recipient's breach of this Agreement or any Law; or
 - (ii) an unlawful or negligent act or omission of the Recipient or its officers, board members, employees, agents, volunteers or subcontractors in connection with the Project or this Agreement.
- 19.2 The Recipient's Liability will be reduced to the extent that Liability is caused or contributed to by an unlawful or negligent act or omission of the officers or employees of the Department supporting TfV in the performance of its functions.
- 19.3 For the purposes of clause 19:
- (a) 'Liability' includes all costs, damages, expenses and losses of any kind;
 - (b) 'Claim' includes all demand, rights, actions, suits or proceedings of any kind; and
 - (c) 'TfV' includes all of the officers and employees of the Department supporting TfV in the performance of its functions.

20 INSURANCE AND RISK MANAGEMENT

Insurance

- 20.1 The Recipient will:

- (a) effect and keep current at all times the following insurance policies:
 - (i) public risk insurance for personal injury to or death arising by accident to any person and for an injury, loss or damage to any real or personal property for an amount of not less than \$10 million; and
 - (ii) any other insurances specified in the Category Specific Terms and Conditions.
- (b) provide TfV with proof of the Recipient's insurance cover on request;

Risk Management

- 20.2 The Recipient accepts all risks arising out of or in connection with the Project and this Agreement. The Recipient will not be entitled to make any claim or seek to be indemnified by TfV for or against any liability arising from any risk arising directly or indirectly out of or that is in connection with the Project or this Agreement.
- 20.3 Nothing in this Agreement is to be construed as a representation or warranty by TfV about the Project or any aspect of the Recipient's operations.

21 VARIATION

- 21.1 The Recipient and TfV agree that this Agreement may only be varied if:
 - (a) both parties agree in writing to the variation; or
 - (b) TfV notifies the Recipient in writing of a proposed variation to this Agreement and the date the proposed variation will take effect from ("the Effective Date"), and the Recipient continues to deliver all or part of the Project or delivers new Project as described in the proposed variation after the Effective Date.

22 TfV's CONSENT

- 22.1 Where TfV's consent or approval is required under this Agreement:
 - (b) the Recipient will:
 - (i) make its request in writing a reasonable time before the date on which the consent or approval is required by the Recipient; and
 - (ii) provide any information or documentation required or requested by TfV;
 - (c) TfV may:
 - (i) provide its consent or approval subject to any terms or conditions it considers appropriate; or
 - (ii) withhold its consent or approval;
 - and
 - (d) TfV's consent will not be valid unless provided in writing.
- 22.2 Any consent provided under this Agreement is not deemed to be consent in the context of any other Agreement.
 - 22.3 The Recipient will comply with the terms and conditions of any consent.
 - 22.4 Where TfV's consent or approval is requested by the Recipient under this clause, TfV will provide its response to the Recipient under clause 22.1(b) within a reasonable time.

23 STATUS OF RECIPIENT

- 23.1 The Recipient and TfV agree and acknowledge that:
- (a) nothing in this Agreement creates any joint venture, partnership, employment or agency relationship between the Recipient and TfV; and
 - (b) neither party has authority to incur any liability or make any representation on behalf of the other.
- 23.2 The Recipient is solely responsible and liable for paying superannuation, payroll or any other tax, WorkCover levy or any similar payments or entitlements in relation to its employees.
- 23.3 The Recipient warrants that it is a legal entity capable of entering into this Agreement and that it complies with all Laws under which it is incorporated.
- 23.4 The Recipient will provide TfV with evidence of the Recipient's legal status if requested by TfV and will give written notice to TfV within five (5) Business Days of any changes to the Recipient's legal status coming into effect.
- 23.5 Prior to any proposed Change in Control, the Recipient will:
- (a) give written notice to TfV with reasonable time for TfV to consider the impact of the proposed Change in Control; and
 - (b) provide any information or documentation required or requested by TfV about the proposed Change in Control.
- 23.6 If the Recipient is a partnership, joint venture or consortium of two (2) or more persons, all such persons are liable both individually and as a group to TfV for the full performance of this Agreement.
- 23.7 Where the Recipient or any part of it is a partnership, this Agreement will not terminate automatically on the death, retirement or resignation of one or more members of such partnership.

24 NOTICES

- 24.1 Any notice, approval or consent from one party to another must be in writing and be signed by an officer who is authorised to sign and legally bind that party. This clause 24 does not apply to variations to this Agreement made in accordance with clause 21 [Variation].
- 24.2 Any notice, approval or consent must be addressed to TfV's Primary Contact or the Recipient's Primary Contact and will be properly given or served by a party if that party:
- (a) delivers it by hand;
 - (b) posts it by mail to the address listed in the Details or to another address as notified in writing by the relevant party; or
 - (c) transmits it by electronic mail to the email address listed in the Details or to another email address as notified in writing by the relevant party.
- 24.3 A notice will be taken to be received:
- (a) if delivered by hand, on the day of delivery if the party giving the notice has a receipt for the delivery of the notice signed by a person employed by the party receiving the notice, unless delivery is made:
 - (i) on a non-Business Day; or
 - (ii) after 5:00 pm on a Business Day,in which case the notice will be taken to be received on the next Business Day;
 - (b) in the case of a posted letter, on the third Business Day after the date of posting if posted in Australia;

- (c) in the case of an email, on the day the email is sent if the party giving the notice has a confirmation report or any other written evidence that the email has reached the recipient's mailbox, unless the email is sent:
 - (i) on a non-Business Day; or
 - (ii) after 5:00 pm on a Business Day;in which case the notice will be taken to be received on the next Business Day.

25 WAIVER

- 25.1 No waiver of any right of a party to this Agreement will be effective unless it is in writing and signed by that party.
- 25.2 A single or partial exercise or waiver of a right under this Agreement does not prevent any other exercise of that right or the exercise of any other right.

26 SURVIVAL

- 26.1 The following clauses will continue to apply after the end of this Agreement: 4.7 to 4.8 [Grant], 6 [Recordkeeping], 8 [Reporting], 11 [Dispute Resolution], 15 [Transition of Project], 16 [Intellectual Property], 17 [Privacy Data Protection and Protected Disclosures], 18 [Confidential Information], 19 [Indemnity] and 20 [Insurance and Risk Management]

Execution

EXECUTED by the HEAD, TRANSPORT FOR VICTORIA on behalf of the Crown in right of the State of Victoria by its authorised delegate:

Name and position of authorised representative <Name>

Sign here: Date:

Witness

Name of Witness <Name>

Sign here: Date:

EXECUTED for and on behalf of <Recipient Name> <ABN or ACN> <number>, by the following authorised delegate of <Recipient Name>.

Complete this section including your name and position details

Name and position of authorised representative <Name>
<Position>

Sign here: Date:

Name and position of second authorised representative <Name>
<Position>

Sign here: Date:

Details

1. TfV (clause 1.1) Head, Transport for Victoria, a statutory office established under the *Transport Integration Act 2010* (Vic), on behalf of the Crown in right of the State of Victoria
2. Recipient (clause 1.1) <Recipient Name> (<ABN or ACN> <number>)
3. Start Date (clause 1.1) <DD/MM/YYYY>
4. Completion Date (clause 1.1) <DD/MM/YYYY>
5. Dispute Resolution Officer (clause 1.1) A person agreed between the parties to be the Dispute Resolution Officer in respect of a Dispute or in the absence of agreement, a person appointed to be the Dispute Resolution Officer by the Victorian Bar Commercial Arbitration Appointment Service.
6. Recipient's Primary Contact (clause 1.1) <Name>
7. Recipient's address <Address>
8. Recipient's phone number <Number>
9. Recipient's email address <Address>
10. TfV's Primary Contact (clause 1.1) <Name>
11. TfV's address <Address>
12. TfV's phone number <Number>
13. TfV's email address <Address>

Schedule

Re: <Project Name>

Item 1: Project details

a. What the Grant is for

<Insert Service/Project description being funded, OR the description the applicant submitted on their application form if applicable, OR briefly describe the Project>

b. Why TfV is providing the Grant for this Project

<Describe objectives of Project and/or associated policy>

c. Project start date and completion date

The Project described in this Schedule starts on <DD/MM/YYYY> and ends on <DD/MM/YYYY>.

d. The people/groups who are intended to benefit most from this Project are:

<Insert Beneficiaries>

e. This Project is intended to benefit people or groups living in the following places:

<Insert Name of LGAs, whole of Government regions or statewide>.

Item 2: Grant

The Grant for the Project comes from the Boating Safety and Facilities Program. The total Grant for the Project is \$<Amount>. This amount is excluding GST.

Item 3: Project deliverables and payments

(To be read with Clause 4.1)

Project Deliverables and Payments Table			
Deliverable or milestone	Demonstrating the deliverable is complete	Evidence due date	Payment amount (excluding GST)
<Deliverable – free text>	<Indicator – free text>	<DD/MM/YYYY>	\$<Amount>
<Add rows as needed>	<Add rows as needed>	<DD/MM/YYYY>	\$<Amount>
<Add rows as needed>	<Add rows as needed>	<DD/MM/YYYY>	\$<Amount>
<Add rows as needed>	<Add rows as needed>	<DD/MM/YYYY>	\$<Amount>
<Add rows as needed>	<Add rows as needed>	<DD/MM/YYYY>	\$<Amount>

Item 4: Budget

(Optional Table)

Budget Forecast Table	
Project Income	\$ (excluding GST)
Funds from TfV	\$<Amount>
Funds from the Recipient	\$<Amount>
Funds from other contributors or partners	\$<Amount>
Grants (Commonwealth)	\$<Amount>
Grants (State)	\$<Amount>
Grants (Other)	\$<Amount>
<Insert item>	\$<Amount>
Total Project Income	\$<Amount>
Project Expenditure (Aligned to National Standard Chart of Accounts Headings)	\$ (excluding GST)
Expenditure against total Project income	\$<Amount>
<Insert item>	\$<Amount>
<Insert item>	\$<Amount>
<Insert item>	\$<Amount>
Total Project Expenditure	\$<Amount>
Project costs met through in-kind contributions (approximate value)	\$ (excluding GST)
Total in-kind support	\$<Amount>

Item 5: Reporting requirements

(To be read with Clause 8.1)

Item 6: Project specific requirements

Acknowledgement and Publicity (to be read with clause 4.11)

1. The Recipient must:
 - (a) keep confidential all details of the Grant Amount to the Recipient until a formal statement has been made by TfV announcing the successful applicants for a Grant for the year in which the Grant Amount has been awarded to the Recipient;
 - (b) contact and liaise with TfV prior to any media launch, media release or media statement involving the Project and participate in any joint media launch, media release or media statement involving the Project if such a joint activity is requested by TfV;
 - (c) provide the Minister for Ports (or the Minister's representative) with the opportunity to participate in the launch of any activates or items funded with the Grant Amount;
 - (d) be sensitive to the profile of TfV and the profile of the Minister for Ports in all communications and dealings with the media and the public; and
 - (e) acknowledge the financial support of TfV in the Recipient's annual report, and in all other publications, promotional and advertising materials and public announcements relating to the Project.

2. TfV reserves the right to publicise and report on awarding the Grant to the Recipient.

Item 7: Category Specific Terms and Conditions

[Category Specific terms and Conditions that are not relevant will be deleted. There are no Category Specific Terms and Conditions for the Search and Rescue (SAR) education and training funding category]

Category Specific Terms and Conditions-

Boating Infrastructure and Master Planning for Significant Boating Projects

- a) The Project Site must be, and must remain, under the control of a council, a government department or a statutory authority, or the control of a committee of management appointed by the appropriate statutory body.
- b) The Facility must be available to the general public at all reasonable times.
- c) Costs associated with the ongoing maintenance of the Facility are to be borne by the Recipient. The Recipient must ensure that the Facility is safe for public access.
- d) The Project must be carried out under the supervision of a qualified engineer or qualified architect and shall be in accordance with plans and specifications signed by the engineer or architect.
- e) The Recipient must obtain the relevant permits and approvals from the appropriate authorities.
- f) If the Project is valued at over \$150,000, TfV may require the Recipient to hold a public tender process for the procurement of goods and services relating to the Project.

- g) If the Project is valued at over \$250,000, the Recipient must install a community billboard (to be provided by TfV). The billboard will detail the description of the Project and the contribution made towards the Project by TfV. This will be at no cost to the Recipient.
- h) The Recipient must remove the billboard either at the completion of the relevant boating season or at the request of TfV.
- i) The Recipient must update all boating information signs at the Project Site on completion of the Project.
- j) If the Project is valued over \$150,000, the Recipient must effect and maintain an insurance policy insuring any works undertaken for the Project and the Facility against any loss or damage.

Search and Rescue (SAR) Vessels and Equipment Category Specific Terms and Conditions

- a) Upon request by TfV, the Recipient must provide TfV with a security interest in the vessel or equipment purchased in favour of TfV, or nominee, to the extent of the Grant Amount. The security interest will be in the form required by TfV and the Recipient must do all things necessary to enable the registration on any applicable register required by TfV and/or to secure priority of the security.
- b) Any vessels or equipment purchased with the Grant Amount must be:
 - adequately maintained and operated by the Recipient
 - available for general community marine SAR activities and not for sole use by any club or organisation
 - available, if requested, to Victoria Police for temporary use
 - fully insured against all reasonable cause of loss; uninsured equipment may not be considered for a grant replacement if lost due to theft, fire, etc.
- c) Vessels must be built and operated in accordance with all applicable State and Federal laws.
- d) Equipment must be purchased for use for undertaking marine rescue activities. This includes equipment such as radios and pagers and equipment required to bring SAR vessels up to the required standard.
- e) The Recipient must purchase the approved vessel or equipment and forward a copy of the paid invoice/s prior to the Completion Date.
- f) If the Recipient is awarded \$150,000 and over for vessels, TfV may require the Recipient to hold a public tender process for the procurement of the vessel.
- g) The Recipient must not sell, transfer or dispose of a vessel purchased with the Grant Amount within 10 years after the date of issue of the Safe Construction Certificate, without the prior written consent of TfV (which may be withheld in TfV's sole discretion or be subject to such terms and conditions as TfV considers appropriate).
- h) The Recipient must not place any security interest over any vessel purchased with the Grant Amount without the prior written consent of TfV (which may be withheld in TfV's sole discretion or be subject to such terms and conditions as TfV considers appropriate).
- i) If the Recipient is awarded \$150,000 and over for vessels, the Recipient must effect and maintain an insurance policy insuring the vessel against any loss or damage.

Aids to Navigation Category Specific Terms and Conditions

- a) The Recipient must comply with all applicable State and Federal laws and standards set by the Director, Transport Safety for the installation and maintenance of any funded aids to navigation.
- b) The Recipient must update all boating information signs at the site on completion of the Project