

General Funding Agreement – R&D

Details

| | |
|---|--|
| Contract ID: Please insert | |
| Parties | |
| Sustainability Victoria | Sustainability Victoria (ABN 62 019 854 067) Level 28, 50 Lonsdale Street Melbourne, Victoria, 3000 Tel: (03) 8626 8700 |
| Contracting Party | Name of Legal Entity: Please insert ABN: Please insert Trading name: Please insert Street address: Please insert Postal Address: Please insert Tel: Please insert |
| Contract Title | Please insert |
| Grant Program | Please insert |
| Term | Commencement Date: Please insert Expiry Date: Please insert |
| Permitted Extension Period | 20 Business Days The Permitted Extension Period applies at Sustainability Victoria's absolute discretion in accordance with clause 6(d). |
| Sustainability Victoria Representative | Name: Please insert Address: Please insert Tel: Please insert Email: Please insert |
| Contracting Party Representative | Name: Please insert Address: Please insert Tel: Please insert Email: Please insert |
| Project | Please insert |
| Lead Industry Partner | Please insert |

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| | | | | | | | |
|--|--------------------------|------------------------------|----------------|---------------|---------------------------|------------------|--------------------|
| Change to insurance requirement | None | | | | | | |
| | Clause | Type of insurance | Insurer | Amount | Excess/ deductible | Policy no | Expiry date |
| | 12(a)(ii) | third party public liability | | | | | |
| | 12(a)(iii) | professional indemnity | | | | | |
| Cap | \$(insert amount) | | | | | | |

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Milestone Payment Schedule

| Milestone | Advance Payment (Yes/No) | Description of Work | Date for completion | Required Evidence | Sustainability Victoria's In-Kind Contribution(s) (if any) | Other Party Contribution(s) (if any) | Contracting Party's Contribution(s) (if any) | Milestone Amount |
|-----------|--------------------------|-------------------------------------|---------------------|--|--|--------------------------------------|--|------------------|
| 1 | Yes | insert | insert | insert | \$ insert | \$ insert | \$ insert | \$ insert |
| 2 | [Yes/No] | insert | insert | insert | \$ insert | \$ insert | \$ insert | \$ insert |
| 3 | No | Submission of Final Report | insert | Final Report | \$ insert | \$ insert | \$ insert | \$ insert |
| 4 | No | Annual review of the Amnesty Period | insert | Material that demonstrates efforts to advance commercialisation of the research findings | | | | |
| | | | | | | Total (excluding GST) | \$ insert | \$ insert |
| | | | | | | GST | \$ insert | \$ insert |
| | | | | | | Total (including GST) | \$ insert | \$ insert |

General Funding Agreement

SIGNED for and on behalf of **Sustainability Victoria** (ABN 62 019 854 067) by its duly authorised representative

.....
[Name]
[Position – Department/Area]
Sustainability Victoria

Date:

By executing this Contract, Sustainability Victoria consents to the execution of this Contract by digital signature.

SIGNED by **[insert name of Contracting Party]** by its duly authorised representative

.....
Signature

Date:

By executing this Contract, the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of **[insert name of Contracting Party]** and the Contracting Party consents to the execution of this Contract by digital signature.

Name: **insert**

Title: **insert**

Email: **insert**

Mobile: **insert**

Schedule — Amendments to Terms and Conditions

Appendix — Further details concerning Project

Please complete as applicable

Description of Services

Background

Purpose/Objective

Deliverables

Task list

Project Plan

Timeline

Meetings

Governance structure

Reporting/Data

Evaluation

Out of Scope

Records management

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Terms and Conditions

1. COMPLIANCE WITH LEGISLATION

The Contracting Party:

- (a) acknowledges and agrees that Sustainability Victoria has certain statutory rights and obligations, including under the *Sustainability Victoria Act 2005* (Vic), the *Financial Management Act 1994* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic); and
- (b) must comply with any reasonable directions issued and / or take any actions reasonably directed by Sustainability Victoria to enable Sustainability Victoria to exercise such rights or comply with such obligations.

2. INTERPRETATION

- (a) A reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in these Terms and Conditions unless otherwise stated.
- (b) No rule of contract interpretation is to be applied to the disadvantage of Sustainability Victoria on the basis that it prepared, or put forward any document comprising part of, this Contract.
- (c) The references used in this Contract are to be interpreted as follows except where the context otherwise requires:
 - (i) a reference to this Contract, another instrument or document includes any variation or replacement;
 - (ii) a reference to any statute, code, ordinance or other law includes regulations and other instruments under it and amendments, consolidations, replacements or other instruments overruling that law;
 - (iii) a reference to an accounting term is to be interpreted in accordance with accounting standards under the *Corporations Act 2001* (Cth) and, if not inconsistent with those accounting standards, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate over time;
 - (iv) a reference to a person will be taken to include any natural or legal person, the person's executors, administrators, successors, substitutes and permitted assigns;
 - (v) a reference to a person or body which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
 - (vi) where a reference occurs to the doing of anything by a Party including giving any notice, consent, direction or waiver, this is to be construed as to be performed by the Representative of that Party unless specifically stated otherwise;
 - (vii) a reference to any direction, approval or requirement given by Sustainability Victoria is not to be construed as Sustainability Victoria participating in the supervision or control of the Project and does not infer any release of the Contracting Party or its obligations to appropriately carry out any supervision and control function;

(viii) a reference to where a Party is required to act reasonably in the performance of this Contract that shall be read as a requirement to act as would a Party in the position of Sustainability Victoria that is acting reasonably in its own best interests; and

(ix) a reference to a group of persons is a reference to all of them collectively, any two or more of them collectively and to each of them individually.

(d) In reading this Contract except where the context otherwise requires:

(i) the headings in this Contract are for convenience only and do not affect the interpretation of this Contract;

(ii) the singular includes the plural and vice versa;

(iii) the word 'including' means 'including without limitation';

(iv) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;

(v) a month is to be interpreted as a calendar month;

(vi) if any time limit under this Contract falls on a non-Business Day then that time limit shall be deemed to have expired on the next Business Day;

(vii) a gender includes every other gender; and

(viii) where a word or phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning.

(e) Where a clause requires a Party to form an opinion, that opinion is to be formed reasonably and based on available evidence.

(f) If there is an inconsistency between:

(i) an Amendment to this Contract;

(ii) a Schedule to this Contract; or

(iii) the Terms and Conditions,

then each will take precedence in the order set out in clauses 2(f)(i) to 2(f)(iii).

3. DEFINITIONS

The definitions in this clause 3 apply to this Contract:

Advance Payment means a Milestone Amount where the 'Advance Payment' column of the Milestone Payment schedule has been marked 'Yes' or which is by its nature paid in advance of a Milestone delivered.

Amnesty Period means the period of up to three years from the completion of Final Report Milestone during which clause 21(da) will apply to Confidential Project Intellectual Property.

Approved Auditor means a person who is:

(a) registered as a company auditor in accordance with the *Corporations Act 2001* (Cth) or a member of the Institute of Chartered Accountants in Australia, or CPA Australia or the National Institute of Accountants; and

(b) not a principal, member, shareholder, officer, agent, Subcontractor or employee of the Contracting Party.

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Asset means any item of tangible or intangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Milestone Amounts and/or Sustainability Victoria In-Kind Contributions, which has a value of over \$5,000 inclusive of GST.

Australian Auditing Standards means the Australian Auditing Standards developed and published by the Commonwealth Government Auditing and Assurance Standards Board as amended from time to time.

Background Intellectual Property means Intellectual Property that is not Project Intellectual Property and includes all pre-existing data, analysis and reports used by the Contracting Party in the course performing the Project.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Cap means the cap on Sustainability Victoria's indemnity as defined in the Details.

Change of Control means for a corporation or company, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attaching to shares in the corporation; or
- (c) Control of more than half the issued shares of the corporation (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital), and

that, in the opinion of Sustainability Victoria, has a potentially detrimental impact on the ability of the Contracting Party to perform the Contract.

Code of Conduct means the *Code of Conduct for Victorian Public Sector Employees 2015* issued by the Public Sector Standards Commissioner pursuant to section 63 of the *Public Administration Act 2004* (Vic).

Commencement Date is defined in the Details.

Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the Parties before, on or after the date of this Contract relating to the business, technology or other affairs of a Party but, for the removal of doubt, does not include the existence of the Project or the existence of this Contract or the identity of the Parties.

Conflict of Interest means any matter, circumstance, interest or activity affecting the Contracting Party (including the Related Persons of the Contracting Party) which may or may appear to impair the ability of the Contracting Party to provide the Project diligently and independently.

Confidential Project Intellectual Property means Project Intellectual Property that is also Confidential Information, being the Confidential Information contained in the Final Report.

Contract means the Terms and Conditions, any Schedule or Appendix and the Details.

Contracting Party means the Party identified as the Contracting Party in the Details.

Contracting Party Contribution(s) means the contribution(s) (if any) set out in the column headed Contracting Party Contribution(s) in the Details.

Contracting Party Group means the Contracting Party, the Contracting Party's Representative, the Contracting Party's Subcontractors, the Other Party and the Contracting Party's employees, officers, agents and contractors.

Control means a power or control that is direct or indirect

or that is, or can be, exercised as a result of, by means of or by the revocation or breach of a trust, an agreement, a practice, or any combination of them, whether or not they are enforceable. It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else.

Details means the section of this Contract headed "Details".

Dispute Notice means the notice defined in clause 17(c)(i).

Environmental Laws means all Laws which regulate the environment including Laws relating to land use planning, pollution of air or water, soil or groundwater contamination, chemicals, waste, the use, handling, storage or transport of dangerous goods or substances, greenhouse gas emissions, carbon trading, or any other aspect of protection of the environment or person or property and including the *Environment Protection Act 1970* (Vic).

Expiration Date means the later of:

- (a) the Expiry Date specified as such under "Term" in the Details; and
- (b) the last day of any Permitted Extension Period notified in accordance with clause 6.1(d).

Final Report means the final project report to be delivered to Sustainability Victoria in accordance with the Milestone Payment Schedule.

Final Report Milestone means the Milestone at which the Contracting Party provides the Final Report.

Gift means anything of monetary or other value that is offered by the Contracting Party or its Related Persons to Sustainability Victoria or its Related Persons as a result of their role with Sustainability Victoria. It includes free/discounted items or service, benefits (such as preferential treatment, privileged access, favours or other advantages or intangible benefits) or hospitality.

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

Indemnified Parties means the indemnified persons defined in clause 15(a).

Insolvency Event includes any of the following events affecting a Party:

- (a) that Party disposes of the whole or any part of its assets, operations or business other than in the normal course of business;
- (b) any step is taken to enter into any arrangement between that Party and its creditors;
- (c) that Party ceases to be able to pay its debts as they become due;
- (d) that Party ceases to carry on business;
- (e) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of that Party's assets or business;
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or controller or other like person of the whole or any part of that Party's assets or business;
- (g) that Party is a partnership or joint venture and any member of the partnership or joint venture commits or is subject to any of the events set out in (a)-(f);
- (h) that Party is a partnership or joint venture and any step is taken to dissolve the partnership or joint venture;
- (i) an application for winding-up of that Party is made which is not stayed within 14 days or a winding-up order is made; or
- (j) something having a substantially similar effect to (a)

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to (i) happens in connection with that Party or that Party's business under the Law of any jurisdiction.

Intellectual Property includes patent, know-how, copyright, design, semiconductor or circuit layout rights, trade mark, service mark, trade secret, data, Confidential Information, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the date of this Contract and whether protected under common law or statute.

Law means the law in force in the jurisdiction in which the Project is carried out, including common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures, codes and standards including the requirements of any authority having jurisdiction over the Parties or the Project.

Loss means all costs (including legal costs and expenses on a solicitor and own client basis), fees, expenses, losses, damages (including reputational damage), charges, taxes, outgoings, claims, liabilities, causes of action, proceedings, awards and judgments.

Milestone means a performance requirement of this Contract as set out in the 'Milestone' column of the Milestone Payment Schedule and / or Details and / or Appendix (if applicable).

Milestone Amount means an amount set out in the 'Milestone Amount' column of the Milestone Payment Schedule which is payable in respect of the satisfactory completion of a specified Milestone in accordance with this Contract (if applicable).

Milestone Payment Schedule means the Milestone Payment Schedule set out in the Details.

Moral Rights includes the following rights of an author of copyright material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed.

Non-Advance Payment means a Milestone Amount that is not an Advance Payment.

Other Party means the party, approved by Sustainability Victoria, specified in the "Lead Industry Partner" section of the Details, who will make the Other Party Contribution specified in the Milestone Payment Schedule and who will collaborate with the Contracting Party to undertake the Project.

Other Party Contributions means the contribution(s) set out in the column headed "Other Party Contribution(s)" in the Milestone Payment Schedule, being financial contributions to the Project provided by the Other Party.

Parties means the Contracting Party and Sustainability Victoria and Party means either of them.

Permitted Extension Period means the period of time so described and set out in the Details.

Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Privacy Laws means the Information Privacy Principles set out in the *Privacy and Data Protection Act 2014* (Vic), Sustainability Victoria's Privacy Statement as issued from time to time and any other applicable laws, principles, policies and codes dealing with the collection, use, disclosure, storage, management, transfer or granting of access rights to Personal Information.

Prohibited Gift means a Gift which:

- (a) is money or is similar to money or easily converted into money;
- (b) is a Conflict of Interest (real, potential or perceived), including where the Contracting Party has an interest in a decision that Sustainability Victoria or its Related Persons is likely to make or can influence, including in relation to:
 - (i) procurement of goods or services;
 - (ii) tender processes;
 - (iii) awarding of a grant or sponsorship;
 - (iv) setting of policy;
 - (v) enforcement, licensing or regulation; or
 - (vi) contracts;
- (c) could create a reasonable perception that it is offered to influence, or could influence, the judgement of Sustainability Victoria or its Related Persons;
- (d) is inconsistent with community expectations; or
- (e) could in any other way bring the integrity and impartiality of Sustainability Victoria, or its Related Persons, into disrepute.

Project means the project described in the Details and/or the Appendix (as applicable).

Project Intellectual Property means Intellectual Property including reports, case studies and background information, photographs, audio visual material and other deliverables specified in this Agreement created by or for the Contracting Party in the course of carrying out or otherwise in connection with the Project and includes all data collected, analysis performed and reports produced by the Contracting Party in the course of the Project.

Related Persons means a Party's Representative, officers, employees, agents, Board members and contractors.

Representative means:

- (a) the person identified to be the representative of a Party in the Details;
- (b) any person to whom the representative's relevant powers, duties and functions have been delegated in accordance with clause 5(d); or
- (c) any person who replaces the representative of a Party in accordance with clause 5(f).

Required Evidence means the evidence required to substantiate the completion of a Milestone as set out in the Milestone Payment Schedule.

Safety Laws means all Laws, relating to the protection and safety of persons or property including the *Occupational Health and Safety Act 2004* (Vic) and electrical safety standards.

Subcontractor means third party entities or individuals engaged by the Contracting Party to perform any part of this Contract.

Sustainability Victoria or *SV* means the Party identified as Sustainability Victoria in the Details.

Sustainability Victoria In-Kind Contribution(s) means the in-kind contribution(s) (if any) set out in the column headed Sustainability Victoria In-Kind Contribution(s) in the Details.

Term means the term of this Contract which commences on the Commencement Date and ends on the Expiration Date and includes any Permitted Extension Period.

Terms and Conditions means these terms and conditions.

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4. CONDITIONS PRECEDENT

It is a condition precedent to this Contract that the Contracting Party has:

- (a) examined and taken into consideration all information pertaining to the risks, contingencies and other circumstances that could in any way affect the Contracting Party's decision to enter into this Contract; and
- (b) disclosed in writing to Sustainability Victoria all matters that may adversely affect, from Sustainability Victoria's perspective, the Contracting Party's ability to perform any of its obligations under this Contract including:
 - (i) any litigation or proceeding, actual or threatened, against the Contracting Party;
 - (ii) any breaches and defaults (including alleged) of any contract, order or award binding upon the Contracting Party;
 - (iii) any past or current prosecutions, comprehensive investigations, notices, penalties or other breaches from the Environment Protection Authority or WorkSafe or any other breaches of any Environmental Law or Safety Law in the last 10 years;
 - (iv) matters relating to the commercial, technical or financial capacity of the Contracting Party Group; and
 - (v) all possible Conflicts of Interest.

5. REPRESENTATIVES

- (a) Each Party has nominated a Representative, specified in the Details, who:
 - (i) shall represent the Party;
 - (ii) shall be available at all reasonable times for consultation with the other Party in connection with any matter arising under this Contract; and
 - (iii) is the agent of the Party for the purposes of any act, matter, or thing to be done by the Party under this Contract.
- (b) Any direction, notice or other communication provided in accordance with clause 22 given to the Representative of a Party shall be deemed to have been given to that Party.
- (c) Matters within the knowledge of a Representative are deemed to be within the knowledge of that Party.
- (d) A Representative may delegate any of his or her powers, duties and functions under the Contract to other employees or agents of that Party subject to notification to the other Party.
- (e) An approval by a Representative or its delegate/s may be given conditionally or unconditionally, or withheld, in the absolute discretion of a Party unless expressly provided for otherwise in this Contract.
- (f) If a Party requires the replacement of its Representative, it shall promptly notify the other Party in writing.

6. OBLIGATIONS OF THE PARTIES

6.1 Milestones

- (a) The Contracting Party must:
 - (i) satisfactorily complete each Milestone in respect of the Project;
 - (ii) provide the Contracting Party Contribution(s)

(if any) and obtain the Other Party Contributions (if any); and

- (iii) pay all of the costs in respect of the Project which are not covered by the Milestone Amounts paid by Sustainability Victoria,

in each case in accordance with this Contract.

- (b) Sustainability Victoria must:
 - (i) pay to the Contracting Party the Milestone Amounts; and
 - (ii) provide the Sustainability Victoria In-Kind Contribution(s) (if any),

as and when required by this Contract.

- (c) Time will be of the essence in the performance of this Contract.

- (d) Sustainability Victoria may in its absolute discretion extend, by a period of not longer than the Permitted Extension Period, any date for completion of a Milestone (if applicable) or the due date for any deliverable the Contracting Party must provide to Sustainability Victoria under this Contract.

6.2 Reports

- (a) This clause 6.2 applies if the Project involves the Contracting Party preparing one or more reports (**Report**).
- (b) Without limiting any other rights of Sustainability Victoria under this Contract, if Sustainability Victoria notifies the Contracting Party within 10 Business Days from receiving a Report that it does not accept the Report, then Sustainability Victoria may:
 - (i) require the Contracting Party to submit a revised Report;
 - (ii) require the Contracting Party to provide additional information;
 - (iii) require an independent audit as per clause 6.2(a)(ii); and/or
 - (iv) immediately terminate the Contract in accordance with clause 16(a).
- (c) Sustainability Victoria may arrange for an independent audit, at its cost, to verify any information contained in any Report prepared by the Contracting Party. If so, the Contracting Party must comply with all requests by the independent auditor.
- (d) The Contracting Party will prepare all Reports and written material in a style consistent with Sustainability Victoria's Writing Style Guide and in a format suitable for publication.
- (e) The Contracting Party shall ensure that any Report includes appropriate notices and acknowledgements, including:
 - (i) copyright notice if relevant;
 - (ii) attribution: author (if required) plus all third party authors (if relevant);
 - (iii) disclaimer if required;
 - (iv) acknowledgement of funding by Sustainability Victoria; and
 - (v) acknowledgement of all third party Intellectual Property used with permission if relevant.

- (f) After the expiry of the Contract, the Contracting Party Group must, if requested by Sustainability Victoria, promptly provide data and information in relation to the Project and other information reasonably requested by Sustainability Victoria for its annual data surveys or other data collection needs. This clause survives expiry or termination

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of the Contract.

6.3 Notifications

The Contracting Party will immediately notify Sustainability Victoria in writing if:

- (a) it is the subject of an Insolvency Event;
- (b) it reasonably considers it is likely to undergo a Change of Control; or
- (c) the Contracting Party Contribution (if any) is made from funds provided to the Contracting Party by a third party.

6.4 Research/evaluation

Without limiting any other obligations of the Contracting Party under this Contract, if the Contracting Party is performing research either for project design, implementation or evaluation (**Research/Evaluation**) as part of the Project, the Contracting Party will:

- (a) provide to Sustainability Victoria all raw data collected from the Research/Evaluation, including interview transcripts and Personal Information;
- (b) provide data in both identified (for Sustainability Victoria's reference) and de-identified (for publication) form; and
- (c) ensure that it obtains permission, consents and licences (including in relation to Intellectual Property, privacy and Moral Rights) from any Research/Evaluation subjects, including interviewees, focus group participants or survey respondents for:
 - (i) their Personal Information and responses to be provided to Sustainability Victoria;
 - (ii) their interview transcripts and quotes to be published (including under a creative commons licence); and
 - (iii) the de-identified results of the Research/Evaluation to be published (including under a creative commons licence).

6.5 Data format

Any data provided by the Contracting Party Group to Sustainability Victoria, including data provided under this clause 6, will be provided as follows:

- (a) raw data must be provided in a machine readable format (i.e. CSV, XLSX, not a PDF, etc.);
- (b) a data dictionary must be provided for all raw data;
- (c) an appropriately de-identified raw data set is provided; and
- (d) metadata definitions are completed and provided for the de-identified data set, the table is available in section 7.3 of the DataVic Access Guidelines available at: <https://www.data.vic.gov.au/policy-and-standards-0>.

6.6 Standards for performance

The Contracting Party must:

- (a) conduct itself with courtesy and professionalism at all times in the performance of the Project and shall not do or omit to do anything that may damage, bring into disrepute or ridicule Sustainability Victoria's or the Victorian Government's name, messages or reputation, or attract public or media attention which may be prejudicial or otherwise detrimental to Sustainability Victoria's or the Victorian Government's name, messages or reputation; and

- (b) comply with, or ensure that its relevant employees and Subcontractors comply (as applicable) with, the Code of Conduct as if the Contracting Party or those employees and Subcontractors were public sector employees, if in the course of delivering the Project, the Contracting Party, or any employee or Subcontractor of the Contracting Party:

- (i) supervises public sector employees;
- (ii) undertakes work that is of a similar nature to the work undertaken by public sector employees at premises or at a location generally regarded as a public sector workplace; or
- (iii) uses or has access to public sector resources or information that are not normally accessible or available to the public.

6.7 Compliance with Safety Laws

- (a) The Contracting Party warrants to Sustainability Victoria that it understands and has the capability and resources to comply with all applicable Safety Laws.

- (b) The Contracting Party must:

- (i) comply with, and ensure that its employees and Subcontractors comply with, all applicable Safety Laws, including ensuring, so far as is reasonably practicable:

- (A) the health and safety of its employees, Subcontractors and other relevant persons (including members of the public); that its employees and Subcontractors take reasonable care while carrying out the Project;
- (B) the provision and maintenance of safe systems of work; and
- (C) that its employees and Subcontractors receive the necessary information, training, instruction and supervision in order to comply with Safety Laws;

- (ii) on reasonable request by, or on behalf of, Sustainability Victoria, demonstrate such compliance including by:

- (A) providing written evidence of measures taken to achieve such compliance; or
- (B) providing a report from a suitably qualified independent consultant retained by the Contracting Party at its own cost; and

- (iii) immediately advise Sustainability Victoria in writing of any act, fact or circumstances relevant to the ability of the Contracting Party to carry out the Project, without risk to health or safety.

- (c) The Contracting Party must:

- (i) before commencement of the Project, undertake an assessment of the risks associated with the Project, consistent with applicable Safety Laws, and identify and implement appropriate measures to control such risks;
- (ii) on reasonable request by, or on behalf of, Sustainability Victoria, provide details of the risk assessment and evidence of implementation of adequate risk control measures;

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- (iii) promptly notify Sustainability Victoria of any accident, notifiable incident (being an incident which is notifiable under applicable Safety Laws), injury, 'near miss' or occurrence of property or environmental damage (**incident**) which occurs, or is reasonably believed as likely to have occurred, in relation to the Project;
- (iv) provide investigation reports and details of root causes, action and remedial work to be undertaken in connection with any such incident; and
- (v) co-operate with Sustainability Victoria in respect of any public statement which Sustainability Victoria may, at its sole discretion, issue in respect of the incident.

7 ASSETS

- (a) Unless it is specified in the Details that Sustainability Victoria owns the Asset then, subject to this clause 7 and the terms of any relevant lease, as between the parties, the Contracting Party owns the Assets.
- (b) Throughout the Term of this Contract, the Contracting Party must:
 - (i) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this Contract, without Sustainability Victoria's prior written approval;
 - (ii) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
 - (iii) maintain all Assets in good working order;
 - (iv) if required by Law, maintain registration and licensing of all Assets;
 - (v) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets;
 - (vi) maintain all appropriate insurances for all Assets to their full replacement cost noting Sustainability Victoria's interest, if any, in the Asset under this Contract and provide satisfactory evidence of this on request from Sustainability Victoria;
 - (vii) maintain an Assets register; and
 - (viii) as and when requested by Sustainability Victoria, provide copies of the Assets register to Sustainability Victoria.
- (c) During the Term, the Contracting Party must use any Asset in accordance with this Contract and for the purposes of the Project.
- (d) If any of the Assets are lost, damaged or destroyed, the Contracting Party must promptly reinstate the Assets including from the proceeds of insurance and this clause 7 continues to apply to the reinstated Assets.
- (e) If on termination or expiry of this Contract, an Asset has not been fully depreciated, the Contracting Party must continue to use the Asset for the purposes of the Project and in accordance with any conditions notified by Sustainability Victoria.
- (f) This clause 7 survives expiry or termination of this Contract

8 AUDIT RIGHTS

8.1 Requirement to prepare and keep records

During the Term and for seven years after the expiration or termination of this Contract, the Contracting Party must

prepare (in accordance with good operating practice) and keep all records relevant to this Contract, including:

- (a) all Background and Project Intellectual Property; and
- (b) accounting records which are necessary or convenient to enable proper monitoring of its performance of the Project and all amounts payable to it under this Contract,

as required by all applicable Laws and as otherwise required by Sustainability Victoria and as notified to the Contracting Party from time to time.

8.2 Audits

- (a) During the Term and for seven years after the expiration or termination of this Contract, Sustainability Victoria may, at its own cost, conduct or engage an auditor to conduct inspections and audits of the Contracting Party, including for any one or more of the following purposes:
 - (i) assessing the ongoing viability of the Contracting Party and/or the Project;
 - (ii) assessing the likely ability of the Contracting Party to perform the Project or achieve any Milestone;
 - (iii) accessing Background and Project Intellectual Property; or
 - (iv) determining how the Contracting Party has used or is using the Milestone Amounts.
- (b) None of the audits or inspections referred to in clause 8.2(a) detracts from the Contracting Party's responsibility for its compliance, performance, records, workforce and procedures.
- (c) Except in circumstances where notice is not practical or desirable given the nature of the audit, Sustainability Victoria shall notify the Contracting Party of upcoming audits not less than five Business Days before the audit commencement.
- (d) The Contracting Party must fully co-operate with any auditor and other representatives of Sustainability Victoria conducting, reviewing, or making any inspection or audit under this Contract including allowing unfettered access to the workforce, premises, facilities and equipment, software, records and documents pertaining to the Project and the Contract (as required by Sustainability Victoria in its absolute discretion).
- (e) An auditor may make copies of records necessary for the purposes of their audits, including records kept pursuant to clause 8.1.
- (f) Where an auditor has made findings requiring rectification:
 - (i) both Parties shall rectify audit findings that are applicable to the respective Party within the required time as stated in the audit report;
 - (ii) failure of the Contracting Party to rectify the audit findings may result in termination of this Contract or suspension of payment in the absolute discretion of Sustainability Victoria; and
 - (iii) rectification shall be at the respective Party's own cost.

9 COMPLIANCE WITH ENVIRONMENTAL LAWS

- (a) The Contracting Party Group shall ensure that all work carried out in respect of the Project complies with applicable Environmental Laws and any notices issued by the Environment Protection Authority or other environmental regulatory body and use its best endeavours to have systems, equipment and/or

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procedures in place to minimise environmental impacts.

- (b) The Contracting Party warrants that any information or representations provided by it about its or the Contracting Party Group's environmental practices in any tender, quote or proposal documents in relation to the Project are accurate and that the Contracting Party shall undertake any such practices in the course of this Contract and implement any undertakings given in any tender, quote or proposal documents.

10 VARIATION

- (a) Requests to vary the Contract can be raised by a Party's Representative via a notice setting out a variation request. The Parties recognise that either Party may have valid reasons for raising variations and will work in good faith to reach agreement on such variations.
- (b) Sustainability Victoria shall maintain a log and copies of all variation requests (in process, approved and rejected) which shall be made available to the Contracting Party upon demand.
- (c) Variations shall not take effect until the Variation is agreed in writing and signed by both Parties and is in the possession of Sustainability Victoria.
- (d) Sustainability Victoria shall amend all documents as appropriate regarding agreed Variations.

11 INVOICING AND PAYMENT

11.1 Prices

- (a) The Milestone Amounts (as applicable) for which the Contracting Party may charge Sustainability Victoria are set out in the Details. Subject to any change in the Milestone Amounts resulting from the application of any express provision of this Contract, the Milestone Amounts are fixed for the Term.

11.2 Submission of invoices

- (a) The Contracting Party must submit a GST compliant tax invoice:
- (i) on or before the date for completion of each Milestone;
 - (ii) which is for the relevant Milestone Amount set out in the Details;
 - (iii) to Sustainability Victoria's Representative; and
 - (iv) quoted in Australian dollars.
- (b) Each invoice must be accompanied by the Required Evidence and the following financial information or documents:
- (i) list of expenditures clearly identifying all items claimed from Sustainability Victoria;
 - (ii) receipts/invoices of all expenditure items;
 - (iii) financial statement of cash receipts and payments certified by the Contracting Party's Chief Financial Officer (or equivalent);
 - (iv) evidence of the contribution of the Contracting Party Contribution for that Milestone which is the amount specified in the Milestone Payment Schedule or, if none is specified, which is the same proportion of the total Contracting Party Contribution that the Milestone Amount bears to the total of the Milestone Amounts for this Contract; and/or

- (v) additional information requested by Sustainability Victoria to verify the amounts.

11.3 Payment of invoices

- (a) All invoiced amounts in respect of Milestone Amounts which are:
- (i) properly invoiced in accordance with clause 11.2(a);
 - (ii) accompanied by the evidence required by clause 11.2(b); and
 - (iii) not in dispute,
- shall be paid by Sustainability Victoria within 30 days of receipt of the invoice or by the invoice due date, whichever is the later.
- (b) The Contracting Party shall not be entitled to payment for any tasks undertaken in respect of any Milestone or reimbursement of any kind:
- (i) subject to a longer period being provided in respect of that Milestone, if not invoiced within 90 days after completion of the relevant task; or
 - (ii) if such payment would exceed the relevant Milestone Amount, to the extent of such excess.
- (c) Sustainability Victoria may reduce or cease payment if Sustainability Victoria's Representative is not satisfied at any time that:
- (i) this Contract has been complied with;
 - (ii) the Project is making satisfactory progress; or
 - (iii) payments made by Sustainability Victoria are being used for the Project in accordance with this Contract.
- (d) The Contracting Party must retain on trust for Sustainability Victoria all monies paid by Sustainability Victoria until they are applied for the purposes of the project in respect of which the Project is carried out.
- (e) Notwithstanding that the Contracting Party has satisfactorily completed one or more Milestones, unless Sustainability Victoria otherwise agrees in writing, the Contracting Party must reimburse Sustainability Victoria for any amounts already paid by Sustainability Victoria which, in the opinion of Sustainability Victoria's Representative, were:
- (i) not used for the Project in accordance with this Contract;
 - (ii) paid in circumstances where Sustainability Victoria at the time or since is not satisfied (in its absolute discretion) that the Project made or is making satisfactory progress;
 - (iii) paid in circumstances where the Contracting Party has not complied, or subsequent to the payment does not comply, with this Contract;
 - (iv) paid in circumstances where payment was made in advance of work done and the Contract is for whatever reason terminated; or
 - (v) paid in circumstances where the Project is discontinued for any reason.
- (f) Payment of an invoice is not to be taken as:
- (i) evidence or an admission that a Milestone or the Project have been provided in accordance with this Contract;

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- (ii) evidence of the value of any Milestone or the Project supplied; or
 - (iii) an admission of liability,
- but must be taken only as payment on account.
- (g) The provisions of this clause 11.3 survive expiry or termination of this Contract.

11.4 Offset

- (a) Without prejudice to any other rights, Sustainability Victoria may deduct from any monies that are otherwise payable to the Contracting Party:
- (i) monies which are payable to Sustainability Victoria whether under this Contract or otherwise; and
 - (ii) monies expended by Sustainability Victoria to make good any breach or non-compliance by the Contracting Party of any provision of this Contract.
- (b) Nothing in this clause 11.4 shall affect the right of Sustainability Victoria to recover from the Contracting Party the whole of the debt of any balance that remains owing after any deduction or offset.

11.5 Fair payment

- (a) Sustainability Victoria will, on demand by the Contracting Party, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.
- (b) For the purposes of clause 11.5(a), overdue amount means an amount (or part thereof) that:
- (i) is not, or is no longer, disputed in accordance with this Contract;
 - (ii) is due and owing under a tax invoice (as defined in the GST Act properly rendered by the Contracting Party in accordance with this Contract; and
 - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice, the invoice due date, or the date that the amount ceased to be disputed, as the case may be.

11.6 Financial audit

- (a) Notwithstanding any other provision of this Contract, Sustainability Victoria may, at any time, in its absolute discretion, require the Contracting Party to provide at its own expense an independently audited statement of all income and expenditure for the Project and a certification that the Milestone Amounts and any other cash or in kind payments or contributions made by any Party under the Contract were spent for the purposes of the Project and in accordance with this Contract prepared by an Approved Auditor in compliance with the Australian Auditing Standards (**Audit Report**).
- (b) In the event that Sustainability Victoria does not, in its absolute discretion, accept the Audit Report or if the Contracting Party does not provide an acceptable Audit Report to Sustainability Victoria within 60 days of request, Sustainability Victoria may, at its absolute discretion, make its own arrangements to obtain the Audit Report, at the Contracting Party's expense, in which case the Contracting Party must fully co-operate with representatives of Sustainability Victoria conducting the audit, including allowing unfettered access to Subcontractors, employees, premises, facilities and equipment, software, records and documents pertaining to the Project and the Contract (as

required by Sustainability Victoria in its absolute discretion).

- (c) Sustainability Victoria's obligations to make any payment pursuant to this Contract shall be suspended until the Audit Report is accepted by Sustainability Victoria.

12 GST

- (a) Input Tax Credit, Tax Invoice and GST have the same meaning as they have under the GST Act.
- (b) Unless otherwise specified, all amounts payable in this Contract do not include any amount for GST.
- (c) If a supply under this Contract is subject to GST, the Party paying for the supply must pay to the Party making the supply an additional amount equal to the amount payable multiplied by the applicable GST rate.
- (d) The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the Party making the supply gives the Party paying for the supply a Tax Invoice.
- (e) If the additional amount differs from the amount of GST payable by the Party making the supply, the Parties must adjust the additional amount.
- (f) If a Party is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified does not include any amount for GST for which the Party is entitled to an Input Tax Credit.

13 REPRESENTATIONS AND WARRANTIES

- (a) The Contracting Party acknowledges and warrants that, in entering this Contract, the Contracting Party:
- (i) has the power to enter into and observe its obligations under this Contract;
 - (ii) has familiarised itself with Sustainability Victoria's needs and obtained all relevant information necessary to enable it to perform this Contract;
 - (iii) subject to clause 13(d), did not in any way rely upon the information which may have been provided by, or on behalf of, Sustainability Victoria for the purposes of entering into this Contract and that the accuracy of all such information is not guaranteed and was provided for convenience only;
 - (iv) entered into this Contract based on its own investigations and determinations and has used its own endeavours and efforts to verify the accuracy of all information relied on by the Contracting Party; and
 - (v) entered into this Contract without contravention of the provision of:
 - (A) any of its licences or other agreements with third parties;
 - (B) its constituent documents;
 - (C) any Law; or
 - (D) any of its obligations or undertakings by which its assets are bound or cause a limitation on its powers or those of its directors to be exceeded.
- (b) If the Contracting Party enters this Contract in its capacity as trustee, it warrants that it is the sole trustee of the trust and is fully indemnified out of the assets of the trust.
- (c) Any failure on the part of the Contracting Party to do what it has warranted shall not relieve the

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Contracting Party from any of its responsibilities or obligations under the Contract nor shall it entitle the Contracting Party to claim any adjustments to the Milestone Amounts or other monetary compensation.

- (d) Sustainability Victoria acknowledges and agrees that the Contracting Party may rely on any statement, material or information made or provided by Sustainability Victoria to the Contracting Party in relation to the Project which Sustainability Victoria expressly states is a statement, material or information on which the Contracting Party may rely in delivering the Project in accordance with this Contract.

14 INSURANCE

- (a) Unless otherwise specified in the Details, the Contracting Party must, at its own cost and throughout the Term, maintain the following insurances with a reputable insurer acceptable to Sustainability Victoria:
- (i) third party public and products liability for the amount of \$10 million for any one occurrence;
 - (ii) professional indemnity insurance for the amount of \$5 million for any one claim during the Term and for seven years after the Term;
 - (iii) workers' compensation insurance as required by Law;
 - (iv) insurances that a prudent supplier in the Contracting Party's industry would be reasonably expected to maintain in order to ensure the successful completion of the Contracting Party's obligations under this Contract, including insurance, to the full replacement value, of equipment, hardware and software used in the Project; and
 - (v) any other insurance as specified in the Details or as otherwise reasonably required by Sustainability Victoria.
- (b) Sustainability Victoria may request the Contracting Party to name Sustainability Victoria as an insured, on reasonable terms and conditions as determined by Sustainability Victoria, to the extent of the Contracting Party's indemnities under this Contract on the Contracting Party's insurance policies and the Contracting Party will comply with such request.
- (c) All insurances maintained by the Contracting Party under this Contract must have an excess that is acceptable to Sustainability Victoria. All excesses, if incurred, shall be borne in their entirety by the Contracting Party.
- (d) If requested by Sustainability Victoria, the Contracting Party must provide evidence of the currency of each insurance policy:
- (i) prior to the Commencement Date;
 - (ii) at any time during the Term; and
 - (iii) in the case of any insurance policy that the Contracting Party is required under this Contract to maintain after expiration or termination of this Contract, at any time during such time that the insurance must be maintained.
- (e) The Contracting Party must:
- (i) notify Sustainability Victoria within seven days if any insurance is cancelled or any insurance details change; and
 - (ii) not do or omit to do anything that results in any insurance being void or voidable, or

results in any liability for payment being reduced.

- (f) Any insurance proceeds or other payment made or due to the Contracting Party under any insurance policy the subject of this clause 12 for any damage to, loss (including loss of use) or destruction of any property in any way associated with the Project must be promptly applied by the Contracting Party to ensure that such property is repaired and reinstated.
- (g) Should the Project result in the development of capital assets, all agreed insurance must be maintained for the life of the Project asset.
- (h) This clause 14 will continue notwithstanding the expiration or termination of this Contract.

15 INDEMNITY AND LIMITS ON LIABILITY

- (a) Subject to clause 15(b), the Contracting Party indemnifies Sustainability Victoria and its Related Persons (together **Indemnified Parties**) from and against all Losses incurred by or sustained by the Indemnified Parties (including Losses incurred or sustained as a result of a third party claim against the Indemnified Parties) arising out of or in connection with:
- (i) a breach of this Contract (including any express or implied warranty or representation) by the Contracting Party or its Related Persons;
 - (ii) injury to or death of any person caused or contributed to by the Contracting Party or its Related Persons in connection with this Contract; or
 - (iii) Loss of any property caused or contributed to by the Contracting Party or its Related Persons in connection with this Contract.
- (b) The Contracting Party is not liable under clause 15(a) to an Indemnified Party to the extent to which any Losses in respect of which the Contracting Party would otherwise be liable to indemnify that Indemnified Party arise directly from any negligent act or omission or wilful misconduct of that Indemnified Party.
- (c) Sustainability Victoria's maximum liability to the Contracting Party for any Losses incurred or sustained by the Contracting Party or its Related Persons (including Losses incurred or sustained as a result of a third party claim) whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is limited to the Cap.

16 TERMINATION

- (a) Sustainability Victoria may terminate this Contract without penalty and with immediate effect by written notice to the Contracting Party if the Contracting Party:
- (i) commits a material breach of this Contract and:
 - (A) the material breach is not capable of remedy; or
 - (B) the material breach is not remedied within five Business Days of the Contracting Party receiving notice from Sustainability Victoria of the material breach (or such other period agreed between the Parties);
 - (ii) commits a breach of clauses 6.7, 9(a), 18, 20 or 27;
 - (iii) fails to adequately complete any Milestone to Sustainability Victoria's satisfaction or to complete any Milestone by the date for

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- completion of that Milestone as set out in the Details;
- (iv) or any of its Related Persons commits a fraudulent act or omission;
 - (v) or any of its Related Persons offers a Prohibited Gift to Sustainability Victoria or its Related Persons;
 - (vi) subcontracts the provision of any part of the Project without the consent of Sustainability Victoria;
 - (vii) assigns its rights or obligations under this Contract without the consent of Sustainability Victoria;
 - (viii) is the subject of an Insolvency Event;
 - (ix) undergoes a Change of Control without first notifying Sustainability Victoria and obtaining prior written approval;
 - (x) fails to commence the Project to a material extent within 90 days of the Commencement Date;
 - (xi) fails to complete any Milestone relating to Other Party Contributions in accordance with the Milestone Payment Schedule;
 - (xii) substantially alters the nature of its business such that its ability to provide the Project in accordance with this Contract is materially adversely affected; or
 - (xiii) commits any act or does any thing that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of Sustainability Victoria, the Victorian Government or the Contracting Party into disrepute and as a consequence Sustainability Victoria believes in its absolute discretion that its continued association with the Contracting Party will be prejudicial or otherwise detrimental to the name, messages or reputation of Sustainability Victoria or the Victorian Government.
- (b) Notwithstanding any other provision of this Contract, Sustainability Victoria may terminate this Contract without cause or penalty upon the provision of 30 days' written notice to the Contracting Party.
- (c) If this Contract is terminated for any reason, including by the Contracting Party in accordance with clause 16(h), then:
- (i) termination however caused does not affect any accrued rights, remedies or liabilities either Party may have at the date of termination;
 - (ii) subject to clause 21, each Party must, at its own cost, immediately deliver or render a faithful account to the other Party of all the other Party's Intellectual Property, Confidential Information and all other information and equipment in that Party's power, possession or control belonging to the other Party, including all business, financial, operational and technical information, tools, computer hardware, office equipment, documents, models, designs, reports, plans, charts, drawings, calculations, tables, specifications, schedules, data and know-how and any other property, item or thing (stored by any means);
 - (iii) the Contracting Party must immediately repay to Sustainability Victoria all Advance Payments paid by Sustainability Victoria unless Sustainability Victoria has made a Non-Advance Payment after the relevant Advance Payment. The Contracting Party may deduct from the total of the Advance Payments to be repaid, the reasonable and unavoidable direct costs incurred by the Contracting Party in the performance of the parts of the Project that are referable to the Advance Payments;
- (iv) the Contracting Party must immediately repay to Sustainability Victoria any amount paid by Sustainability Victoria and expended by the Contracting Party which Sustainability Victoria considers, acting reasonably, as unnecessary given the progress of the Project or the nature of the defect (as notified by Sustainability Victoria to the Contracting Party); and
 - (v) the Contracting Party is not entitled in contract, tort or otherwise to any payment or compensation as a result of the termination of the Contracting Party's engagement, except as provided under clause 16(d).
- (d) If a Party terminates this Contract, then Sustainability Victoria will pay the Contracting Party:
- (i) the Non-Advance Payments for Milestones completed prior to the date of termination;
 - (ii) if (and only if) termination occurs under clause 16(b), the Contracting Party's reasonable and unavoidable direct costs of termination actually incurred (excluding redundancy payments) provided that these costs are not included in the deduction made under clause 16(c)(iii)),
- less any amount Sustainability Victoria is entitled to deduct or withhold under this Contract, including under any indemnity and set off.
- (e) If termination occurs under clause 16(b) and an Advance Payment becomes payable during the termination notice period, Sustainability Victoria will not pay the Advance Payment to the Contracting Party. Sustainability Victoria will pay the Contracting Party the reasonable and unavoidable costs incurred by the Contracting Party in the performance of the parts of the Project referable to the Advance Payment.
- (f) If Sustainability Victoria terminates this Contract in accordance with clause 16(a), then the Contracting Party is liable for and indemnifies Sustainability Victoria against any Loss of whatever nature incurred by Sustainability Victoria in engaging others to complete the provision of the Project (as the case may be) and any other Loss suffered by Sustainability Victoria as a result of the termination.
- (g) If a purported termination for cause by Sustainability Victoria under clause 16(a) is determined by a competent authority not to be a proper termination for cause, then that termination by Sustainability Victoria will be deemed to be a termination for convenience under clause 16(b) which termination has effect from the date of the notice of termination.
- (h) The Contracting Party may terminate this Contract without penalty and with immediate effect by written notice to Sustainability Victoria if Sustainability Victoria:
- (i) commits a material breach of any of its obligations under this Contract and if such breach is capable of remedy, does not remedy the breach within 10 Business Days after the date on which written notice of the breach is provided by the Contracting Party (or such

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other period as is agreed between the Parties); or

- (ii) is the subject of an Insolvency Event.

17 DISPUTE RESOLUTION

- (a) Disputes can be raised by the Representative of either Party in writing to the other Party's Representative. The Parties recognise that resolving disputes between the two Parties is the preferred method of resolution rather than requiring a third party intermediary.
- (b) Sustainability Victoria shall maintain the disputes log and register all disputes raised by either Party, the log shall be made available to the Contracting Party upon demand.
- (c) The following disputes management procedures will be conducted:
- (i) the Representative raising the dispute shall provide notice of the dispute (**Dispute Notice**) to the Representative of the other Party;
- (ii) the Dispute Notice shall be in writing, be expressed to have been issued in accordance with this clause 17(c) and set out brief details of the dispute;
- (iii) Sustainability Victoria shall log the Dispute Notice; and
- (iv) the Representatives shall use reasonable endeavours to resolve the dispute within 10 Business Days of the Dispute Notice having been received.
- (d) Should any dispute not be resolved by the due date, or the resolution not be able to be agreed at the time the disputes is discussed by the Parties in accordance with clause 17(c)(iv), the disputes will be escalated to a senior representative of each Party.
- (e) If the senior representatives of each Party cannot resolve the dispute within 30 days, the Parties can agree on alternative forms of external dispute resolution or Sustainability Victoria may terminate the Contract.
- (f) The Contracting Party shall continue to perform its obligations under this Contract during any dispute proceedings unless otherwise notified by Sustainability Victoria. Sustainability Victoria cannot withhold payment of any amount payable in accordance with this Contract because of the dispute proceedings unless it is the subject matter of the proceedings.
- (g) Payment and/or a failure by Sustainability Victoria to notify a dispute over an invoice does not prejudice its ability to dispute that invoice after it has determined the invoice is incorrect.
- (h) Monies owing to a Party as a result of dispute resolution shall be paid by the owing Party within 30 days of the relevant Party's Representative having received a written notice of the resolution of the dispute.
- (i) Unless a Party has complied with the provisions in this clause 17, that Party may not commence court proceedings relating to any dispute under this Contract, except where that Party seeks urgent interlocutory relief.

18 PRIVACY AND DATA PROTECTION

- (a) For the purposes of this clause 18 **public sector data** has the meaning given to that term in the *Privacy and Data Protection Act 2014* (Vic).
- (b) The Contracting Party must and must procure that

the Contracting Party Group comply with Privacy Laws in relation to any Personal Information collected, used or stored in relation to this Contract and in the same way and to the same extent as Sustainability Victoria would have been bound had the relevant act been done by Sustainability Victoria (where applicable).

- (c) The Contracting Party:
- (i) must not and must procure that the Contracting Party Group does not, do any act or engage in any practice that contravenes a protective data security standard (including the Victorian Protective Data Security Framework established under Part 4 of the *Privacy and Data Protection Act 2014* (Vic)) in respect of public sector data collected, held, used, managed, disclosed or transferred by the Contracting Party or the Contracting Party Group; and
- (ii) must comply with and must procure that the Contracting Party Group complies with, in relation to any public sector data collected, held, used, managed, disclosed or transferred in relation to this Contract, any other applicable Laws dealing with the collection, use, disclosure, storage, management, transfer or granting of access rights to public sector data.

19 PROMOTIONS

- (a) The Contracting Party may only use Sustainability Victoria or the Victorian Government's name, logo and testimonial (if any) in promotional material and communications relating to the Project or this Contract (including proposals, presentations, websites, corporate brochures) with the express permission of Sustainability Victoria.
- (b) Sustainability Victoria may withdraw its permission for the Contracting Party to use Sustainability Victoria and the Victorian Government's name, logo and testimonial at any time, in its absolute discretion and the Contracting Party must cease all use of Sustainability Victoria and the Victorian Government's name, logo and testimonials immediately upon such notice.
- (c) All Sustainability Victoria instructions to the Contracting Party to discontinue using Sustainability Victoria or the Victorian Government's name, logo or testimonials must be complied with immediately upon notice by Sustainability Victoria.
- (d) The Contracting Party must co-ordinate any Project launch activity or Ministerial visit with Sustainability Victoria.
- (e) The Contracting Party shall disseminate results of the Project including:
- (i) development of materials suitable for use in publications and websites;
- (ii) press releases and statements to all forms of media;
- (iii) presentation at meetings and conferences to stakeholders and industry associations; and
- (iv) hosting site tours.
- (f) The Contracting Party must acknowledge in accordance with this clause 19 the assistance and funding from Sustainability Victoria and the Victorian Government in any site signage, report, publication, announcement and the like (whether oral or written) in relation to the Project.
- (g) If required by Sustainability Victoria (for example, for capital works funding of \$250,000 or more), the Contracting Party will, at its own expense, erect a

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sign in accordance with the [Victorian Government Capital Works Signage Guidelines](#) .

- (h) Sustainability Victoria and the Victorian Government may publish and in other ways promote information, data and reports relating to the Project for the sole purpose of supporting the general objectives of Sustainability Victoria and the Victorian Government and not for any commercial purpose.
- (i) The Contracting Party shall obtain approval from Sustainability Victoria prior to release of any information concerning the Project, the Parties or the Contract.
- (j) The provisions of this clause 19 survive expiry or termination of this Contract.

20 CONFIDENTIALITY

- (a) Each Party agrees to keep all Confidential Information confidential and not to disclose it to any third party without the prior written consent of the other Party, except in the following circumstances:
 - (i) where the disclosure is required by Law;
 - (ii) where the disclosure is reasonably required by any persons for the purposes of performing their obligations under this Contract;
 - (iii) any disclosure to that Party's own professional advisers, or its insurer; or
 - (iv) in the case of Sustainability Victoria, if requested by the Auditor-General, the Ombudsman, or the Minister responsible for the portfolio under which the Project is carried out.
- (b) Each Party must ensure that any person to whom Confidential Information is made available, communicated or disclosed is at all times subject to and complies with the obligations of confidentiality contained in this clause 20.
- (c) If a court, government body, the Auditor-General or Sustainability Victoria requires information or documents in the possession of the Contracting Party relating the Project or the Contract, the Contracting Party must fully co-operate and must bear its own costs unless Sustainability Victoria itself is the subject of the enquiry. In that case, Sustainability Victoria shall reimburse the reasonable expenses of the Contracting Party if the Contracting Party has provided adequate substantiation of those expenses.
- (d) The provisions of this clause 20 survive expiry or termination of this Contract.

21 INTELLECTUAL PROPERTY

- (a) The Contracting Party warrants that it has all necessary right, title and interest in and to all licences and consents (including any necessary consents to infringe Moral Rights) in relation to Project Intellectual Property or to otherwise fulfil its obligations under clauses 21(d) and 21(e)).
- (b) The Contracting Party must hold, or obtain, consents from all third-party authors, including Sustainability Victoria, for all Project Intellectual Property and attribute the material to its author/s in accordance with the *Copyright Act 1968* (Cth).
- (c) The Parties acknowledge that:
 - (i) the Project Intellectual Property and any modifications to the Project Intellectual Property created by the Contracting Party, shall vest in and remain the property of the Contracting Party;

- (ii) Sustainability Victoria's Background Intellectual Property shall remain the property of Sustainability Victoria;
- (iii) the Contracting Party's Background Intellectual Property shall remain the property of the Contracting Party;
- (iv) the Contracting Party's Confidential Information is and shall remain the property of the Contracting Party and disclosure by the Contracting Party of its Confidential Information to Sustainability Victoria shall only occur in accordance with clause 20; and
- (v) Sustainability Victoria's Confidential Information is and shall remain the property of Sustainability Victoria and disclosure by Sustainability Victoria of its Confidential Information to the Contracting Party shall only occur in accordance with clause 20.

- (d) Sustainability Victoria may use or exploit the Project Intellectual Property (including all modifications to the Project Intellectual Property made by the Contracting Party), for any purpose consistent with the general objectives of Sustainability Victoria and the Contracting Party grants to Sustainability Victoria a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use, reproduce, disclose, make public, modify or otherwise exploit the Project Intellectual Property, such modifications and any Background Intellectual Property (whether owned by the Contracting Party or a third party) to the extent such Background Intellectual Property is incorporated into the outputs of the Project or otherwise required to enable the Project Intellectual Property to be exploited for those purposes, including the right to sub-license such rights (including under any form of creative commons licence (available at creativecommons.org.au) that Sustainability Victoria considers appropriate). For the avoidance of doubt, this includes use on Sustainability Victoria's websites.

(da) **Amnesty for Confidential Project Intellectual Property**

- (i) Notwithstanding clause 20, in the case of Confidential Project Intellectual Property, clause 21(d) will apply to that Confidential Project Intellectual Property when the Contracting Party does not itself fully use or exploit the Confidential Project Intellectual Property for the purposes of the Project, or when it ceases to do so, during the Amnesty Period.
- (ii) The Parties will review the operation of this clause 21(da) annually from the completion of Final Report Milestone. The Contracting Party will provide evidence to demonstrate to Sustainability Victoria's satisfaction that it has made efforts to use or exploit the Confidential Project Intellectual Property by advancing commercialisation of the research findings for example business case development, trade mark or patent applications (**Commercialisation Evidence**). If the Contracting Party is not able to provide Commercialisation Evidence to demonstrate to Sustainability Victoria's satisfaction that it has taken steps to use or exploit the Confidential Project Intellectual Property, the Amnesty Period will come to an end. If the Contracting Party is able to provide Commercialisation Evidence to demonstrate to Sustainability Victoria's satisfaction that it has taken steps to use or exploit the Confidential Project Intellectual Property, the Amnesty Period will continue until the next annual review or until the completion of the Amnesty Period.

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- (iii) If at the end of the Amnesty Period, the Contracting Party is able to provide Commercialisation Evidence to demonstrate to Sustainability Victoria's satisfaction that it has fully used or exploited the Confidential Project Intellectual Property, clause 21(d) will not apply to the Confidential Project Intellectual Property.
- (iv) If at the end of the Amnesty Period, the Contracting Party is not able to provide Commercialisation Evidence to demonstrate to Sustainability Victoria's satisfaction that it has fully used or exploited the Confidential Project Intellectual Property, clause 21(d) will apply to Confidential Project Intellectual Property.
- (v) This clause 21(da) survives expiry or termination of the Contract.

(db) **Journal article**

The Contracting Party will take reasonably practicable steps to publish a journal article in a relevant technical journal concerning the Project, with sufficient detail to enable peer review of the research (**Journal Article**). Sustainability Victoria acknowledges that publication by the journal cannot be guaranteed. The Contracting Party is not required to disclose any raw data or Confidential Information and may delay publication until the end of the Amnesty Period to allow for protection of Project Intellectual Property. Clause 21(d) applies to the Journal Article only to the extent that the Contracting Party has any Intellectual Property in the Journal Article. In the event that the Contracting Party is not able to secure publication of the Journal Article in a technical journal, it will self-publish the Journal Article, in which case clause 21(d) will apply to the Journal Article.

- (e) The Contracting Party grants to Sustainability Victoria a worldwide, irrevocable, non-exclusive, royalty-free, perpetual licence to use and reproduce the Contracting Party's name, logo and organisational summary for promotion and reporting of the Project.
- (f) The Contracting Party indemnifies and will at all times keep Sustainability Victoria indemnified against any Loss arising out of or otherwise in connection with any infringement or alleged infringement by the Contracting Party or Sustainability Victoria of the Intellectual Property rights of any third person, relating to the Project, including Sustainability Victoria exercising its rights under the licences granted under clauses 21(d) and 21(e).

22 NOTICES

22.1 Form of notice

A notice, approval, consent or other communication under this Contract will not be considered valid unless:

- (a) it is in writing; and
- (b) sent or copied to the Representative of the Party.

22.2 Delivery

Such notice must be either:

- (a) left at the property address of the receiving Representative;
- (b) sent by express post with delivery tracking to the property address of the receiving Representative; or
- (c) sent by email to the email address of the receiving Representative.

22.3 Receipt

Such notice is taken to be received:

- (a) if given or served by hand, at the time of delivery;
- (b) if express posted, on the Business Day (seventh Business Day if posted to or from a place outside Australia) after posting; or
- (c) if emailed, on received date displayed by the receiving Representative's system.

23 ENTIRE AGREEMENT

- (a) Subject to variations as provided for in clause 10, this Contract constitutes the entire agreement and understanding between the Parties as to the subject matter of this Contract.
- (b) This Contract may be executed in any number of counterparts and all counterparts taken together will constitute one document.
- (c) Any prior arrangements, agreements, representations or undertakings as to the particular subject matter of this Contract are superseded except where explicitly stated in this Contract.
- (d) If any part of this Contract is prohibited, void, avoidable, illegal or unenforceable, then that part is severed from this Contract but without affecting the continued operation of the remainder of the Contract.

24 GOVERNING LAW

- (a) This Contract is governed by and must be construed in accordance with, the Laws in force in Victoria.
- (b) Each Party submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and the courts of appeal therein.

25 EXERCISE OF RIGHTS

- (a) A Party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy does not prevent a further exercise of that or any other right, power or remedy.
- (c) The rights, powers and remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Contract.
- (d) Failure by a Party to exercise, or delay in exercising a right, power or remedy, does not prevent its exercise.
- (e) A provision of or a right, power or remedy created under this Contract will not be waived, except in writing signed by the Party granting the waiver.

26 RELATIONSHIP OF THE PARTIES

- (a) The relationship between the Parties established under this Contract does not constitute a partnership, joint venture or any form of fiduciary relationship or contract of employment.
- (b) The Contracting Party is an independent Contracting Party and not an agent of Sustainability Victoria.
- (c) The Contracting Party agrees and acknowledges that its relationship with Sustainability Victoria is not exclusive. Sustainability Victoria may enter into other arrangements for similar work at its discretion.

27 CONFLICT OF INTEREST

- (a) The Contracting Party warrants that, as at the Commencement Date, to the best of its knowledge after making diligent inquiry, no Conflict of Interest exists or is likely to arise in the provision of the Project.

General Funding Agreement

- (b) If, during the provision of the Project a Conflict of Interest arises, or appears likely to arise, the Contracting Party must:
 - (i) notify Sustainability Victoria immediately;
 - (ii) make full disclosure of all relevant information relating to the Conflict of Interest; and
 - (iii) take such steps as Sustainability Victoria may reasonably require to resolve, avoid or otherwise deal with the Conflict of Interest.
- (c) Where a Conflict of Interest arises, and cannot be avoided or managed to the satisfaction of Sustainability Victoria, Sustainability Victoria may in its absolute discretion either:
 - (i) engage a third person to deliver any part of the Project affected by the Conflict of Interest; or
 - (ii) terminate this Contract without penalty to Sustainability Victoria and with immediate effect by written notice to the Contracting Party.
- (d) Where Sustainability Victoria engages a third person to provide the Project under clause 27(c)(i), the cost of the third person providing Project will be deducted from the Milestone Amounts payable to the Contracting Party or will be a debt payable on demand by the Contracting Party to Sustainability Victoria.
- (e) The Contracting Party acknowledges and agrees that failure to comply with this clause 27 will constitute a material breach of this Contract.
- (e) Sustainability Victoria's consent to a Subcontractor may be revoked on any of the following grounds:
 - (i) the Subcontractor subcontracts or assigns any of its obligations without Sustainability Victoria's prior written consent;
 - (ii) the Contracting Party has made a misrepresentation, intentionally or otherwise, with regard to the Subcontractor;
 - (iii) Sustainability Victoria has reasonable grounds to believe the Subcontractor may be or become insolvent;
 - (iv) Sustainability Victoria has found, in its absolute discretion, the Subcontractor's performance, or compliance with its obligations under this Contract, to be deficient; or
 - (v) the Subcontractor engages in conduct that in Sustainability Victoria's opinion exposes Sustainability Victoria to possible damages, claims or liabilities, or reputational damage or ridicule.
- (f) Sustainability Victoria's approval to subcontract any part of this Contract shall not relieve the Contracting Party from any of its liabilities or obligations under this Contract.
- (g) The Contracting Party shall be liable to Sustainability Victoria for the acts, defaults and omissions of any assignee or Subcontractor or those of the employees and agents of the assignee or Subcontractor as fully as if they were the acts, defaults or omissions of the Contracting Party.

28 SECURITY

- (a) Sustainability Victoria may give notice to the Contracting Party requiring the Contracting Party to provide security in relation to any amounts owing pursuant to this Contract, over the relevant assets of the Project, the Project itself or other assets, for the purpose of securing the Contracting Party's obligations to repay the Milestone Amounts under clause 11.3(e) or pursuant to clauses 15, 16 or otherwise in accordance with this Contract.
- (b) The form of the security is to be agreed between the Parties after Sustainability Victoria gives notice under clause 28(a). If agreement is not reached within 30 days after Sustainability Victoria gives notice, the Contracting Party must grant security in the form required by Sustainability Victoria.

29 ASSIGNMENT AND SUBCONTRACTING

- (a) Sustainability Victoria may at any time assign, novate or subcontract all of its rights and obligations under this Contract to any other entity or organisation, at its discretion.
- (b) The Contracting Party must not assign this Contract, any payment or any other right, benefit or interest hereunder or undergo a Change of Control without the prior written consent of Sustainability Victoria which may be given, given subject to terms, or withheld, in the absolute discretion of Sustainability Victoria.
- (c) The Contracting Party must not assign, mortgage, charge, otherwise encumber, or declare itself trustee or purport to so assign, mortgage, charge otherwise encumber, or declare itself trustee of or in relation to any of its rights under this Contract.
- (d) The Contracting Party must not subcontract any of its obligations under this Contract without the written approval of Sustainability Victoria, for which Sustainability Victoria has absolute discretion.

30 GENERAL

30.1 No merger

The warranties, undertakings and indemnities in this Contract do not merge on provision of the Project or the completion of any transactions contemplated by this Contract.

30.2 Survival

Any warranties, indemnities and all other provisions which expressly or by implication from their nature are intended to survive termination, survive termination of this Contract.

31 COSTS

- (a) Each Party must bear its own costs, fees and expenses including those incurred:
 - (i) to give effect to the provisions of and performance, under this Contract;
 - (ii) in complying with Laws whether they existed at the time of the Commencement Date or not;
 - (iii) regarding stamp duties and other duties, taxes, fees or charges payable to any Government body in respect of, arising from, or in connection with this Contract;
 - (iv) for mediation and/or court proceedings;
 - (v) for rectification of any audit findings applicable to the Party; and
 - (vi) to exercise or enforce its rights under this Contract unless otherwise agreed or determined by an expert, arbitrator or the courts.

(END OF TERMS AND CONDITIONS)