



Department of Environment,
Land, Water & Planning

[insert] Funding Agreement

[insert name of specific project being funded]

THE STATE OF VICTORIA
as represented by its
DEPARTMENT OF ENVIRONMENT, LAND, WATER AND
PLANNING

AND

[RECIPIENT]

[Legal precedent: This is a template funding agreement for the [insert] Program. The Schedules will be tailored as required for each project funded under the program. The Department reserves the right to amend the terms and conditions without prior notice.]

Funding agreement

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Details

Parties

Name **The State of Victoria as represented by the Department of Environment, Land, Water and Planning**

Address and notice details Address: Level [insert], 8 Nicholson Street, East Melbourne Vic 3002
Email: [insert]
Attention: [insert]

Name **[insert name and ABN]**

ABN **[insert]**

Short form name **Recipient**

Address and notice details Address: [insert]
Email: [insert]
Attention: [insert]

Background

- A In [insert month and year] the Minister launched the [insert program name] (the **Program**). The objective of the Program are to [insert].
- B The Recipient applied for, and has been successful in receiving the Minister's approval of, the Grant under the Program for the purpose of the Recipient carrying out the Project.
- C This Agreement sets out the terms on which the Grant is provided by the State to the Recipient.
- D This Agreement is legally binding upon the Recipient and the State.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Ad hoc Report means the Ad hoc Report described in clause 13.2 (the template for which is set out as Template 2 in Schedule 5).

Agreement means this agreement, including its schedules and annexures.

Assets means those assets purchased, constructed or manufactured for the purpose of the Project or purchased with the Grant.

Audit Opinion means an audit opinion in the form of Schedule 4, Part B (or such other form approved in writing by the Department).

Authorised Representative(s) of the Recipient means the officer(s) or employee(s) of the Recipient identified in item 5 in Schedule 1.

Background Intellectual Property means any Intellectual Property developed independently of the Project and used by the Recipient for the purpose of undertaking the Project.

Business Day means a day other than a Saturday, Sunday or a day that is a public holiday in Melbourne.

Claim means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent or at law (including negligence), in equity, under statute or otherwise.

Co-funded Project means a Project identified as such in item 2 in Schedule 1.

Commencement Date means the date on which this Agreement has been signed by the last of the parties to sign it.

Company means a company registered under the *Corporations Act 2001* (Cth).

Confidential Information of a party (**Disclosing Party**) means all information (regardless of its form) disclosed or otherwise made available by the Disclosing Party to the other party (**Receiving Party**) or of which the Receiving Party otherwise becomes aware in connection with this Agreement and the transactions contemplated by this Agreement which is marked as confidential or which is Background Intellectual Property or which the parties agree in writing is confidential, but **does not** include information which:

- (a) is or becomes public knowledge other than by a breach of this Agreement or any other confidentiality obligation by the Receiving Party;
- (b) has been independently developed or acquired by the Receiving Party as established by written evidence; or
- (c) is contained in the non-confidential section of each of the Progress Reports, Ad hoc Reports, Final Report and Performance Outcome Report set out in Schedule 5.

Conflict refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Recipient engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Recipient undertaking the Project fairly and independently and in

accordance with this Agreement, but does not include the fact that the Recipient or a 'related entity' (as that term is defined in the *Corporations Act 2001* (Cth)) of the Recipient may profit from the Project.

Department has the meaning given to it in clause 1.3.

Dispute has the meaning given to it in clause 23.

Eligible Project Expenditure means expenditure incurred by the Recipient on the Project which is eligible in accordance with the application guidelines for the Program.

End Date means the date on which the Department notifies the Recipient in writing that it has accepted the Performance Outcome Report.

Energy Safety and OHS Requirements means:

- (a) all applicable requirements under the *Electricity Safety Act 1998* (Vic), *Gas Safety Act 1997* (Vic) and *Occupational Health and Safety Act 2004* (Vic) and any other similar laws and regulations applicable to the Project; and
- (b) all relevant energy safety and occupational health and safety management plans, standard operating procedures, job safety analyses, risk assurance processes, training and induction processes and work instructions necessary to undertake the Project and meet its obligations under this Agreement in a safe and reliable manner and in accordance with all applicable laws and regulations, Good Industry Practice and this Agreement.

Final Report means the report required to be provided by the Recipient to the Department under clause 12.3.

Good Engineering Practice means the recognised engineering practices, policies, methods and acts expected from a highly competent infrastructure provider experienced in works of a similar size, character and complexity to the Project.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from an entity or organisation in the same position as the Recipient that is consistent with the Recipient's obligations under this Agreement, applicable regulatory instruments, reliability, safety and environmental protection and taking into account factors such as the size, duty, age and technological status of the Assets.

Government Funder means a State or Commonwealth department that provides funding for the Project but does not otherwise participate in the Project.

Government Funding Agreement means an agreement between the Recipient and a Government Funder relating to the Project.

Grant means the grant amount set out in item 1 in Schedule 1.

Grant Agreement Material means any reports, plans, documents, information, data or other material developed by the Recipient or its subcontractor:

- (a) the Recipient provides, or is required to provide, to the Department under or in connection with this Agreement; or
- (b) which is copied or derived at any time from the material referred to in paragraph (a).

Grant Period means the period that commences on the date on which the last of the conditions precedent set out in clause 4.1 are fulfilled or waived in accordance with clause 4.3, and ends on the date on which the Department notifies the Recipient in writing that it has accepted the Final Report

provided to it by the Recipient, or the effective date of termination of this Agreement under clause 16, whichever is the earlier.

GST Act has the meaning given to it in clause 5.5(a).

GST and Tax Invoice have the same meaning as in the GST Act.

ICN means the Industry Capability Network Victoria of Level 11, 10 Queens Road Melbourne, Victoria, 3004.

Insolvency Administration means, in relation to a person:

- (a) the person ceases to carry on business;
- (b) an order is made by a Court of competent jurisdiction for the winding up or dissolution of the person pursuant to the *Corporations Act 2001* (Cth);
- (c) any step is taken to appoint a receiver, receiver and manager, trustee in bankruptcy or similar officer over all or any of the assets or undertakings of the person and is not discontinued or withdrawn within five Business Days;
- (d) any step is taken by a mortgagee to take possession either directly or by an agent over all or any of the assets, operations, or undertakings of the person and is not discontinued or withdrawn within five Business Days;
- (e) any step is taken to appoint a liquidator or provisional liquidator to the person and is not discontinued or withdrawn within five Business Days;
- (f) any step is taken to appoint an administrator to the person;
- (g) any step is taken to enter into a compromise or deed of arrangement between the person and its creditors; or
- (h) the person is insolvent or is presumed insolvent under the *Corporations Act 2010* (Cth).

Intellectual Property means all types of intellectual property rights whether registered or not and includes all copyright and neighbouring rights (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, Know How, the right to have confidential information kept confidential and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

IRN means the 'interaction reference number' issued by the ICN to the Recipient.

IRN Form means the form submitted by the Recipient to the ICN via the VMC in accordance with clause 15.2.

IRN Letter means the letter provided by the ICN to the Recipient after the Recipient has consulted with the ICN regarding opportunities for local industry for the Project.

Know How means all information not in the public domain including drawings, designs, diagrams, computer programs, data, formulae, specifications, procedures for experiments and tests, results of experiments and tests, techniques and information.

Landlord means the person or entity specified in item 7 of Schedule 1 and any subsequent owner of the Project site(s) from time to time.

Landlord Agreement has the meaning given to it in clause 5.3(a).

Local Jobs First Act means the *Local Jobs First Act 2003* (Vic).

Local Jobs First Commissioner means the person appointed under section 12 of the Local Jobs First Act.

Local Jobs First Commitments means the commitments of the Recipient as set out in the IRN Letter.

Local Jobs First Policy means the Local Jobs First Policy made pursuant to section 4 of the Local Jobs First Act.

Loss means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise.

Maintenance Period means the period set out in item 8 in Schedule 1.

Metropolitan Melbourne means a Victorian municipal district other than a municipal district that falls within 'rural and regional Victoria' (as that term is defined in the *Regional Development Victoria Act 2002* (Vic)).

Minister means the Minister for Energy, Environment and Climate Change in the State of Victoria.

Parliament means the Parliament of Victoria.

Participating Organisation means any Company or other entity working with the Recipient on, and/or providing funding to the Recipient for, the Project, other than a Government Funder or a Subcontractor (the initial list of which is set out in item 10 of Schedule 1).

Participating Organisation Agreement or **POA** means an agreement between the Recipient and a Participating Organisation relating to the Project.

Performance Outcome Report means the Performance Outcome Report described in clause 12.4 (the template for which is set out as Template 4 in Schedule 5).

Progress Report means the Progress Report described in clause 13.1 (the template for which is set out as Template 1 in Schedule 5).

Program has the meaning set out in the Background section of this Agreement.

Project means the project to be carried out by the Recipient, as described in Schedule 2 (which, for the avoidance of doubt, may involve activities at either a single site, or at multiple different sites).

Project Intellectual Property means all Intellectual Property developed by or on behalf of the Recipient in the course of undertaking the Project, including all Intellectual Property in all information, material and documents written, created or prepared by or on behalf of the Recipient in relation to the Project.

Project Milestones means the milestones relating to the Project, as set out in Schedule 3, and as varied from time to time in accordance with clause 6.2.

Project Plan has the meaning set out in clause 7.1.

Recipient Co-funding Amount means the amount set out in item 3 in Schedule 1.

Recipient Created Tax Invoice has the meaning given to it in clause 5.5(d).

Regional Victoria means a Victorian municipal district that falls within 'rural and regional Victoria' (as that term is defined in the *Regional Development Victoria Act 2002* (Vic)).

Responsible Local Jobs First Minister means the Minister with responsibility for administering the Local Jobs First Act being, as at the Commencement Date, the Minister for Jobs, Innovation and Trade.

Secretary means the Secretary of the Department.

Security means a guarantee, letter of credit, bond or any other form of security provided to the Department as contemplated under clause 10.

Security Provider means the person who provides the Security.

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

State Wide means where the Project will occur in both Metropolitan Melbourne and Regional Victoria or across the entire State of Victoria.

Statutory Declaration means a statutory declaration in the form of Schedule 4, Part A (or such other form approved in writing by the Department).

Subcontractor means a third party engaged by the Recipient to perform some of the Recipient's obligations under this Agreement on a fee for service basis.

Term means the term of this Agreement as described in clause 2.

Third Party Co-funding Amount means the amount set out in item 4 in Schedule 1.

VMC means the Victorian Local Jobs First Management Centre online system developed to manage the application of the Local Jobs First Policy by Recipients, Departments and agencies.

Warranted Materials has the meaning given to it in clause 18.4.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar, AUD or \$** is to Australian currency;
- (f) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and

- (j) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 References to Department

In this Agreement, references to the **Department** include the Department of Environment, Land, Water and Planning and its successor Government departments, and all references to the Department shall be read and construed as references to the Crown in Right of the State of Victoria. Powers and functions of the Department under this Agreement may be carried out by officers of the Department who have delegated authority.

1.4 Precedence of documents

To the extent of any inconsistency, the documents comprising this Agreement must be read in the following order of precedence:

- (a) these terms and conditions;
- (b) Schedule 1 (Project Particulars);
- (c) Schedule 2 (Project Plan);
- (d) Schedule 3 (Milestones, Timing and Payments); and
- (e) the remaining schedules to this Agreement.

1.5 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Term

This Agreement commences on the Commencement Date and continues until the End Date or the effective date of termination of this Agreement under clause 16, whichever is the earlier (**Term**).

3. Grant

3.1 Grant

- (a) The Recipient has been awarded the Grant.
- (b) The Recipient must use the Grant only for the purpose of carrying out the Project in accordance with this Agreement.
- (c) Nothing in this Agreement implies that the State shall provide funding for the Project or the Recipient beyond that specifically provided for under this Agreement and the Recipient must at all times secure funding from other sources to fully fund the Project to the extent it is not funded by the Grant.
- (d) Without limiting any of the Department's other rights under this Agreement, the Department may, if it Department reasonably considers it necessary, review and adjust the Grant amount during the Grant Period:
 - (i) where there is a material change in circumstances in relation to the Project, including in response to any updated Project Plan and/or updated Project budget prepared by the Recipient; or
 - (ii) based on the Department's assessment of the extent to which budgeted or incurred expenditure relating to the Project is Eligible Expenditure.

- (e) If the Department determines that an adjustment to the Grant amount is required as a result of a review undertaken in accordance with clause 3.1(d), the Department will notify the Recipient in writing of the revised Grant amount as soon as practicable and, if applicable, of any consequential amendments to Schedule 3.

4. Conditions precedent

4.1 Conditions precedent

This Agreement, other than this clause 4 and clauses 1, 12, 20, 21, 22, 23, 25 and 26, has no effect unless the following conditions precedent are fulfilled or waived in accordance with clause 4.3:

- (a) the Recipient has provided the Department with a Project Plan in a form and level of detail satisfactory to the Department;
- (b) the Recipient has provided evidence satisfactory to the Department that it has obtained the necessary approvals to undertake the Project as specified in item 9 of Schedule 1; and
- (c) evidence satisfactory to the Department that the Recipient has entered into a Participating Organisation Agreement with all Participating Organisations.

4.2 Failure to comply with conditions precedent

If the conditions precedent specified in clauses 4.1(a), 4.1(b) and 4.1(c) have not been either satisfied by the Recipient or waived by the Department under clause 4.3 within 10 days of the Commencement Date (or such longer period as the Department may agree in writing), then:

- (a) this Agreement will automatically terminate unless the parties agree otherwise in writing; and
- (b) the Recipient shall have no claim to any of the Grant provided for under this Agreement.

4.3 Waiver of conditions precedent

The conditions precedent in clause 4.1 may be waived in writing by the Department.

5. Grant payment

5.1 Payment of Grant

- (a) Subject to clauses 5.2, 5.3, 6, 7, 16.1 and 24.6, the Department shall pay the Grant in instalments as set out in Schedule 3 within 20 Business Days of the acceptance by the Department of the requisite deliverables set out in Schedule 3 (and, where clause 5.5(f) applies, receipt of a Tax Invoice in accordance with that clause).
- (b) All payments of the Grant shall be made to the Recipient in full satisfaction of the Department's obligations under this Agreement. No amount of the Grant will be paid by the Department to any person other than the Recipient.
- (c) The Recipient shall be responsible for ensuring that monies are appropriately applied to the Project and distributed amongst Participating Organisations in accordance with each Participating Organisation Agreement.

5.2 Conditions of Grant payment

Without limiting the operation of clause 5.1 and subject to clause 16.1, the payment of each Grant instalment is conditional on:

- (a) the Department being satisfied that the Project has been conducted in compliance with the Project Plan and the requirements of this Agreement, including that the relevant Grant instalment will be applied only towards Eligible Project Expenditure;

- (b) if the Project is a Co-funded Project, provision to the Department of evidence that:
 - (i) payment of any applicable contribution by a third party to the Third Party Co-funding Amount, as specified in the Project Plan, has been received and is available for use by the Recipient to carry out the Project; and
 - (ii) any applicable Recipient Co-funding Amount, as specified in the Project Plan, is available for use by the Recipient to carry out the Project.
- (c) provision to the Department of any supporting documentation and other evidence specified in Schedule 3 for that Grant instalment;
- (d) the Department being satisfied that the Recipient has entered into an agreement in accordance with clause 5.3 and that the agreement remains in force and neither the Recipient or the Landlord is in material breach of the agreement;
- (e) the Department being satisfied that the Grant funds paid to date have been applied towards the Project in the manner contemplated by the Project Plan;
- (f) there being no material breach of any Government Funding Agreement which has not been remedied to the satisfaction of the Department;
- (g) without limiting clause 5.2(f), a Government Funder has not withheld any payments or sought repayment under any Government Funding Agreement; and
- (h) the Department being satisfied that the written reports referred to in clause 13 have been provided by the Recipient in accordance with this Agreement (including that the non-confidential sections of those reports contain sufficient details for the Department to be able to use the reports as described in clauses 13.3 and 18).

5.3 Agreement with Landlord

- (a) If, for any relevant Project site, the Recipient is not the owner of the site, the Recipient must, in accordance with the timing in Schedule 3, enter into an agreement with the Landlord for that site which includes provisions enabling the Recipient to comply with its obligations under this Agreement and the Project Plan (including as required under clause 26.7) and the provisions set out in item 7 of Schedule 1 (**Landlord Agreement**).
- (b) If the Recipient ceases to be the owner of a Project site during the Term, the Recipient must notify the Department and enter into a Landlord Agreement with the incoming Landlord prior to the date on which the Recipient will cease to be the owner of the site.
- (c) The Recipient must not enter into, vary, terminate or assign a Landlord Agreement unless the Recipient has provided the proposed agreement or details of the proposed variation, termination or assignment to the Department and the Department has provided written consent to the Recipient entering into, varying, terminating or assigning the agreement (as applicable).

5.4 Unused Grant amounts

Unless otherwise agreed between the Recipient and the Department in writing, all Grant amounts not used or not applied in accordance with this Agreement by the Recipient at the termination or expiry of this Agreement must be returned by the Recipient to the Department within 30 Business Days of the termination or expiry of this Agreement.

5.5 GST

- (a) 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**).

- (b) The Grant is exclusive of GST. If GST is payable on all or part of the Project activities under clause 5.5(c), it will be paid to the Recipient at the same time as the Grant.
- (c) The Recipient and the Department agree that if GST is payable on a *supply* of a Project activity by the Recipient under this Agreement, the Department will pay the Recipient an additional amount equal to the GST payable on or for the *taxable supply*.
- (d) If GST is payable on the *supply* of the Project activity by the Recipient under this Agreement, unless otherwise specified in this Agreement, the Recipient and the Department agree to a recipient created tax invoice (**RCTI**) arrangement under this Agreement authorised under section 29-70(3) of the GST Act and that:
- (i) the Department at the Commencement Date is registered for GST and agrees that it will notify the Recipient if it ceases to be registered for GST or ceases to satisfy any of the requirement of GST Ruling GSTR 2000/10;
 - (ii) the Department will reasonably comply with its obligations under the taxation laws;
 - (iii) the Department can issue an RCTI in respect of a *taxable supply* made to the Department of goods or services provided by the Recipient under this Agreement;
 - (iv) the Department will issue a copy of each RCTI to the Recipient and retain the original;
 - (v) the Department will issue a copy of each *adjustment note* to the Recipient and retain the original;
 - (vi) the Department will not issue a document that would otherwise be by an RCTI, on or after the date when it or the Recipient has ceased to satisfy the requirements of GST Ruling GSTR 2000/10;
 - (vii) the Recipient will not issue Tax Invoices in respect of *taxable supplies* of goods or services to the Department;
 - (viii) the Recipient acknowledges that as at the Commencement Date it is registered for GST and has an active Australian Business Number and agrees that it will notify the Department within seven days if it ceases to be registered.
- (e) If, as at the Commencement Date, the Recipient is not required by law to be registered for GST and during the Term of this Agreement the Recipient becomes registered for GST, the Recipient will give written notice to the Department within 7 days of becoming registered for GST.
- (f) If for any reason the RCTI arrangement specified in clause 5.5(d) is unable to be implemented or ceases, the Recipient must give the Department a Tax Invoice in respect of any *taxable supply* made to the Department by the Recipient in connection with this Agreement prior to any payment of any Grant instalment to the Recipient.
- (g) Any repayment of any part of the Grant in accordance with this Agreement that includes an amount for GST must be accompanied by an *adjustment note* relating to *taxable supplies* for which the Department previously issued an RCTI to the Recipient or the Recipient previously issued a Tax Invoice to the Department.

6. Project Plan and milestones

6.1 Revision of Project Plan

In addition to any applicable obligations of the Recipient under clause 3.1 and any material changes under clause 6.2 made during the reporting period, the Recipient must notify the Department in

writing within 3 Business Days of any changes that materially impact the Project Plan. If the Department is not satisfied (acting reasonably) with the revised Project Plan the Department may withhold Grant instalments and seek redress under clause 16. Each revised version of the Project Plan required under this clause 6.1 shall include any modifications and/or amendments that have been agreed in the previous period in accordance with clause 6.2.

6.2 Changes to Project

Whenever there are expected or required material changes in the Project and/or expenditure of the Grant and/or the time in which the Recipient expects to achieve a Project Milestone, the Recipient must:

- (a) ensure that the change has been approved by the Authorised Representative of the Recipient;
- (b) have the change approved by the Department;
- (c) develop and revise that item in the Project Plan in consultation with the Department to take into account the change;
- (d) submit a revised Project Plan to the Department within 3 Business Days of any material changes; and
- (e) ensure that any revision to the Project Plan is approved by the Department and the Authorised Representative of the Recipient before the change occurs; and
- (f) ensure that any approved revision to the Project Plan by the Department is provided to all Participating Organisations.

If the Department does not approve the revised item in the Project Plan and the Recipient does not comply with the Project Plan in the form approved by the Department, the Department may withhold Grant instalments and seek redress under clause 16.1(b).

7. Conduct of Project

7.1 Development of Project Plan

The Recipient must develop a plan for the conduct of the Project, outlining and providing a framework for the proposed Project activities and budget in accordance with clause 7.2 and Schedule 2 (**Project Plan**), and submit it to the Department in a form and level of detail satisfactory to the Department within 10 days of the Commencement Date.

7.2 Form and content of Project Plan

The Project Plan must:

- (a) outline the Project Milestones to be achieved;
- (b) contain information in respect of the whole of the Project's life from commencement to the end of the Grant Period; and
- (c) contain each of the following, unless the Department agrees that any of the following is not relevant to the particular Grant or Project:
 - (i) an outline of the activities of the Project to be funded by the Grant;
 - (ii) an executive summary including an overview of the Recipient, strategy and rationale for the Project as well as an indication of the timing of Project delivery;
 - (iii) budget financial projections, with details of proposed expenditure of the Grant funds;

- (iv) a strategic overview of the Project outlining the strategic aims, objectives and benefits that will be achieved for Victoria;
- (v) the intended outcomes of the Project;
- (vi) performance measures and milestones for the Project that can be used to assess the effectiveness and efficiency of the implementation of the Project; and
- (vii) other information which the Recipient agrees to provide in supplementary documentation.

7.3 Recipient to conduct Project

- (a) In consideration of the payment of the Grant, the Recipient must:
 - (i) (and must procure that any applicable Subcontractors and personnel) conduct the Project with due care and skill, in a professional manner consistent with Good Industry Practice, and in full compliance with all applicable laws and regulatory requirements including but not limited to all applicable Energy Safety and OHS Requirements (including by holding all licences, exemptions or registrations it is required under law to hold in connection with the Project and by complying with all relevant conditions under any such licences, exemptions or registrations);
 - (ii) assume all responsibility for conducting the Project activities substantially and materially in accordance with the Project Plan, including by ensuring that the establishment and management of the activities detailed in the Project Plan adheres to the timelines specified in the Project Plan and Schedule 3;
 - (iii) meet any other reasonable requests of the Department in relation to the Project Plan, having regard to existing resources and timelines; and
 - (iv) assume all financial responsibility and meet all costs and general operating expenses in connection with the Project.
- (b) The Recipient acknowledges and agrees that:
 - (i) the State, its servants, employees, representatives and agents will not be responsible at any time for any liabilities incurred or entered into by the Recipient as a result of, or arising out of the Recipient's responsibilities under this Agreement or the conduct of the Project; and
 - (ii) it has sole responsibility for actions and the performance of persons authorised by the Recipient or otherwise engaged to participate in any components of the Project activities (including those obligations expressed to be those of Participating Organisations).

8. Assets

8.1 Maintenance of Assets

- (a) The Department acknowledges and agrees that the Recipient (or such other third party as is nominated by the Recipient and disclosed to the Department) will own the Assets.
- (b) The Recipient undertakes for the Maintenance Period to (or procure that the nominated Asset owner does):
 - (i) maintain the Assets in accordance with Good Industry Practice;
 - (ii) reinstate the Assets if any Assets are lost, damaged or destroyed; and

- (iii) wherever necessary, make available additional funding to enable the maintenance or reinstatement of the Assets.

8.2 Use of Assets

The Recipient will ensure that each material capital item of equipment wholly or partly purchased with the Grant funds shall be utilised, made available and remain accessible for the purposes of the Project and as specified in the Project Plan throughout the Grant Period.

8.3 Access to Assets

The Recipient will allow the Department (or any person authorised by the Department) to access any Project site for the purposes of inspecting the installation, maintenance and operation of the Assets, and disconnecting, dismantling or removing the Assets as permitted under this Agreement.

9. Government Funding Agreements

- (a) Each Government Funding Agreement must be consistent with the terms of this Agreement.
- (b) The Recipient must at all times comply with each Government Funding Agreement and must notify the Department of the details of any disputes in relation to that agreement, or the withholding of any Government Funder payments, the seeking of any repayments by a Government Funder or any amendments to a Government Funding Agreement.

10. Security

If requested by the Department, the Recipient must provide Security to the Department in a form and from a Security Provider satisfactory to the Department within 14 days of the Department's request.

11. Participating Organisation Agreements

11.1 This clause 11 shall only apply where the Project will be undertaken by the Recipient and one or more Participating Organisations.

11.2 Each Participating Organisation Agreement must include provisions that:

- (a) detail the role of the Participating Organisation in the Project;
- (b) detail the contribution to the Third Party Co-funding Amount to be made by the Participating Organisation to the Project;
- (c) describe the Intellectual Property arrangements that apply to the outcome or results generated by the Project;
- (d) are consistent with details contained in the application for funding submitted to the Department in relation to the Project;
- (e) require the Participating Organisation to comply with the following clauses to the same extent the Recipient is required to comply with such clauses:
 - (i) clauses 12.1(c) and 12.1(d) (Publicity and promotion);
 - (ii) clause 14 (Records audit and inspection);
 - (iii) clause 18 (Intellectual Property);
 - (iv) clause 19.1 (Indemnity);
 - (v) clause 19.4 (Insurance);

- (vi) clause 20 (Confidentiality);
 - (vii) clause 21 (Conflict of interest); and
 - (viii) clause 26.2 (Equal opportunity, anti-discrimination and privacy legislation); and
- (f) are otherwise consistent with the terms of this Agreement and do not impede or prevent the Recipient from complying with any of its obligations under this Agreement.
- 11.3 Each Participating Organisation Agreement must continue to satisfy the requirements of this clause 11 at all times during the Term.
- 11.4 The Recipient must:
- (a) provide the Department with prior written notice of any proposed material change to any Participating Organisation Agreement (including a change to any of the matters set out in clause 11.2);
 - (b) obtain the Department's approval of that change before amending the Participating Organisation Agreement; and
 - (c) provide the Department with a copy of the amended Participating Organisation Agreement.
- 11.5 The Recipient must ensure that the total Participating Organisation's contributions (along with the Recipient's contributions) for the Project satisfies the requirements of this Agreement.
- 11.6 If the Recipient receives notice that a Participating Organisation wishes to withdraw its support for the Project, the Recipient must immediately notify the Department and may attempt to find a replacement Participating Organisation for the Project or modify remaining Participating Organisation arrangements, in accordance with the procedure outlined in clause 11.7.
- 11.7 Should the Recipient wish to proceed with a replacement Participating Organisation or modified Participating Organisation arrangement as allowed under clause 11.6, it must complete the procedure set out below within three months from the date of notification from the Participating Organisation or from the date on which the Recipient became aware that the Participating Organisation is not meeting its obligations, whichever is the earlier. By the end of the three-month period referred to in this clause 11.7:
- (a) the Recipient must request, in writing, the Department's approval of a replacement Participating Organisation or modified remaining Participating Organisation arrangement which complies with the requirements for Participating Organisations and Participating Organisation contributions specified in this Agreement;
 - (b) the replacement or remaining Participating Organisations must provide a written undertaking to provide (in total) a replacement contribution equivalent to that which would have been provided by the Participating Organisation withdrawing from the Project and which satisfies the requirements of this Agreement; and
 - (c) the Recipient and the replacement Participating Organisation or remaining Participating Organisations must enter into a written agreement, or amend any existing agreement (as appropriate) consistent with this clause 11 to reflect the revised Participating Organisation contribution arrangements.
- 11.8 The Department may approve a replacement Participating Organisation if the replacement Participating Organisation meets the eligibility criteria as specified in the Fund application guidelines.
- 11.9 If the Department approves a replacement Participating Organisation or modified remaining Participating Organisation arrangement proposed under clause 11.7, the Recipient must, within three months of the date of approval by the Department, provide to the Department revised Participating Organisation Agreements reflecting the new approved arrangements.

- 11.10 To avoid doubt, the condition of Grant payment set out in clause 5.2(b) will not have been satisfied if:
- (a) the Department does not approve any replacement Participating Organisation or the modified Participating Organisation arrangements proposed under clause 11.7; or
 - (b) the Recipient does not attempt to find any replacement Participating Organisation or modify existing Participating Organisation arrangements in accordance with clause 11.7.

12. Publicity and promotion

12.1 Publicity by Recipient

- (a) Without limiting any other obligation under this clause 11 the Recipient must comply with the Department's guidelines for acknowledging Victorian government funding as published from time to time at <https://www.delwp.vic.gov.au/grants> or any successor website nominated by the Department.
- (b) Subject to clauses 12.1(c) and (d), the Recipient will provide the Department or any other agency of the State nominated by the Department, recognition as a major funding contributor to the Project, with prominent written acknowledgement and display of appropriate Departmental and any other logos or trademarks notified by the Department wherever appropriate in all advertising material and other publications relating to the Project. Failure to comply with this may result in the Department invoking clause 16.
- (c) The Recipient must not make any public statements or communications, or publish any media releases, in relation to this Agreement, the Grant or the Project, other than disclosures that the Recipient is required to make under the rules of any applicable stock exchange, without first providing a copy of the statement, communication or media release to the Department in accordance with clause 25.1(b) and obtaining the prior written approval of the Department (not to be unreasonably withheld).
- (d) The Recipient must not do or omit to do anything which may:
 - (i) damage, bring into disrepute or ridicule the Department's or the State's name, messages or reputation; or
 - (ii) attract public or media attention which may be prejudicial or otherwise detrimental to the Department's or the State's name, messages or reputation.

12.2 Use of Trademarks

Where the Recipient is permitted to use a trademark under clause 12.1(b), the Recipient must:

- (a) not use that trademark unless it has submitted to the Department samples of all materials on which the trade mark will appear;
- (b) observe all reasonable directions notified to it by the Department in relation to use of that trademark; and
- (c) use its best endeavours to preserve the value and validity of that trademark.

12.3 Publicity by Department

- (a) The Recipient agrees that it will cooperate with the Department in relation to all publicity associated with the Grant and the Project and will provide any assistance required by the Department in the preparation of materials used to promote the benefits of the Program to the industry, such as a media release or case study on the Project.

- (b) Subject to clause 20, the Department may publicise the benefits accruing to both the Recipient and the State as a result of the provision of the Grant. The Department may include the name of the Recipient and the amount of the Grant in its annual report. The Department will provide a copy of any statement, communication or media release to the Recipient in accordance with clause 25.1(a) and obtain the prior written approval of the Recipient (not to be unreasonably withheld) before any public release of information relating to this Agreement, the Grant or the Project.
- (c) The Recipient agrees and acknowledges that, in accordance with State policy, the State may publish and make available to the public the terms and conditions of this Agreement in any medium (including the internet), other than any terms or conditions which the parties agree to keep confidential.

13. Written reports

13.1 Progress Reports

The Recipient must provide to the Department progress reports:

- (a) in accordance with the timeframes set out in Schedule 3; and
 - (b) in accordance with the form and content requirements set out in Schedule 5,
- for the duration of the Term (**Progress Reports**).

13.2 Ad hoc reporting

- (a) The Recipient must provide to the Department all other reports not referred to in clauses 13.1, 13.3 and 13.4, in accordance with Schedule 5 during the Grant Period.
- (b) Whenever requested, and within a reasonable time frame for response, by or on behalf of the Department, the Recipient undertakes to provide non-confidential information in an agreed format detailing facilities, personnel, capabilities and services for incorporation in a publicly accessible database on science and research infrastructure for Victoria.
- (c) At the Department's request, the Recipient must provide any additional oral or written information or documentation that explains details of its performance throughout the Grant Period. The Recipient must respond in a timely manner to any such request, and if requested must provide a full and complete written response to the Department's satisfaction (acting reasonably) within 7 days of any such request.
- (d) At the Department's request at any time during the Term, the Recipient must provide information relating to the operation of the Project.

13.3 Final Report

The Recipient must provide the Final Report containing the information set out in Schedule 5 in accordance with the timeframes set out in Schedule 3 or, in the event of early termination of this Agreement, within 20 Business Days of termination of this Agreement. The Final Report must include details of the status and progress of the Project and the outlook for the Project and any other information reasonably requested by the Department.

13.4 Performance Outcomes Report

The Recipient must provide the Performance Outcome Report containing the information set out in Schedule 5 within 12 months of completion of the Project in accordance with the Project Milestones or, in the event of early termination of this Agreement, within 20 Business Days of termination of this

Agreement. The Performance Outcome Report must include information against performance outcomes, and any other information reasonably requested by the Department.

13.5 Provision of non-confidential information in reports

Each report to be provided under this clause 13 must be prepared in a format approved in writing by the Department that includes clearly identified confidential and non-confidential sections and be signed by an Authorised Representative, or other person approved in writing by the Department.

14. Records, audit and inspection

14.1 Separate accounting

- (a) The Recipient must account for all revenue and expenditure relating to the Grant and the Project separately from other funds managed by the Recipient and in accordance with generally accepted accounting principles. These accounts must disclose all cash contributions for all components of the Project.
- (b) Without limiting clause 14.1(a), the Recipient must identify the receipt and expenditure of Grant instalments separately within the Recipient's accounting records so that at all times the Grant instalments are identifiable and ascertainable.

14.2 Statutory Declaration provided by the Recipient

In accordance with the timeframe(s) set out in Schedule 3, the Recipient must provide the Department with a Statutory Declaration verifying the amount of expenditure incurred on the Project and the amount of expenditure of the Grant funds.

14.3 Audit Opinion provided by the Recipient

- (a) In accordance with the timeframe(s) set out in Schedule 3, the Recipient must provide an Audit Opinion of the expenditure of the Grant funds to the Department.
- (b) The Audit Opinion must be prepared at the Recipient's cost by a person who is not an officer or employee of the Recipient and is:
 - (i) a person who is registered as a company auditor under a law in force in the State; or
 - (ii) a member of the Institute of Chartered Accountants in Australia or of the Australian Society of Certified Practising Accountants.

14.4 Audit and inspection by Department

The Recipient must permit (and must procure that, where applicable, the Landlord permits) the Department and/or the Auditor General of Victoria to audit the monies expended from the Grant and inspect any books and records relating to the Project or this Agreement. For such purposes the Recipient (and the Landlord, where applicable):

- (a) shall permit access to and the copying of the financial and other records and any other materials, to the extent that they relate to the Grant or the Project, by any person duly authorised by the Department;
- (b) subject to reasonable and appropriate occupational, health and safety and confidentiality restrictions, shall permit access to any Assets by any person duly authorised by the Department;
- (c) shall answer all relevant enquiries put to them by any person duly authorised by the Department;

- (d) shall assist any person duly authorised by the Department in the conduct of the audit or inspection relating to the Grant or the Project activities; and
- (e) shall permit any person duly authorised by the Department to inspect any relevant facilities and technologies and to assess quality, quantity and ongoing costs of the Project.

15. Compliance with the Local Jobs First Policy

15.1 Application of clause

- (a) This clause 14 shall only apply where the amount of the Grant is:
 - (i) \$3 million or more for a Project in Metropolitan Melbourne or State Wide;
 - (ii) \$1 million or more for a Project in Regional Victoriairrespective of the total value of the Project.

15.2 Preparation and submission of IRN Form

To maximise opportunities for local business in relation to the Project, the Recipient must, within 10 Business Days of the signing of this Agreement, prepare and submit an IRN Form through the VMC setting out:

- (a) details of the Project; and
- (b) the goods and services likely to be required to deliver the Project.

15.3 Consultation with ICN

When contacted by the ICN, the Recipient must consult with the ICN in respect of opportunities for local businesses to deliver the goods and services required for the Project.

15.4 Obligations upon receipt

Within five Business Days of receipt from the ICN, the Recipient must:

- (a) provide the IRN to the Department; and
- (b) inform the Department of any opportunities for local business agreed with the ICN. For this purpose, the Recipient must provide the Department with a copy of the IRN Letter.

15.5 Compliance with Local Jobs First Commitments

The Recipient must prepare and maintain records demonstrating its compliance with any Local Jobs First Commitments and must monitor its compliance with any Local Jobs First Commitments.

15.6 Department may consult ICN

The Recipient acknowledges and agrees that the Department may consult with the ICN in respect of the Recipient's compliance with any Local Jobs First Commitments.

15.7 No derogation

The obligations of the Recipient set out in this clause 15 are in addition to and do not derogate from any other obligations of the Recipient under this Agreement.

15.8 Disclosure of information from ICN

The Recipient acknowledges and agrees that any information provided to the Department by the ICN may be:

- (a) included in the Department's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the Department's compliance with the LJF Policy in the financial year to which the report of operations relates;

- (b) provided to the Responsible Local Jobs First Minister for inclusion in the Responsible Local Jobs First Minister's report to the Parliament for each financial year on the implementation of the Local Jobs First Policy during that year; or
- (c) disclosed as otherwise required by law.

15.9 Local Jobs First Commissioner

- (a) The Recipient acknowledges that:
 - (i) it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with section 24 of the Local Jobs First Act;
 - (ii) it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with section 26 of the Local Jobs First Act;
 - (iii) its failure to comply with the compliance notice referred to in this clause 15.9(a) may result in the issue of an adverse publicity notice by the Responsible Local Jobs First Minister under section 29 of the Local Jobs First Act; and
 - (iv) the Local Jobs First Commissioner may:
 - (A) monitor and report on compliance with the Local Jobs First Policy; and
 - (B) request the Department to conduct an audit in relation to the Recipient's compliance with the Local Jobs First Policy.
- (b) The Recipient acknowledges that the Commissioner may recommend that the Department take enforcement proceedings against the Recipient if the Recipient has failed to comply with the Local Jobs First Policy by:
 - (i) applying to a court to obtain an injunction; or
 - (ii) taking action available under this Agreement.

16. Compliance with undertakings and deterioration in financial circumstances

16.1 Rights to withhold Grant, require refund or terminate Agreement

Where the Department is of the reasonable opinion that:

- (a) there has been a significant deterioration in the financial circumstances of the Recipient;
- (b) the Recipient has failed to comply with any of its material obligations under this Agreement and, where the non-compliance is capable of remedy by the Recipient, the Recipient has failed to remedy the non-compliance within such reasonable period as specified by the Department in writing;
- (c) the Recipient will not or is unlikely to complete the Project or any Project Milestones within the timeframes required under this Agreement (as extended, if applicable, under clause 22);
- (d) the Project is no longer likely to achieve the objectives contemplated in the Project Plan;
- (e) the Grant funds have not been applied towards Eligible Project Expenditure or have otherwise been applied in a manner inconsistent with the Recipient's obligations under this Agreement and the Project Plan (including where the Recipient is unable to complete a Project activity that was previously contemplated or is unable to acquire or install Assets as previously contemplated);

- (f) there has been any fraud relating to the Recipient or the Grant, misappropriation of Grant funds by the Recipient or there has otherwise been any misleading or deceptive conduct on the part of the Recipient in connection with this Agreement or the provision or use of the Grant;
- (g) the Recipient has engaged or may engage in any conduct which affects or may adversely affect the goodwill or reputation of the Department, a Minister, or the State;
- (h) a Government Funder has withheld, suspended, reduced, ceased or cancelled any payments under any Government Funding Agreement (as applicable) or has sought or is seeking any refunds or repayments under any Government Funding Agreement (as applicable);
- (i) the Recipient or any Security Provider has become subject to Insolvency Administration;
- (j) the Recipient in undertaking the Project and/or in meeting its obligations under this Agreement has or may have infringed, or is likely to infringe, the Intellectual Property rights of a third party;
- (k) there has been a change in the direct or indirect beneficial ownership or control of the Recipient without the consent of the Department or the Recipient has disposed of the whole or any part of its assets, operations or business other than in the ordinary course of business without the consent of the Department;
- (l) the Recipient has disposed of the whole or any part of its assets, operations or business other than in the ordinary course of business without the consent of the Department;
- (m) the Security ceases to be in full force and effect; or
- (n) the Recipient's application for any planning, building, environmental, occupational health and safety, land access and use approval or any other approval, permit or licence required to lawfully conduct and complete the Project in accordance with this Agreement is rejected or the Recipient is unlikely to be able to obtain such approval, permit or licence,

then the Department may do one or more of the following:

- (o) withhold, suspend, cancel or terminate any payment or payments of the Grant due or to fall due under this Agreement;
- (p) require the Recipient to refund such amount of the Grant previously paid as the Department reasonably deems appropriate, together with interest calculated daily at the rate of 2% per annum above the rate fixed from time to time under Section 2 of the *Penalty Interest Rates Act 1983* (Vic), from the date of the relevant Grant payment until the date on which that amount is refunded; and
- (q) immediately terminate this Agreement by giving written notice to the Recipient.

16.2 Obligation to notify

The Recipient must promptly notify the Department if:

- (a) any event or circumstance occurs or arises that results or may result in a significant deterioration in the financial circumstances of the Recipient or the Security Provider;
- (b) the Recipient or the Security Provider becomes subject to Insolvency Administration;
- (c) any proposed change in the direct or indirect beneficial ownership or control of the Recipient or proposed disposal of the whole or any part of its assets, operations or business other than in the ordinary course of business;

- (d) the Recipient in undertaking the Project and/or in meeting its obligations under this Agreement becomes aware that it has, may have, or is likely to have any claim, action or demand made against it by a third party for infringement of that third party's Intellectual Property rights; or
- (e) the Recipient's application for any planning, building, environmental, occupational health and safety, land access and use approval or any other approval, permit or licence required to lawfully conduct and complete the Project in accordance with this Agreement is rejected or it becomes apparent that the Recipient is unlikely to be able to obtain any such approval, permit or licence.

16.3 No derogation

Nothing in this Agreement, including clause 16.1, affects any rights or remedies otherwise available to the Department at law.

17. Liability

- (a) The State, its servants and agents shall not be responsible at any time for any liabilities incurred or entered into by the Recipient as a result of, or arising out of the Recipient's responsibilities under, this Agreement or the conduct of the Project.
- (b) It is the responsibility of the Recipient to carry out its obligations under this Agreement and to carry out the Project at its own risk and, in so doing, it shall comply with (and procure that any applicable Subcontractors and personnel comply with) the provisions of all applicable laws and the legal requirements of any authority in connection with those laws including but not limited to any Energy Safety and OHS Requirements.

18. Intellectual Property

18.1 Project Intellectual Property

As between the Recipient and the State, all Project Intellectual Property shall vest in the Recipient upon creation.

18.2 Licence of Grant Agreement Material

Subject to clause 20, the Recipient grants to the State a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right to sub-licence) to reproduce, publish, communicate to the public, adapt, modify or otherwise use the:

- (a) Grant Agreement Material for non-commercial purposes; and
- (b) Project Intellectual Property for purposes relating to the Program, or to other Victorian Government programs with similar policy objectives.

18.3 Moral rights

If any Grant Agreement Material that is a copyright work contains information over which a third party (including the Recipient's personnel and subcontractors) has 'Moral Rights' (as defined in the *Copyright Act 1968* (Cth)), the Recipient must ensure that it has in place all necessary consents sufficient to allow the State to deal with the Grant Agreement Material in accordance with this Agreement.

18.4 Warranties

The Recipient warrants that:

- (a) it is entitled to use for the Project and for the purposes of meeting its obligations under this Agreement, all Background Intellectual Property and Project Intellectual Property (**Warranted Materials**); and
- (b) it has the right to grant the licence in clause 18.2.

18.5 Remedy for breach of warranty

If the Recipient breaches either of the warranties in clause 18.4, and as a result of the breach of that warranty, a third party claims the State's use of all or part of the Warranted Materials infringes its Intellectual Property rights, the Recipient must, in addition to its obligations under clause 19 and to any other rights that the State may have against it, promptly, at the Recipient's expense:

- (a) use its best efforts to secure the rights for the State to continue to use the affected Warranted Materials as permitted under clause 18 free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the State's use of them as permitted under this clause 18 does not infringe the Intellectual Property rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

19. Indemnity, warranties and insurance

19.1 Indemnity

- (a) The Recipient indemnifies (and must keep indemnified) the State, its officers, employees and agents (referred to in this clause as 'those indemnified') from and against all Losses sustained or incurred by those indemnified and arising out of or as a consequence of:
 - (i) any Claim against the State, its officers, employees or agents in relation to any act or omission of the Recipient, its officers, employees, agents or related bodies corporate in connection with this Agreement or the Project;
 - (ii) the exercise of any Intellectual Property (including the Grant Agreement Material, Background Intellectual Property or Project Intellectual Property) or other rights licensed or granted in accordance with this Agreement, including any Claim that any act in relation to the Grant Agreement Material, Background Intellectual Property or Project Intellectual Property infringes the Intellectual Property of any third party;
 - (iii) a negligent, reckless, wilful or unlawful act or omission of the Recipient, its employees, agents or other persons acting on its behalf or under its direction in the conduct of the Project;
 - (iv) the breach by the Recipient of any obligation under this Agreement; or
 - (v) the breach of any representation or warranty given by the Recipient under this Agreement.
- (b) The Recipient's liability to indemnify those indemnified under this clause 19 will be reduced proportionally to the extent that any negligent, reckless, wilful or unlawful act or omission on the part of those indemnified directly caused the relevant Loss.
- (c) The right of those indemnified to be indemnified under this clause 19 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but those indemnified are not entitled to be compensated in excess of the amount of the relevant Loss.

19.2 Consequential loss

Without prejudice to the State's right to recover Grant payments under this Agreement, neither party is liable to the other party under this Agreement at law or otherwise for any kind of indirect or consequential loss or damage nor for any loss of profit, loss of revenue, loss of use, loss of production, business interruption or any other kind of financial or economic loss. This clause does not apply to the unlimited liability of the Recipient in relation to any breach of the warranties in clause 18.4 or under the indemnities in clause 19.1(a).

19.3 Warranties

The Recipient represents and warrants that:

- (a) if it is a Company, it validly exists under the law of the place of its incorporation;
- (b) it has the power to sign this Agreement and has all authority and rights needed to perform its obligations under this Agreement;
- (c) the Authorised Representative(s) are duly authorised to act on behalf of the Recipient for the purposes of this Agreement in the manner contemplated by this Agreement;
- (d) it operates as a business in Victoria, Australia;
- (e) it has a registered Australian Business Number;
- (f) it is not, and has no reason to expect that it might become, the subject of an Insolvency Administration;
- (g) except as otherwise expressly contemplated by this Agreement, it enters into and performs its obligations under this Agreement on its own account and not as trustee for, or nominee or agent of, any other person;
- (h) neither it nor any of its officers, employees or Subcontractors:
 - (i) have been convicted of any offence relating to an Energy Safety and OHS Requirement; or
 - (ii) have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence relating to an Energy Safety and OHS Requirement.

19.4 Insurance

- (a) The Recipient shall, at its cost, take out and maintain the following insurances:
 - (i) public liability insurance for an amount of at least \$20 million per claim;
 - (ii) professional indemnity insurance for an amount of at least \$10 million per claim;
 - (iii) all risks property insurance to protect against loss or damage to the Assets or the relevant Project site(s) for an amount of not less than the full replacement value of the Assets; and
 - (iv) insurance which fully indemnifies the State against any Loss arising due to the fraudulent misappropriation of any Grant monies paid under this Agreement, to the value of the full Grant amount.
- (b) The Recipient must maintain such insurance:

- (i) in the case of insurance issued on a claims made basis, for 7 years after the end of the Term; or
 - (ii) otherwise, until the End Date.
- (c) Whenever requested, the Recipient must provide the Department, within 10 Business Days of the request, with a current certificate of currency and any other evidence the Department may reasonably require as evidence that the Recipient has complied with its obligation under this clause 19.4.

20. Confidentiality

20.1 Recipient's obligations of confidentiality

The Recipient shall not disclose or permit the disclosure of Confidential Information of the State or any information relating to the Grant (including this Agreement), and will ensure that the Participating Organisations do not disclose such information, except:

- (a) with the prior written consent of the Department;
- (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency;
- (c) to the extent required in connection with legal proceedings;
- (d) where otherwise permitted under this Agreement; or
- (e) to its legal advisers or accountants or tax advisers in order to obtain advice in relation to its rights under this Agreement or the Project,

and then only to the extent strictly necessary for that purpose.

20.2 Department's obligations of confidentiality

The Department shall not disclose or permit the disclosure of Confidential Information of the Recipient, except:

- (a) with the prior written consent of the Recipient;
- (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency;
- (c) if required in connection with legal proceedings;
- (d) for public accountability reasons, including (without limitation) a request for information by parliament or a parliamentary committee;
- (e) for any other reporting requirements of the Department;
- (f) where otherwise permitted under this Agreement; or
- (g) to its professional advisers in order to obtain advice in relation to this Agreement or the Project,

and then only to the extent strictly necessary for that purpose.

20.3 Disclosure required by law

Prior to disclosing Confidential Information of the other party under clause 20.1(b) or clause 20.2(b) a party will, if it is able to do so without breaching any law and if time constraints reasonably permit, provide prior notice to the other party and give the other party a reasonable opportunity to object to the disclosure.

20.4 Obligations on disclosure

If a party discloses Confidential Information of the other party under clause 20.1(a), (d) or (e), clause 20.2(a), (f) or (g), the party making the disclosure must ensure that each person to whom the Confidential Information is disclosed is aware of the obligations under this clause 20 and agrees to keep the Confidential Information confidential as if it was bound by the obligations of confidentiality imposed on the party making the disclosure under this clause 20. Nothing in this clause 20.4 derogates from the Department's obligations under freedom of information or privacy legislation.

21. Conflict of interest

21.1 Warranty

The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date, no Conflict exists or is likely to arise in the performance of the Recipient's obligations under this Agreement.

21.2 Conflict during the Term

If a Conflict arises during the Term (including through the Recipient's involvement with the parties or programs, if any, specified in the Project Plan), the Recipient must notify the Department in writing immediately of the Conflict, make full disclosure of all relevant information relating to the Conflict and take such steps as the Department requires to resolve or otherwise deal with the Conflict.

21.3 Failure to resolve Conflict

If the Recipient fails to notify the Department under this clause 21, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Agreement in accordance with clause 16.1(b).

22. Delay

- (a) The Recipient must take all reasonable steps to avoid and minimise delay in completion of the Project.
- (b) Without limiting the obligations of the Recipient under clause 6.2, if the Recipient becomes aware that it will be delayed in progressing or completing the Project in accordance with this Agreement, the Recipient must immediately notify the Department in writing of the cause and nature of the delay. The Recipient is to detail in the notice the steps it will take to contain the delay. For the avoidance of doubt, this clause 22 does not entitle the Recipient to an extension of any Project Milestone due date or other due dates under this Agreement.
- (c) If a delay is notified to the Department under clause 22(b), the Department may at its sole option:
 - (i) notify the Recipient in writing of a period of extension to complete the Project and vary this Agreement accordingly;
 - (ii) notify the Recipient in writing of reduction in the scope of the Project and any adjustment to the Grant instalments for the Recipient to complete the reduced Project and vary this Agreement accordingly; or
 - (iii) terminate this Agreement under clause 16 or take such other steps as are available under that clause or otherwise under this Agreement.
- (d) Unless the Department takes action under clause 22(c), the Recipient is required to comply with the time frame for progressing and completing the Project as set out in this Agreement.

23. Dispute

23.1 No court proceedings

If a dispute arises in relation to this Agreement or the Project (**Dispute**), a party must not commence court proceedings or arbitration relating to the Dispute without first complying with this clause 23, except proceedings for urgent interlocutory relief.

23.2 Notice of dispute

A party claiming that a Dispute has arisen may give written notice of the Dispute to the other party.

23.3 Referral to representatives

During the 14 days after a notice is given in accordance with clause 23.2, each party must seek to settle the Dispute by referring the Dispute to a representative with authority to settle the Dispute to attempt to settle the Dispute.

23.4 Referral to Chief Representative and Secretary

If the parties' representatives are unable to settle a dispute within seven days of the 14 day period referred to in clause 23.3, the Dispute must be referred:

- (a) in the case of the Recipient - to its Chief Executive Officer or Managing Director or equivalent (or such other senior officer as may be agreed for this purpose with the Department); and
- (b) in the case of the Department - to the Secretary or a Deputy Secretary of the Department,

within seven days of the end of that 14 day period. The Recipient's Chief Executive Officer or Managing Director or equivalent (or other agreed senior officer) and the Department's Secretary or Deputy Secretary must meet with each other to seek to resolve the Dispute within 14 days of the last date by which the Dispute must be referred to them under this clause 23.4.

23.5 Referral to further process

If the Dispute is not resolved within a further period of 14 days of the first meeting of the Recipient's Chief Executive Officer or Managing Director or equivalent (or other agreed senior officer) and the Department's Secretary or Deputy Secretary, the parties may agree on a process for resolving the Dispute through other means such as further negotiations, mediation, conciliation or independent expert determination.

23.6 Failure to resolve Dispute

Nothing in this clause prevents either party from seeking resolution by any means of any Dispute that has not been resolved by the dispute resolution process in this clause or otherwise.

23.7 Breach of this clause

Where a party fails to comply with this clause 23 in relation to a Dispute, the other party is not required to comply with this clause 23 in relation to that Dispute.

23.8 Parties to continue to fulfil obligations

The parties must at all times during a Dispute proceed to fulfil their respective obligations under this Agreement.

24. Force majeure

24.1 Force majeure event

For the purposes of this clause 24, a 'force majeure event' means any event or combination of events which:

- (a) is beyond the control of the Recipient;
- (b) causes a failure to perform or delay in performance by the Recipient of any of its obligations under this Agreement; and
- (c) could not have been prevented or overcome by the Recipient acting in accordance with Good Industry Practice,

and which may include (provided that the above criteria are satisfied):

- (d) fire, lightning, explosion, flood, earthquake, storm or any other act of God or force of nature;
- (e) pandemic, epidemic or quarantine;
- (f) civil commotion, sabotage, war, revolution, radioactive contamination, toxic or dangerous chemical contamination;
- (g) strikes, lock-outs, industrial disputes, labour disputes, industrial difficulties, labour difficulties, work bans, blockades or picketing; and
- (h) a delay in obtaining an authorisation not caused by the act or omission of the Recipient,

but does not include:

- (i) strikes and industrial disputes between the Recipient and its employees or subcontractors or their employees specifically employed in relation to the Project except where any such dispute is part of a wider dispute involving employees of other employers (not being a related entity of the Recipient);
- (j) wet or inclement weather;
- (k) shortages of materials or other supplies required for the Project where the Recipient has failed to use its best endeavours to overcome such shortages;
- (l) the inability of the Recipient, for whatever reason, to pay money it is obliged to pay;
- (m) a delay in obtaining an authorisation caused by the act or omission of the Recipient; or
- (n) any change in law.

24.2 Recipient must notify

If a force majeure event occurs the Recipient must promptly notify the Department of the event, providing details of the event, any obligations affected, the action being taken to mitigate the situation and the likely duration of the delay.

24.3 Suspension of obligations

- (a) Subject to clauses 24.3(b) and 24.4, the obligations of the Recipient are suspended while the force majeure event notified to the Department under clause 24.2 persists.
- (b) The Recipient must use its best endeavours to remedy and mitigate the effects of the force majeure event.

24.4 Termination

If a force majeure event continues for greater than 90 days in aggregate, the State may immediately terminate this Agreement by notice in writing to the Recipient.

24.5 Cessation of force majeure event

Subject to the Department exercising its rights under clause 24.4, the period of any force majeure event will end on the date on which the Recipient notifies the State that it is able to recommence work on the Project.

24.6 Impact on Project Milestones

If a force majeure event notified to the Department under clause 24.2 causes any delay in the achievement of a Project Milestone, the Department may at its sole option (and without limiting its rights under clause 24.4 or any other provision of this Agreement):

- (a) notify the Recipient in writing of a period of extension to complete the Project and vary this Agreement and the timing for achievement of Project Milestones and any associated Grant instalments accordingly; or
- (b) notify the Recipient in writing of reduction in the scope of the Project and any adjustment to the Grant instalments for the Recipient to complete the reduced Project and vary this Agreement accordingly.

25. Notices

25.1 Service of notices

- (a) Subject to clause 25.1(b), any notice, demand, consent, approval or communication required by or permitted under this Agreement shall be deemed to be duly served if delivered to the recipient's address for notices specified at the beginning of this Agreement, as varied by any notice given by the recipient to the sender.
- (b) The Recipient must provide a copy of any proposed public statement, communication or media release under clause 12.1(c) to the Secretary by delivering it to the address for the Department specified at the beginning of this Agreement (addressed with attention to the person specified below that address) as well as serving a copy in accordance with clause 25.1(a).

25.2 Methods of service

Notices may be delivered by hand, by prepaid mail, or by electronic mail and shall be deemed to be duly served:

- (a) in the case of delivery by hand, at the time of delivery;
- (b) in the case of prepaid mail, at the time at which it would normally arrive in ordinary course of the post at the address of the receiving party to which it is directed; and
- (c) in the case of electronic mail, if the message is correctly addressed and successfully transmitted to that party's electronic mail (e-mail) address, at the time that the sender's computer records that transmission was successful.

26. Miscellaneous

26.1 Governing law and jurisdiction

This Agreement shall be governed by the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

26.2 Equal opportunity, anti-discrimination and privacy legislation

The Recipient shall comply with the provisions of all applicable Commonwealth and State privacy, anti-discrimination and equal opportunity legislation.

26.3 Negation of partnership and agency

The Recipient shall not, by virtue of this Agreement, or for any purpose, be deemed to be a partner or agent of the State or as having any power or authority to bind or represent the State, and must not represent that it has any such authority.

26.4 Joint and several obligations

If the Recipient consists of two or more parties, this Agreement binds each of them jointly and severally.

26.5 Assignment

The Recipient must not assign or otherwise deal with this Agreement or any right under it without the prior written consent of the Department (acting reasonably).

26.6 Restructure

The Recipient must advise the Department as soon as a decision is taken regarding any restructuring of its business or change in ownership or control of the Recipient. Without limiting clause 16.1, if a restructure of the business or change in ownership or control of the Recipient affects, or will in the opinion of the Department affect, the Recipient's ability to carry out its obligations under this Agreement, or complete the Project, Grant instalments may be withheld or cancelled in the Department's absolute discretion.

26.7 Subcontracting

- (a) The Recipient remains fully responsible for the performance of all of its obligations under this Agreement and for all costs incurred with respect to its Subcontractors and is liable for acts and omissions of its Subcontractors as though they were actions of the Recipient itself.
- (b) The Recipient must ensure that any Subcontractor complies with the following clauses to the same extent that the Recipient is required to comply with such clauses:
 - (i) clause 7.3(a)(i);
 - (ii) clauses 12.1(c) and 12.1(d) (Publicity and promotion);
 - (iii) clause 14 (Records audit and inspection);
 - (iv) clause 17(b) (Liability);
 - (v) clause 18 (Intellectual Property);
 - (vi) clause 19.1 (Indemnity);
 - (vii) clause 19.4 (Insurance);
 - (viii) clause 20 (Confidentiality);
 - (ix) clause 21 (Conflict of interest); and
 - (x) clause 26.2 (Equal opportunity, anti-discrimination and privacy legislation).

26.8 Severance

Each provision of this Agreement, and each part thereof shall, unless the context requires otherwise, be read and construed as a separate or severable provision, or as a separate and severable part thereof, so that if any provision or part thereof is void or otherwise unenforceable for any reason then

that provision, or part thereof, as the case may be, shall be severed and the remainder shall be read and construed as if the severable provision or part thereof, has never existed.

26.9 Entire agreement

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

26.10 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

26.11 Variation

No agreement or understanding varying or extending this Agreement shall be legally binding upon either party unless in writing and signed by both parties.

26.12 Waiver

No right or obligation under this Agreement shall be deemed to be waived except upon written acknowledgement signed by the party waiving the right or obligation in each instance.

26.13 Stamp duty

The Recipient shall pay any stamp duty and any other taxes or imposts which may be payable in connection with the Grant or this Agreement.

26.14 Survival

Clauses 1, 5.4, 8.1(b), 8.3, 12, 13.3, 13.4, 13.5, 14, 16.1(p), 16.3, 17, 18, 19, 20, 21, 26.1, 26.3, 26.4, 26.7, 26.8, 26.9, 26.10, 26.12, 26.13 and this clause 26.14 survive termination or expiry of this Agreement.

Draft Agreement

Signing page

EXECUTED as an agreement.

Signed by [insert name and title of person signing on behalf of the Department] of the Department of Environment, Land, Water and Planning, for and on behalf of the State of Victoria in the presence of

[Insert Name of person signing]

Date

Signature of witness

Name of witness (print)

[Select relevant option according to legal status of Recipient]

[Option A - Company]

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth) by [**insert Recipient name**]

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

[Option B – Sole Director]

Executed in accordance with section 127 of the *Corporations Act 2001* by [**insert Recipient name**] in the presence of:

Sole Director and Sole Secretary Signature

Witness Signature

Print Name

Print Name

The common seal of [*insert Recipient name*] is fixed to this document in accordance with its constitution in the presence of

Signature of witness one

Signature of witness two

Name of witness one (print)

Name of witness two (print)

Address of witness one (print)

Address of witness two (print)

Position of witness one (print)

Position of witness two (print)

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Schedule 1 – Project Particulars

1.	Grant: (Clause 3.1)	\$[<i>insert grant amount</i>] (excluding GST) <i>Note: the Grant amount is awarded for the completion of eligible Project activities and for Eligible Project Expenditure and may, depending on the evidence and other deliverables provided by the Recipient in meeting the Project Milestones set out in Schedule 3, be adjusted by the Department in accordance with the terms of this Agreement (see, e.g., clauses 3.1(d), 5.2 and 16.1).</i>
2.	Co-funded Project (Clause 5.2(b))	Is the Project a Co-funded Project? <i>Insert either 'Yes' or 'No'.</i>
3.	Recipient Co-funding Amount	\$[<i>insert Recipient co-funding amount</i>] <i>Note: this co-funding amount is intended to count cash contributions from the Recipient itself only. Third-party cash contributions should be separately identified in item 4 below.</i> <i>If the Project is not a Co-funded Project, insert 'Not Applicable'.</i>
4.	Third Party Co-funding Amount: (Clause 5.2(b))	\$[<i>insert third party co-funding amount</i>] <i>Note: this co-funding amount is intended to count cash contributions from third parties only. Cash contributions from the Recipient should be separately identified in item 3 above.</i> <i>If the Project is not a Co-funded Project, insert 'Not Applicable'.</i>
5.	Authorised Representative(s) (Clauses 6.2(a), 6.2(e), 13.5 and 19.3(c))	Complete for up to two officers or employees who are duly authorised to act on behalf of the Recipient for the purposes of this Agreement. Name: Title: Email: Phone: Name: Title: Email: Phone:
6.	DELWP Contacts:	Name: Title: Email: zev@delwp.vic.gov.au

		<p>Phone:</p> <p><i>Insert full name, address and ABN. If no Landlord insert Not Applicable</i></p> <p><i>Insert provisions to be included in Landlord Agreement, as relevant. For example:</i></p> <p><i>A the Recipient and the Landlord each acknowledge and agree that the Assets are not fixtures;</i></p> <p><i>B the Recipient and the Landlord acknowledge and agree that the Assets are owned by the Recipient or such other person as is nominated as the Asset owner by the Recipient (and not by the Landlord);</i></p> <p><i>C the Landlord agrees to allow (and to procure that any mortgagee over the site allows) the Department (or any person authorised by the Department to access the site for the purpose of [e.g. inspecting, installing, maintaining or operating the Assets] (as permitted under the Funding Agreement for the [insert] Program), including by granting the Department (and any person authorised by the Department) a right of entry waiver;</i></p> <p><i>D the Landlord agrees that it will disclose to any prospective purchaser or lessee of the site that the Assets are owned by the Recipient or such other person as has been nominated by the Recipient;</i></p> <p><i>E the Recipient and the Landlord each agree to the assignment or novation of this agreement to the Department or its nominee upon termination or expiration of the Funding Agreement for the [insert] Program;</i></p> <p><i>F the Landlord agrees to not sell, transfer, lease or otherwise deal with the site without first notifying the Department (after obtaining the consent of the Department under paragraph G);</i></p> <p><i>G the Recipient and the Landlord agree to not terminate, amend, vary or assign this agreement without the prior consent of the Department;</i></p> <p><i>H the Recipient and the Landlord each agree to not proceed to terminate this agreement by reason of a default without allowing the Department a reasonable opportunity to cure such default;</i></p> <p><i>I the Recipient and the Landlord each agree to hold all licences, exemptions or registrations that they are required under law to hold in connection with the Project, and to comply with the terms of those licences, exemptions or registrations; and</i></p> <p><i>J the Landlord agrees to not do anything to cause the Recipient to be in breach of any licence, exemption or</i></p>
7.	<p>Landlord and Landlord Agreement Provisions:</p> <p>(Clause 5.3)</p>	

		<i>registration it is required under law to hold in connection with the Project.</i>
8.	Maintenance Period: (Clause 8.1(b))	The useful life of the relevant Asset.
9.	Regulatory Approvals (Clause 4.1(b))	<i>Insert details of required approvals. If none insert Not Applicable.</i>
10.	Participating Organisations (Clause 11)	<i>Insert full corporate name, address and ABN of each Participating Organisation. If there is no Participating Organisation for the Project, insert 'Not Applicable'.</i>

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Schedule 2 – Project Plan

The Project Plan must encompass the following elements and will include Attachments 1 and 2 of this Schedule 2. Additional information that provides a fuller description may also be included.

<i>[Recipient]</i>	<i>[Project title]</i>
<i>[Period of Plan]</i>	
Executive Summary [max. 200 words]	
<ul style="list-style-type: none"> - <i>Please provide a plain language summary of the Project, its objectives and proposed outcomes, the gap/opportunity that is being exploited through the Project that will benefit Victoria</i> - <i>The Executive Summary should also include an overview of the strategy and rationale for the Project as well as an indication of the timing of Project delivery.</i> 	
Project Governance [max 300 words]	
<ul style="list-style-type: none"> - <i>Governance arrangements including project management, oversight and roles of key project personnel (include estimation of time to be devoted to this Project).</i> - <i>Also include collaborations under this heading.</i> 	
Project Outline - Objectives, Aims and Outcomes [max 400 words]	
<p>Must include:</p> <ul style="list-style-type: none"> - Number of sites - Number of chargers - Details of kilo wattage of chargers - Details about (each) site, including any planning approvals or leasing permits required. - 	
Proposed Project Milestones [max 300 words]	
<ul style="list-style-type: none"> - <i>Give details on the activities planned for the Project to be funded by the Grant and contributions from other sources.</i> - <i>Include a detailed Project work plan listing the steps to achieve each Project Milestone, with start and end dates for each activity.</i> 	
Post-project plan [max 300 words]	
<ul style="list-style-type: none"> - <i>Give details on the steps planned after the project's completion (activities regarding replication, sharing lessons learned etc).</i> 	
Budget, metrics and other financial information See Schedule 2, Attachment 1 for more detail.	
Risk Management Log See Schedule 2, Attachment 2 for more detail.	

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Schedule 2, Attachment 1 – Budget, metrics and other financial information

BUDGET FORECAST TABLE	Milestone 1 [MMM/YYYY – MMM/YYYY]		Milestone 2 [MMM/YYYY – MMM/YYYY]		Milestone 3 [MMM/YYYY – MMM/YYYY]		Milestone 4 [MMM/YYYY – MMM/YYYY]		Project To Date		Project Total
	Forecast \$ (ex. GST)	Actual \$ (ex. GST)	Forecast \$ (ex. GST)	Actual \$ (ex. GST)	Forecast \$ (ex. GST)	Actual \$ (ex. GST)	Forecast \$ (ex. GST)	Actual \$ (ex. GST)	Forecast \$ (ex. GST)	Actual \$ (ex. GST)	
Funds from the Department	\$<Amount>	\$<Amount>	\$<Amount>								
Funds from the Recipient	\$<Amount>	\$<Amount>	\$<Amount>								
Funds from any other participating organisations	\$<Amount>	\$<Amount>	\$<Amount>								
Funds from Government Funders	\$<Amount>	\$<Amount>	\$<Amount>								
Total Project Income	\$<Amount>	\$<Amount>	\$<Amount>								
Eligible Project Expenditure	\$ (ex. GST)	\$ (ex. GST)	\$ (ex. GST)								
Eligible Project Expenditure against total Project income	<p>Note: this row shows the difference between the expenditure incurred by the recipient and the income the Recipient has received from all revenue streams. E.g. If it is negative, it means the recipient has incurred more expenditure than it has received funding for in that milestone. To determine, subtract the 'Eligible Project Expenditure' figure from the 'Total Project Income' figure</p>										
<Insert item i.e. engagement of Subcontractors, purchase of equipment etc.>	\$<Amount>	\$<Amount>	\$<Amount>								
Total Project Expenditure	\$<Amount>	\$<Amount>	\$<Amount>								

Metrics	Milestone 1 [MMM/YYYY – MMM/YYYY]	Milestone 2 [MMM/YYYY – MMM/YYYY]	Milestone 3 [MMM/YYYY – MMM/YYYY]	Milestone 4 [MMM/YYYY – MMM/YYYY]	Project To Date	Project Total
Staff FTE	#					
Subcontractor hours	#					
Expenditure through local businesses	\$ (ex. GST)					

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Schedule 2, Attachment 2 – Risk Management Log

Risk	Likelihood	Impact	Impact Rating	Risk Rating	Mitigation
<i>Details of potential occurrence</i>	<i>Rare, Possible, Very likely</i>	<i>Details of potential consequences</i>	<i>Mild, Moderate, Severe</i>	<i>Low, Medium, High</i>	<i>Steps to reduce likelihood and/or impact of risk</i>

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Schedule 3 — Milestones, Timing and Payments

[Insert as many milestones as are required. The below deliverables are provided by way of example.]

Project Milestones	Deliverables	Due Date	Payment	
			Amount (Total AUD [exc. GST])	No.
<p>MILESTONE X</p> <p>[Insert description of Project Milestone]</p> <p>[Project Milestones are achievements of significant steps in the project, usually the completion or acceptance of important deliverables. Note that a Progress Report is required as a deliverable for each Project Milestone with a Final Report being provided for the last Project Milestone]</p>	<ul style="list-style-type: none"> - (Progress Report) A report as per Schedule 5; - (Evidence) [insert details of any relevant milestones/targets/approvals etc. that are required]; - (Other Reports) [insert details of any relevant reports, models, Project plans, audit options, statutory declarations that are required] - (Statutory Declaration) [A Statutory Declaration in the form provided in Schedule 4, Part A.] - (Audit Opinion) [A final Audit Opinion in the form provided in Schedule 4, Part B] - (Other) [insert other milestones, targets, approvals, or anything else that is required. If nothing is required, this can be deleted.] 			
Total			\$	

Schedule 4 – Statutory Declaration and Audit Opinion

Part A - Statutory Declaration

I, *[insert name and address]*, do hereby solemnly and sincerely declare that:

- I am a Director of *[insert name of organisation]* (the **Recipient**).
- The Recipient has complied with all of its obligations under the Grant Agreement dated *[insert date]* (the **Agreement**) between the Recipient and the State of Victoria.
- The Recipient has incurred *[\$#]* of 'Eligible Project Expenditure' (as defined in the Agreement) on the Project as at *[insert date]* for Project Milestones *[#.# and #]* in accordance with the terms of the Agreement.
- The accounts relating to the Project as attached to this Statutory Declaration are true and correct.*

[Insert any other details as required – delete if nothing else is required]

AND I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED at)
in the State of Victoria this)
day of Two Thousand and)
)
Before me) ←
)
..... ←

An Australian legal practitioner (within the meaning of the Legal Profession Uniform Law (Victoria))
Justice of the Peace;
A senior officer of a council (as defined in the *Local Government Act 1989*); or
Any other person empowered under Section 107A of the *Evidence (Miscellaneous Provisions) Act 1958*

**Note: The Project accounts should, at a minimum, itemise the expenditure on the Project and, in relation to each item, describe the nature of expenditure, the amount and the connection to the Project.*

Part B - Audit Opinion

(To be prepared on the letterhead of the Accounting firm)

Tiah Monahan, Director Energy Programs
c/- Energy Programs
Department of Environment, Land, Water and Planning
8 Nicholson Street
Melbourne, Vic, 3002

[Insert full legal name of the Recipient]

This Audit Opinion is prepared for the purposes of the Grant Agreement dated (the **Agreement**) between the State of Victoria and *[insert]* (the **Recipient**).

Scope

We have conducted an independent audit in accordance with Australian Auditing Standards of the *[attached insert description of relevant Recipient document audited – may be statement by Recipient’s chief financial officer]* provided by the Recipient which specifies an amount of of 'Eligible Project Expenditure' (as defined in the Agreement) on the Project, in order to express an opinion on it for the purposes of the Agreement.

Our audit involved an examination, on a test basis, of evidence supporting the amount of expenditure incurred. This included an examination of the Recipient’s financial records and receipts, and an evaluation of the policies and procedures used to calculate the expenditure on the Project. These procedures have been undertaken to form an opinion as to whether the methodology used to calculate the expenditure on the Project is in accordance with the Agreement, and that the figure stated is true and fair.

This Audit Opinion expressed in this report has been formed on the above basis.

Audit Opinion

We confirm that in our opinion, the Recipient, has incurred \$..... of Eligible Project Expenditure on the Project as defined in the Agreement.

.....
Name of the Accounting Firm

.....(Signed)

Schedule 5 – Reports

REPORTING REQUIREMENTS

The Recipient must provide the following reports to the Department:

1. Progress Report

Progress Reports in relation to the Project must be provided in accordance with Template 1 of Schedule 5 and the timing set out in clause 13.1.

Schedule 5, Template 1 – Progress Report

Each Progress Report must refer to activities in the Project Plan, Schedule 3 (Milestones, Timing & Payments) and Schedule 5 (Reports).

<i>[Recipient]</i>		<i>[Project title]</i>	
2. Introduction [max 300 words] <i>(Section is classified as non-confidential)</i>			
<ul style="list-style-type: none"> <i>This report relates to the funding agreement between the State of Victoria and XX, for the project entitled XX.</i> <i>State the activities covered under this report. The deliverables required by the State are set out in Schedule 3.</i> 			
3. Project Description and Scope [max 300 words] <i>(Section is classified as non-confidential)</i>			
<ul style="list-style-type: none"> <i>Can stay the same for each report, unless Project is modified.</i> 			
4. Summary of Project Milestone Progress and Outlook [max 200 words per milestone] <i>(Section is classified as confidential)</i>			
<p>Project Milestones <i>List the relevant Project Milestones for the reporting period, and the dates scheduled for completion/achievement, as specified in the Project Plan (Schedule 2) or Milestones, Timing, and Payment Schedule (Schedule 3).</i></p>	<p>Result Achieved/Not achieved <i>Outline actual status of the Project Milestone for the reporting period. Were Project Milestones achieved or not achieved?</i></p>	<p>Outlook <i>Detail progress, and list any issues impacting the Project Milestones and dates.</i></p> <p><i>For missed/past Project Milestones, outline the processes that will be undertaken to ensure that the unachieved Project Milestones will be achieved in the coming reporting period.</i></p> <p>For future Project Milestones, indicate progress and any issues that may affect achieving the date.</p>	
5. Summary of Progress and Issues <i>(Section classified as non-confidential)</i>			
5.1 Issues and resolutions <i>(Section classified as confidential)</i>			

Table X: Issues resolution				
Milestone	Objective	Activities	Issues	Resolution
1.				
2.				
5.2 Achievements this period [max 200 words]				
6. Budget, metrics and other financial information				
<p><i>Please update and attach the Budget, Metrics and Other Financial Information template in Schedule 2, Attachment 1.</i></p> <p><i>Also, provide relevant separate accounting records as outlined in clause 14.1 of this Agreement, which shows how grant funds have been expended and can be used to independently verify expenditure of the grant funds.</i></p>				
6.1 Variance and Issues [max 200 words]				
<ul style="list-style-type: none"> • <i>State whether the Project is proceeding within budget, and if it is not, provide an explanation of why the budget is not being met and the action you propose to address this.</i> 				
7. Creation of any Project Intellectual Property [max 200 words]				
<ul style="list-style-type: none"> • <i>Describe any creation of any Project Intellectual Property.</i> 				
8. Risks update				
<ul style="list-style-type: none"> • <i>Please update and attach the Risk Management Log template in Schedule 2, Attachment 2.</i> 				
9. Comments [max 200 words]				
<ul style="list-style-type: none"> • <i>You may provide feedback regarding your project and the Program here.</i> 				
10. Signature				
<p>The contents of this Progress Report, including all attachments, are true and correct in every particular to the best of my knowledge after having made all due enquiries.</p> <p>Signed</p> <p>Name of authorised representative (print).....</p> <p>Organisation & Position.....</p> <p>Date</p>				
List of Appendices [If applicable]				

Example: APPENDIX A – Risk Management Log

End of template

2. Ad hoc reports

Throughout the Grant Period, the Recipient must also provide to the Department, within 10 Business Days of the Department's request, such other ad hoc reports that the Department requires, concerning:

- any significant developments concerning the Project; and
- any significant delays or difficulties encountered in performing the Project in accordance with this Agreement.

The Recipient must refer to clause 13.2 and use *Schedule 5*, Template 2 to provide the Ad hoc Report.

Schedule 5, Template 2 – Ad hoc Report

Each Ad hoc Report must refer to activities in the Project Plan, Schedule 3 (Milestones, Timing & Payments) and Schedule 5 (Reports).

<i>[Recipient]</i>	<i>[Project title]</i>
1. Issue or development [max 200 words]	
<ul style="list-style-type: none">• <i>State the issue or development and how it impacts your project.</i>	
2. Mitigation [max 300 words]	
<ul style="list-style-type: none">• <i>Describe how you will manage the issue or development.</i>	
3. Signature	
The contents of this Ad hoc Report, including all attachments, are true and correct in every particular to the best of my knowledge after having made all due enquiries.	
Signed	
Name of authorised representative (print).....	
Organisation & Position.....	
Date	
List of Appendices [If applicable]	
<i>Example: APPENDIX A – Risk Management Log</i>	

3. Final Report

A Final Report in relation to the Project must be provided in accordance with the timing set out in clause 13.3.

The Final Report must be a stand-alone document in two parts which will address the requirements of this item 3, Schedule 5, Template 3:

- **Part A** - will be kept confidential by the Department.
- **Part B** - can be used for public information dissemination purposes.

The Final Report must cover the entire Grant Period and describe the benefits and outcomes of the Project as a whole (including a summary of the major activities undertaken by the Recipient).

Details and responses will be required on sections including, objectives, deliverables, outcomes, outlook of the project and appropriateness of approaches and methodology used.

The Recipient must also include in the Final Report the number of full time equivalent (FTE) jobs (including engagement of any Subcontractors) created up until Project completion (or termination of this Agreement, if earlier), and a discussion of any other matters relating to the evaluation of the Project, which the Department specifies to be included in the Final Report. Any such requirement will be notified to the Recipient at least 20 Business Days before the Final Report is due.

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Schedule 5, Template 3 – Final Report

The Final Report must refer to activities in the Project Plan, Schedule 3 (Milestones, Timing & Payments) and Schedule 5 (Reports).

[Recipient]	[Project title]
PART A (Section is classified as confidential and only needs to be completed if the Recipient is claiming confidentiality in respect of any information to be set out in the Final Report.)	
1. Introduction [max 300 words]	
<ul style="list-style-type: none"> This report relates to the funding agreement between the State of Victoria and XX, for the project entitled XX. List the activities covered under this report. The deliverables required by the State are set out in Schedule 3 and the Statutory Declaration and Audit Opinion must be signed, as per Schedule 4. 	
2. Objectives [max 300 words]	
<ul style="list-style-type: none"> Can stay the same as the Project Plan, unless the Project was modified. 	
3. Deliverables [max 300 words]	
<ul style="list-style-type: none"> Describe the degree to which the Project has delivered the agreed outputs as stated in Schedule 2– Project Plan. 	
4. Achieved Outcomes [max 300 words]	
<ul style="list-style-type: none"> Describe the extent to which the Project has achieved the intended outcomes as stated in Schedule 2 – Project Plan. 	
5. Outlook [max 300 words]	
<ul style="list-style-type: none"> Describe the outlook for the Project. 	
6. Appropriateness [max 200 words]	
<ul style="list-style-type: none"> Describe the appropriateness of the approaches and methodology used in the development and implementation of the Project. 	
7. Achievements since the last progress report [max 200 words]	
<ul style="list-style-type: none"> List any achievements over the grant period. 	
8. Budget, metrics and other financial information Please update and attach the Budget, Metrics and Other Financial Information template in Schedule 2, Attachment 1. Also provide relevant separate accounting records as outlined in clause 14.1 of this Agreement, which shows how grant funds have been expended and can be used to independently verify expenditure of the grant funds.	

8.1 Variance and Issues [max 200 words]
<ul style="list-style-type: none"> State whether the Project was within budget, and if it is not, provide an explanation of why the budget was not met and the action undertaken to address this.
9. Job creation
<ul style="list-style-type: none"> State the number of FTE jobs created until project completion, including any engagement of persons e.g. Subcontractors.
10. Comments [max 200 words]
<ul style="list-style-type: none"> You may provide feedback regarding your project and the Program here.
11. Signature
<p>The contents of this Final Report, including all attachments, are true and correct in every particular to the best of my knowledge after having made all due enquiries.</p> <p>Signed</p> <p>Name of authorised representative (print).....</p> <p>Organisation & Position.....</p> <p>Date</p>
List of Appendices [If applicable]
PART B (Section is classified as non-confidential)
<ul style="list-style-type: none"> This section must cover the same items required for Part A, but with any content for which the Recipient is claiming confidentiality omitted. If the Recipient is not claiming confidentiality in any of the content of the Final Report, only this Part B needs to be completed.

End of template

4. Performance Outcome Report

A Performance Outcome Report in relation to the Project must be provided to the Department in accordance with the timing set out in clause 13.4, using Template 4 of Schedule 5.

This information will assist the Department in measuring the outcomes of the Program against performance indicators.

Schedule 5, Template 4 – Performance Outcome Report

Each Performance Outcome Report must refer to Schedule 5 (Reports).

[To be inserted.]

End of template

Draft Agreement