**Participating Organisation Agreement**

**Energy Innovation Fund**

**Parties**

**Recipient**

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| Address and notice details | Address: [insert]  Email: [insert] |
|  | Attention: [insert] |

**Participating Organisation**

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| Address and notice details | Address: [insert]  Email: [insert] |
|  | Attention: [insert] |

**Background**

1. The Recipient was successful in an application for a Grant under the Energy Innovation Fund.
2. The Recipient has entered into the Funding Agreement with the Department in respect of the Grant.
3. The Participating Organisation has agreed to [insert].
4. This is a Participating Organisation Agreement for the purposes of clause [10] of the Funding Agreement.

**Operative Terms**

1. **Priority of documents and consideration**
   1. If there is any inconsistency between the following documents, the order of priority will be applied to the extent of the inconsistency from (a) to (c):
2. The Funding Agreement.
3. This agreement.
4. Any schedule, annexure or attachment to this agreement.
   1. The parties acknowledge that their obligations under this agreement amounts to good and valuable consideration, and that this agreement is binding on each party.
5. **Definitions and Interpretations**
   1. **Definitions**

In this agreement, unless inconsistent with the context or subject matter:

**Funding Agreement** means the Energy Innovation Fund funding agreement between the Recipientand the Department dated [insert].

* 1. **Terms defined in the Funding Agreement**

Terms defined in the Funding Agreement have the same meaning in this agreement unless given another meaning in this agreement.

* 1. **Interpretation**

Clause 1.2 of the Funding Agreement applies to this agreement as if fully set out in this agreement.

* 1. **Headings**

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

1. **Term of this Agreement**
   1. **Term**

This agreement is for the term of the Funding Agreement. If the Funding Agreement ends for any reason, then this agreement also ends.

* 1. **Termination for breach**

If a party does not comply with its obligations under this agreement, the other party may give the non-complying party a notice identifying the breach and requesting they remedy the breach within a period of at least 14 days. If the non-complying party does not remedy that breach in that period, the other party may end this agreement by giving written notice.

1. **Funding Agreement obligations**
   1. The Participating Organisation acknowledges that it has read the Funding Agreement.
   2. The Participating Organisation agrees to and must comply with:
2. the clauses of the Funding Agreement that are listed in clause [10.2(e)] of the Funding Agreement, as they are relevant to the Participating Organisation’s role in the Project; and
3. all other clauses of the Funding Agreement which the Participating Organisation would need to comply with in order to satisfy its obligations under clause 4.2(a).

These provisions from the Funding Agreement are taken to be incorporated into this agreement with such modifications as are necessary to make them terms of this agreement that are binding on the Participating Organisation, as if the Participating Organisation was the ‘Recipient’ named in the Funding Agreement.

* 1. The Participating Organisation must not do anything which would cause or contribute to the Recipient breaching its obligations under the Funding Agreement.

1. **Project obligations**

[**Note**: delete the clause(s) below that are not relevant to the Participating Organisation’s role in the Project.]

* 1. **[In-kind contribution to the Project**

The Participating Organisation:

1. agrees that it is making an in-kind contribution to the Project;
2. warrants that its in-kind contribution is a non-monetary contribution that meets the following criteria:
   1. the contribution can be given a cash value (e.g. salaries and associated overheads of persons working on the Project; access to and use of capital equipment made available for the Project; imputed rent on buildings made available for use by the Project; non-salary Project-specific direct costs, such as the cost of providing consumables, and other auditable costs necessary to enable Project completion);
   2. the contribution is for the direct and primary benefit of the Project;
   3. the contribution is directly attributable to the provider of the in-kind support; and
   4. the contribution is capable of audit by an independent auditor so as to be able to verify their contribution to the total cost of the activity (including overhead levels and/or formulae); and
3. agrees that it is not entitled to be paid or reimbursed for performing its obligations under this agreement.]
   1. **[Co-funding Amount**
4. Subject to clause 5.2(b), the Participating Organisation must pay the Co-Funding Amount to the Recipient in accordance with the instalments and timeframes specified in Table 1.

**Table 1**

|  |  |  |
| --- | --- | --- |
| **Co-Funding Amount Instalment** | **Date** | **Amount (ex. GST)** |
| Instalment 1 | [insert date] | $*[insert]* |
| Instalment 2 | [insert date] | $*[insert]* |

1. The Participating Organisation may withhold, suspend or cancel payment of any Co-Funding Amount instalments due under this agreement if the Recipient has breached a term of this agreement and the Participating Organisation has provided notice requiring the breach to be remedied under clause 3.2.
2. The Participating Organisation may require the Recipient to refund such amount of the Co-Funding Amount previously paid to the Recipient to the extent that it has not been spent as agreed between the parties on the Project.]
   1. **[Recipient Payments to Participating Organisation**
3. Subject to clause 5.3(b), the Recipient agrees to make payments to reimburse the Participating Organisation for its contributions to the Project (**Recipient Payments**) in accordance with the instalments and timeframes specified in Table 2:

**Table 2**

|  |  |  |
| --- | --- | --- |
| **Recipient Payment Instalment** | **Date** | **Amount (ex. GST)** |
| Project Milestone [X] | [insert date] or [within *[insert]* Business Days after Recipient receives Grant payment for completion of Project Milestone [X]] | $*[insert]* |
| Project Milestone [X] | [insert date] or [within *[insert]* Business Days after Recipient receives Grant payment for completion of Project Milestone [X]] | $*[insert]* |

1. The Recipient is only required to pay each Recipient Payment instalment to the Participating Organisation after the Participating Organisation has provided evidence satisfactory to the Recipient that it validly incurred the costs which the relevant Recipient Payment instalment will reimburse.
2. If an instalment of the Grant is not paid to the Recipient under the Funding Agreement for any reason, then the Recipient is not obliged to pay the Participating Organisation the Recipient Payment that correlates to that Grant instalment.
3. Where only part of an instalment of the Grant is paid to the Recipient under the Funding Agreement, the amount of the Recipient Payment payable to the Participating Organisation is to be adjusted on a proportionate basis.]
4. **GST**
   1. **GST exclusive**

Except as otherwise provided by this clause, all consideration payable under this agreement in relation to any taxable supply is exclusive of GST.

* 1. **Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this agreement (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

* 1. **Payment of GST**

A recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this agreement.

* 1. **Reimbursements**

If this agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

1. the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
2. if the payment or reimbursement is subject to GST, an amount equal to that GST.
   1. **Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this agreement:

1. the supplier must provide an adjustment note to the recipient within 5 Business Days of becoming aware of the adjustment; and
2. any payment necessary to give effect to the adjustment must be made within 5 Business Days after the date of receipt of the adjustment note.
3. **Miscellaneous**
   1. **Reading down**

A provision of this agreement which is void, voidable by any party, unenforceable or illegal must be read down to the extent required to give the provision legal effect.

* 1. **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.

* 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.

**Execution Page**

**EXECUTED** as an agreement

[**Drafting note:** execution block to be amended, as required]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** in accordance with section 127 of the *Corporations Act 2001* (Cth) by [insert] ***ABN*** *[insert]* |  |  |  |
|  |  |
|  |  |  |  |
| Signature of director |  | Signature of director/secretary |  |
|  |  |  |  |
| Name of director (print) |  | Name of director/secretary (print) |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** in accordance with section 127 of the *Corporations Act 2001* (Cth) by [insert] ***ABN*** *[insert]* |  |  |  |
|  |  |
|  |  |  |  |
| Signature of director |  | Signature of director/secretary |  |
|  |  |  |  |
| Name of director (print) |  | Name of director/secretary (print) |  |