

Date 21/2/2013

Ref: CD/12/486499

Memorandum of Understanding - Infringement Processing

Department of Justice (Infringement Management and Enforcement Services)

and

Director, Transport Safety on behalf of the Crown in the right of the State of Victoria

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Memorandum Of Understanding - Infringement Processing

DATE 21/2/2013

BETWEEN

DEPARTMENT OF JUSTICE (INFRINGEMENT MANAGEMENT & ENFORCEMENT SERVICES)

of Level 40, 80 Collins Street, Melbourne, VIC 3000

(DOJ)

AND

DIRECTOR, TRANSPORT SAFETY ON BEHALF OF THE CROWN IN THE RIGHT OF THE STATE OF VICTORIA

of Levels 8 & 11, 121 Exhibition Street, Melbourne VIC

(Safety Director)

RECITALS

- A. DOJ and Tenix Solutions IMES Pty Ltd (**Tenix**) are parties to the Infringement Processing Contract.
- B. Tenix processes infringement notices issued by transport safety officers (**Transport Safety Infringement Notices**) on behalf of the Safety Director.
- C. The Safety Director and DOJ now enter this MOU to agree on the terms (including payment terms) relating to the processing of Transport Safety Infringement Notices.

THE PARTIES AGREE

1. DEFINITIONS

In this document unless expressed or implied to the contrary:

Adjustment Note has the same meaning given to that term in the GST Act.

Amended Fee means the Amended Fee as described in clause 4.2.1.

Business Day means Monday to Friday excluding public holidays in Victoria.

Consideration means consideration payable under this MOU in return for a Taxable Supply, but does not include any amount on account of GST.

DOJ means the Crown in the right of the State of Victoria represented by the Department of Justice (Infringement Management & Enforcement Services).

DOJ Contact Officer means the person holding the position of Director, Infringement Management and Enforcement Services from time to time or such other position nominated in writing by DOJ to TSV.

Fee means the amount of \$13.79.

GST has the same meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999*.

Infringement Processing Contract means the Infringement Management and Enforcement Services Agreement entered into by the Attorney-General and the Minister for Police and Emergency Services on behalf of the Crown in the right of the State of Victoria and Tenix dated 29 July 2007 relating to, amongst other things, the processing of infringement notices.

Input Tax Credit has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

MOU means this Memorandum of Understanding.

Parties means the Safety Director or DOJ or both, as the context requires.

Recipient has the same meaning given to that term in the GST Act.

Relevant Expense means the Relevant Expense described in clause 5.4.

Safety Director means the Director, Transport Safety, a statutory office established under section 171 of the *Transport Integration Act 2010 (Vic)*.

State means the Crown in Right of the State of Victoria.

Supplier means the entity making a Supply to the Recipient.

Supply has the same meaning given to that term in the GST Act.

Tax Invoice has the same meaning given to that term in the GST Act.

Taxable Supply has the same meaning given to that term in the GST Act.

TCMA means the *Transport (Miscellaneous and Compliance) Act 1983 (Vic)*.

Tenix means Tenix Solutions IMES Pty Ltd ACN 126 390 378.

Tenix Contact Person means the person nominated as the “Contractor’s Representative” in the Infringement Processing Contract from time to time, at the date of this MOU being Ms Rebecca Power, or such other person nominated in writing by Tenix to DOJ and TSV.

TSV means the Department of Transport staff seconded to the Safety Director in order to support the Safety Director in the exercise of his powers and the performance of his functions.

TSV Contact Officer means the person holding the position of Director, Maritime Safety from time to time or such other position nominated in writing by TSV to DOJ.

Transport Safety Infringement Data means data containing the details of Transport Safety Infringement Notices that meets the formatting and other requirements as agreed from time to time by the Parties.

Transport Safety Infringement Notices means infringement notices issued by TSV for offences committed under legislation administered by the Safety Director.

TSO means a transport safety officer appointed under section 228T of the TCMA.

2. TERM OF THE MOU

This MOU will continue for the term of the Infringement Processing Contract or as otherwise agreed by DOJ and the Safety Director.

3. PROCESSING OF TRANSPORT SAFETY INFRINGEMENT NOTICES

- 3.1 The Parties agree that Transport Safety Infringement Notices will be processed as follows:
 - 3.1.1 TSV will prepare the Transport Safety Infringement Data for Tenix by lodging Transport Safety Infringement Notices with Tenix as per the current process, or as agreed by both Parties; and
 - 3.1.2 DOJ will require that Tenix process the Transport Safety Infringement Data in the same manner as similar data is processed for DOJ in relation to infringements known as "as "Type 1B" (as set out in Schedules 11 and 25 of the Infringement Processing Contract).
 - 3.1.3 TSV will respond to all correspondence, applications and other issues concerning Transport Safety Infringement Notices that are not ordinarily dealt with by Tenix in its services under the Infringement Processing Contract.
- 3.2 The TSV Contact Officer will be the first point of contact for Tenix and DOJ in relation to Transport Safety Infringement Notices and Transport Safety Infringement Data.
- 3.3 The TSV Contact Officer may enquire as to the status of Transport Safety Infringement Data during the course of its processing by Tenix.
- 3.4 The Safety Director acknowledges and agrees that the processing of Transport Safety Infringement Data under this MOU will be performed by Tenix and that DOJ is not responsible for such processing or the consequences of any act or omission of Tenix.
- 3.5 The Safety Director may request that DOJ provide further services or assistance to TSV relating to the processing of Transport Safety Infringement Notices. The Safety Director acknowledges that the provision of such services or assistance may incur additional fees or costs to be agreed by the Parties.
- 3.6 The Safety Director acknowledges and agrees that:

- 3.6.1 the Infringement Processing Contract entitles Tenix to communicate with the Safety Director (as successor in law to the Marine Board of Victoria) electronically; and
- 3.6.2 if Tenix elects to communicate with TSV electronically for the purposes of processing Transport Safety Infringement Notices, that TSV will implement, at its own cost, systems and/or processes to facilitate those electronic communications.

4. PAYMENT OF FEES

- 4.1 The Safety Director will pay to DOJ the Fee for each Transport Safety Infringement Notice that is included in the Transport Safety Infringement Data lodged with Tenix under clause 3.1.1, in accordance with this clause 4.
- 4.2 The Safety Director acknowledges and agrees that:
 - 4.2.1 The Fee is subject to change from time to time in accordance with the Infringement Processing Contract (**Amended Fee**);
 - 4.2.2 DOJ will notify TSV when it becomes aware of an Amended Fee; and
 - 4.2.3 From the date specified in DOJ's notice in clause 4.2.2 the Amended Fee will be payable by the Safety Director.
- 4.3 DOJ will provide a monthly statement to the Safety Director setting out the total Fees payable in relation to Transport Safety Infringement Data lodged in the relevant month.
- 4.4 The Safety Director must pay to the DOJ the total Fees set out in the statement referred to in clause 4.3 within 28 days of receipt of the statement.
- 4.5 The Safety Director will pay DOJ the total Fees set out in the statement referred to in clause 4.3 by cheque made payable to the Department of Justice and sent attention of the Director, Infringement Management and Enforcement Services, 40/80 Collins Street, Melbourne, 3000.

5. GST

5.1 GST Exclusive

Except as otherwise provided by this clause, all Consideration payable under this MOU in relation to any Supply is exclusive of GST.

5.2 Increase in Consideration

To the extent that any Supply under this MOU constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST ('**GST Amount**'), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

5.3 Payment of GST

Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this

MOU, without any right of set-off or deduction (unless otherwise provided in this MOU).

5.4 **Reimbursements**

If this MOU requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier ('**Relevant Expense**'), the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled in respect of the Relevant Expense, together with any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

5.5 **Tax Invoice**

The Supplier must provide to the Recipient a valid Tax Invoice at or prior to the time of payment of any GST Amount.

5.6 **Adjustments & Adjustment Notes**

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within 7 days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

6. GENERAL

6.1 **Amendment**

This document may only be varied or replaced by a document duly executed by the Parties.

6.2 **Entire Understanding**

This document contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

6.3 **Legal Costs and Expenses**

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it, unless expressly stated otherwise.

6.4 **Waiver and Exercise of Rights**

6.4.1 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

6.4.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

7. NOTICES

7.1 Service of Notice

A notice or other communication required or permitted, under this document, to be served on a person must be in writing and may be served:

- 7.1.1 personally on the person;
- 7.1.2 by leaving it at the person's current address for service;
- 7.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 7.1.4 by facsimile to the person's current number for service.

7.2 Particulars for Service

7.2.1 The particulars for service of DOJ are:

address: Level 40, 80 Collins Street, Melbourne
facsimile number: 8684 1900
DOJ Contact (Title): Director, Infringement Management and Enforcement Services

7.2.2 The particulars for service of the Safety Director are:

address: Level 11, 121 Exhibition St, Melbourne
facsimile number: 03 9655 8929
TSV Contact: Director, Maritime Safety

7.2.3 Any Party may change the address or facsimile number for service by giving notice to the other Party.

7.3 Time of Service

A notice or other communication is deemed served:

- 7.3.1 if served personally or left at the person's address, upon service;
- 7.3.2 if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;
- 7.3.3 if served by facsimile, subject to clause 7.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 7.3.4 if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

8. INTERPRETATION

8.1 Governing Law and Jurisdiction

This document is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

8.2 Legislation

In this document, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

8.3 This Document, Clauses and Headings

In this document:

8.3.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the Parties;

8.3.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document all of which are deemed part of this document;

8.3.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;

8.3.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document; and

8.3.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

8.4 Severance

8.4.1 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

8.4.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

8.5 Business Day

If a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

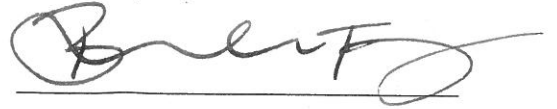
8.6 Number and Gender

In this document, a reference to:

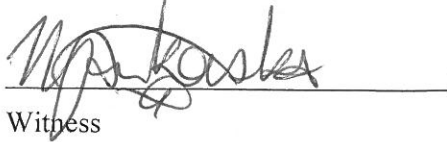
- 8.6.1 the singular includes the plural and vice versa; and
- 8.6.2 a gender includes the other genders.

EXECUTED by the Parties

Signed by **BRENDAN FACEY** Director IMES)
for and on behalf of the Department)
of Justice Infringement and Enforcement Services)
in the presence of:)



A handwritten signature in black ink, appearing to read 'Brendan Facey', written over a horizontal line.



A handwritten signature in black ink, appearing to read 'Natasha Jankovska', written over a horizontal line.

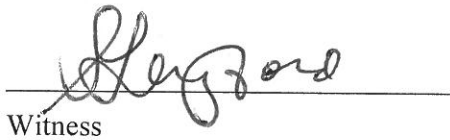
Witness

NATASHA JANKOVSKA
Name

Signed by **TERENCE ALAN OSBORNE,**)
DIRECTOR, TRANSPORT SAFETY)
for and on behalf of the **CROWN IN RIGHT**)
OF THE STATE OF VICTORIA)
in the presence of:



A handwritten signature in black ink, appearing to read 'Terence Alan Osborne', written over a horizontal line.



A handwritten signature in black ink, appearing to read 'Samantha Langford', written over a horizontal line.

Witness

SAMANTHA LANGFORD
Name