

General Funding Agreement

Details

Contract ID: (Sustainability Victoria internal use only)	
Parties	
Sustainability Victoria	Sustainability Victoria (ABN 62 019 854 067) Level 28, 50 Lonsdale Street Melbourne, Victoria, 3000 Tel: (03) 8626 8700 Fax: (03) 9663 1007
Contracting Party	Name of Legal Entity: Please insert ABN: Please insert Trading name: Please insert Address: Please insert Postal Address: (if different to the above): Please insert Tel: Please insert Fax: Please insert
Contract Title	Title: insert name of contract for reference
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 (if different to that of Sustainability Victoria): Please insert Tel: Please insert Fax: Please insert Email: Please insert
Contracting Party Representative	Name: Please insert Address (if different to that of the Contracting Party): Please insert Tel: Please insert Fax: Please insert Email: Please insert
Project	[insert name, description (short summary) and objective of the Project and refer to the Appendix for more details.]
Changes to	None

General Funding Agreement

insurance requirements	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	\$(to be completed)						

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Milestone Payment Schedule

Mile-stone	Advance Payment (Yes/No)	Description of Work	Date for completion	Required Evidence (if any)	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	insert	insert	insert	\$ insert	\$ insert	\$ insert	\$ insert	
							Total (excluding GST)	\$ insert	\$ insert
							GST	\$ insert	\$ insert
							Total (including GST)	\$ insert	\$ insert

DRAFT

Schedule — Amendments to Terms and Conditions

Not Applicable

DRAFT

[To be completed]

Purpose/Objective

Deliverables

Task List

Project Plan

Meetings

Reporting

Evaluation

Governance Structure

Timeline

Performance Measures

Out of Scope

Quality Assurance

Transition In/Out

Terms and Conditions

1 COMPLIANCE WITH LEGISLATION

- (a) The Contracting Party:
- (i) 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
 - (ii) must, subject to clause 1(a)(i), 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 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 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 1(f)(i) to 1(f)(iii).

3 DEFINITION

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'.

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.

Asset means any item of tangible 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.

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

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

- (c) Control of the composition of the board of directors of the corporation;
- (d) Control of more than half the voting rights attaching to shares in the corporation; or
- (e) 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.

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

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.

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, 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 14(c)(i).

Environmental Laws means all laws (including common law, Acts of Parliament, regulations, policies and by-laws and all licenses, permits and consents or approvals made pursuant to such 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:

- (f) the Expiry Date specified as such under "Term" in the Details; and
- (g) the last day of any Permitted Extension Period notified in accordance with clause 6(d).

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

Indemnified Parties means the indemnified persons defined in clause 13(a).

Information and Equipment includes all information and equipment 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) of Sustainability Victoria which is made available to the Contracting Party for the provision of the Project.

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

- (h) that Party disposes of the whole or any part of its assets, operations or business other than in the normal course of business;
- (i) any step is taken to enter into any arrangement between that Party and its creditors;
- (j) that Party ceases to be able to pay its debts as they become due;
- (k) that Party ceases to carry on business;
- (l) 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;
- (m) 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;
- (n) 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);

- (o) that Party is a partnership or joint venture and any step is taken to dissolve the partnership or joint venture;
- (p) 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) to (i) happens in connection with that Party or that Party's business under the Law of any jurisdiction.

Intellectual Property includes (without limitation) 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.

Loss means all costs (including legal costs and expenses on a solicitor and own client basis), fees, expenses, losses, damages, 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 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:

- (q) the right of attribution of authorship;
- (r) the right of integrity of authorship; and
- (s) the right not to have authorship falsely attributed.

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

Other Party Contributions means the contribution(s) (if any) set out in the column headed "Other Party Contribution(s)" in the Details, being financial contributions to the Project provided by parties other than the Contracting Party and Sustainability Victoria.

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.

Privacy Laws means the Information Privacy Principles set out in the *Information Privacy Act 2000* (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 or granting of access rights to Personal Information.

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

Project Intellectual Property means Intellectual Property that is created in the course of carrying out or otherwise in connection with the Project.

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

Representative means:

- (t) the person identified to be the representative of a Party in the Details;
- (u) any person to whom the representative's relevant powers, duties and functions have been delegated in accordance with clause 4(d); or
- (v) any person who replaces the representative of a Party in accordance with clause 4(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 (including common law, Acts of Parliament, regulations, rules, policies and by-laws and all licenses, permits and consents or approvals made pursuant to such laws) and codes and standards which relate to the protection and safety of persons or property, and 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 and/or SV means the Party identified as Sustainability Victoria in the Details.

Sustainability Victoria Group means Sustainability Victoria, Sustainability Victoria's Representative and Sustainability Victoria's employees, agents or officers.

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 terms of this Contract which commences on the Commencement Date and ends on the Expiration Date and includes any Transition Out Period.

Terms and Conditions means the section of this Contract headed "Terms and Conditions".

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) matters relating to the commercial, technical or financial capacity of the Contracting Party

or any Subcontractor or agent of the Contracting Party proposed to be engaged in respect of this Contract;

- (iv) 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) be available at all reasonable times for consultation with the other Party in connection with any matter arising under this Contract;
 - (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 20 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 must prepare a notice setting out a variation request in accordance with clause 8. Notwithstanding clause 8(c) the replacement will be taken to have occurred seven (7) days after the relevant variation request is submitted.

6 OBLIGATIONS OF THE PARTIES

- (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.

- (e) This clause 6(e) applies if the Project involves the Contracting Party preparing one or more reports ("Report").
 - (i) Without limiting any other rights of Sustainability Victoria under this Contract, if Sustainability Victoria notifies the Contracting Party within ten (10) Business Days from receiving a Report that it does not accept the Report, then Sustainability Victoria may:
 - (A) require the Contracting Party to submit a revised Report;
 - (B) require the Contracting Party to provide additional information;
 - (C) require an independent audit as per clause 6(e)(ii); and/or
 - (D) immediately terminate the Contract in accordance with clause 14.
 - (ii) 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.
 - (iii) The Contracting Party shall ensure that any report includes appropriate notices and acknowledgements, including:
 - (A) Copyright notice if relevant: © Contracting Party;
 - (B) Attribution: author (if required) plus all third party authors (if relevant);
 - (C) Disclaimer if required;
 - (D) Acknowledgement of funding by Sustainability Victoria; and
 - (E) Acknowledgement of all third party intellectual property used with permission if relevant.
- (f) The Contracting Party must:

- (i) perform the Project in a manner that ensures the safety of persons and property and in accordance with all applicable Safety Laws; and
- (ii) 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 name, messages or reputation, or attract public or media attention which may be prejudicial or otherwise detrimental to Sustainability Victoria's name, messages or reputation.
- (g) The Contracting Party must, if requested by Sustainability Victoria, promptly provide ongoing data and information in relation to the Project after the expiry of the Contract. This clause survives expiry or termination of the Contract.

6A ASSETS

- (h) Unless it is specified in the Details that Sustainability Victoria owns the Asset then, subject to this clause 6A and the terms of any relevant lease, the Contracting Party owns the Assets.
- (i) 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.
- (j) During the Term, the Contracting Party must use any Asset solely in accordance with this Contract and for the purposes of the Project.
- (k) 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 6A continues to apply to the reinstated Assets.
- (l) 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. This clause 6A survives expiry or termination of this Contract

6B AUDIT RIGHTS

- (a) At any time during the Term of this Contract, or within 21 days of termination or expiry of this Contract, Sustainability Victoria may conduct an independent audit of the Contracting Party, including (without limitation) for any one or more of the following purposes:
 - (i) assessing the ongoing viability of the Contracting Party and/or the Project; or
 - (ii) assessing the likely ability of the Contracting Party to perform the Project or achieve any Milestone; or
 - (iii) determining how the Contracting Party has used or is using the Milestone Amounts.
- (b) None of these audits or inspections referred to in clause 6B(a) detracts from the Contracting Party's responsibility over its compliance, performance, records, and procedures.

- (c) Except those circumstances where notice is not practical or desirable given the nature of the audit, Sustainability Victoria shall notify the Contracting Party of upcoming audits no less than five (5) Business Days of the audit commencement.
- (d) The Contracting Party must fully co-operate with 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 Services and the Contract (as required by Sustainability Victoria in its absolute discretion).
- (e) Internal and external Sustainability Victoria auditors may make copies of records necessary for the purposes of their audits.
- (f) Where an audit 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.

7 COMPLIANCE WITH ENVIRONMENTAL LAWS

- (a) The Contracting Party 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 procedures in place to minimise environmental impacts.
- (b) The Contracting Party warrants that any information or representations provided by it about its 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.

8 VARIATIONS

- (a) Notwithstanding clause 21, 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.

9 INVOICING AND PAYMENT

9.1 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.
- (b) Subject to clause 8.1(c), the Contracting Party must ensure at all times during the Term that the Milestone Amounts invoiced by the Contracting Party are no less favourable than any prices at which the Contracting Party provides or offers to provide work that is equivalent or similar to that contained in the Project to any other customer or funding entity of the Contracting Party in respect of project work which is of a comparable magnitude to the Project.
- (c) For the purposes of clause 8.1(b), exclude any work performed by the Contracting Party on a pro-bono or non-commercial basis.

9.2 Submission of invoices

- (a) The Contracting Party must submit a GST compliant tax invoice:
 - (i) within thirty (30) days from 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 Monies;
 - (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); and/or
 - (iv) additional information requested by Sustainability Victoria to verify the amounts.

9.3 Payment of invoices

- (a) All invoiced amounts in respect of Milestone Amounts which are:
 - (i) properly invoiced in accordance with clause 8.2(a);
 - (ii) accompanied by the evidence required by clause 8.2(b); and
 - (iii) not in dispute,

shall be paid by Sustainability Victoria within thirty (30) days of receipt of the invoice.

- (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 ninety (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) 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;
 - (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.

9.4 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 8 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.

9.5 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 8.5(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 or the date that the amount ceased to be disputed, as the case may be.

9.6 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 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.

10 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.

11 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 perform this Contract;
 - (iii) subject to clause 11(c), 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,
 - (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) Any failure on the part of the Contracting Party to do what it has warranted shall not relieve the 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 charges or other monetary compensation.

- (c) 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.

12 INSURANCE

- (a) The Contracting Party must, at its own cost, throughout the Term or longer if required by law, maintain the following insurances with an insurer who holds a Standard & Poors rating of A- as a minimum:

- (i) employers' liability and workers compensation insurance against any liability which may arise at common law or under any relevant worker's compensation legislation;
- (ii) third party public and products liability insurance for personal injury, death and Loss to third party property, including Loss resulting from a failure to supply, or loss of, destruction of or damage to third party property, for the amount of \$10 million for any one occurrence;
- (iii) professional indemnity insurance for the amount of \$5 million for any one claim;
- (iv) motor vehicle third party insurance, in accordance with legislation as it applies in the State of Victoria, for personal injury or death in respect of or arising out of the use of any vehicle used by the Contracting Party (whether owned or not owned by the Contracting Party) in performing the Project;
- (v) motor vehicle third party property insurance for loss or damage to third party property in respect of or arising out of the use of any vehicle used by the Contracting Party (whether owned or not owned by the Contracting Party) in performing the Project for the amount of \$10 million for any one occurrence;
- (vi) the full replacement value of Assets, equipment, hardware, and software used in the provision of the Project;
- (vii) insurance against loss of, damage to or destruction of property belonging to or leased by it or in its custody or possession (including improvements on, in or to land but otherwise excluding land) for full reinstatement or replacement value; and
- (viii) other insurance as specified in the Details, unless otherwise agreed by Sustainability Victoria as set out in the Details.

- (b) The insurance policies must:

- (i) (if required by Sustainability Victoria) name Sustainability Victoria as insured to the extent of the Contracting Party's indemnities under this Contract; and

- (ii) In the case of third party public liability insurance specified in this clause 12(a)(ii), include a cross-liability clause that states that no knowledge, act, or omission of the insured (whether before or after the inception of the policy) shall be imputed to any other insured and shall not prejudice the rights of any other insured under the policy; and

- (iii) In the case of third party public liability insurance specified in this clause 12(a)(ii), include a waiver of subrogation clause that states the insurer waives any rights of subrogation against any insured under the policy for those claims caused solely by the Contracting Party.

- (c) All insurances maintained by the Contracting Party under this Contract must have an excess that has been approved by Sustainability Victoria. All excesses, if incurred, shall be borne in their entirety by the Contracting Party.

- (d) The Contracting Party must provide evidence of the currency of the insurance policies, if required, prior to the Commencement Date on each anniversary of the Commencement Date thereafter, at each Anniversary Date, and otherwise upon request by Sustainability Victoria.

- (e) The Contracting Party must:

- (i) notify Sustainability Victoria within seven (7) 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 12 will continue notwithstanding the expiration or termination of this Contract.

13 INDEMNITY AND LIMITS ON LIABILITY

- (a) Subject to clause 12(b), to the fullest extent permitted by Law, 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 directly or indirectly from any:

- (i) breach of this Contract by the Contracting Party or its Related Persons;
- (ii) breach by the Contracting Party or its Related Persons of any representation or warranty contained in or in connection with this Contract, whether express or implied;

- (iii) injury to or death of any person caused or contributed to by the Contracting Party or its Related Persons;
 - (iv) Loss of any property caused or contributed to by the Contracting Party or its Related Persons;
 - (v) act or omission of the Contracting Party or its Related Persons in connection with this Contract.
- (b) The Contracting Party will not be liable under clause 12(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) Notwithstanding any other provision in this Contract to the contrary and to the fullest extent permitted by Law, in no circumstances whatsoever and howsoever arising will Sustainability Victoria be liable to the Contracting Party for any consequential, indirect or incidental Loss, special Loss or damage or economic Loss, loss of revenue, loss of production or loss of profit (whether direct or indirect).
- (d) Without limitation to clause 12(a), and to the fullest extent permitted by Law, the Contracting Party indemnifies the Indemnified Parties from and against any liability for Losses which may be apportioned to the Indemnified Parties by a court applying provisions of any relevant proportionate liability legislation which is applicable to a claim brought by a third party against the Contracting Party.
- (e) To the fullest extent permitted by law, and despite any other provision of this Contract, 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.
- (iii) or any of its Related Persons commits a fraudulent act or omission;
 - (iv) subcontracts the provision of any part of the Project without the consent of Sustainability Victoria
 - (v) assigns its rights or obligations under this Contract without the consent of Sustainability Victoria;
 - (vi) is the subject of an Insolvency Event;
 - (vii) undergoes a Change in Control without Sustainability Victoria's prior written approval;
 - (viii) fails to commence the Project to a material extent within 12 months of the Commencement Date;
 - (ix) fails to complete any Milestone relating to Other Party Contributions in accordance with the Milestone Payment Schedule;
 - (x) 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
 - (xi) 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 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.
- (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 13(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 19, 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;
 - (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;

14 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) fails to adequately complete any Milestone to Sustainability Victoria's satisfaction or to complete any Milestone by the date for completion of that Milestone as set out in the Details;
 - (ii) commits a material breach of any of its obligations under this Contract (for the avoidance of doubt, without limitation, any breach of clauses 7(a) or 6(f) constitutes a material breach of this Contract), and if such breach is capable of remedy, the Contracting Party does not remedy the breach within 5 Business Days after the date on which written notice of the breach is provided by Sustainability Victoria (or such other period as is agreed between the Parties);

- (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 13(d).
- (d) If a Party terminates this Contract, then Sustainability Victoria will pay the Contracting Party:
 - (i) the Rates (if any) only in respect of those Project properly provided by the Contracting Party up to and including the date of termination, as determined by Sustainability Victoria acting reasonably;
 - (ii) the Non-Advance Payments for Milestones completed prior to the date of termination;
 - (iii) if (and only if) termination occurs under clause 13(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 14(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 14(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 13(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 13(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 13(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 other period as is agreed between the Parties); or
- (ii) is the subject of an Insolvency Event.

15 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 14(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 ten (10) Business Days of the Dispute Notice having been received.
- (d) Should any disputes 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 14(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 thirty (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 thirty (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 14, that Party may not commence court proceedings relating to any dispute under this Contract, except where that Party seeks urgent interlocutory relief.

16 PRIVACY

- (a) For the purposes of this clause 16, Personal Information means information or an opinion (including in 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.
 - (i) The Contracting Party must, and must procure that its employees, agents, officers and subcontractors comply with:
 - (ii) the Information Privacy Principles set out in the Information Privacy Act 2000 (Vic);
 - (iii) any privacy statement issued by Sustainability Victoria from time to time (as published on its website); and
 - (iv) any other applicable laws, principles, policies and codes dealing with the collection, use, disclosure, storage or granting of access rights to Personal Information,

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).

17 PROMOTIONS

- (a) The Contracting Party may only use Sustainability Victoria'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's name, logo, and testimonial at any time, in its absolute discretion, and the Contracting Party must cease all use of Sustainability Victoria's name, logo, and testimonials immediately upon such notice.
- (c) All Sustainability Victoria instructions to the Contracting Party to discontinue using Sustainability Victoria'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 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 17 the assistance and funding from Sustainability Victoria in any site signage, report, publication, announcement and the like (whether oral or written) in relation to the Project.
- (g) Sustainability Victoria shall 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 not for any commercial purpose.
- (h) The Contracting Party shall obtain approval from Sustainability Victoria prior to release of any information concerning the Project, the Parties, or the Contract.
- (i) The provisions of this clause 17 survive expiry or termination of this Contract.

18 CONFIDENTIALITY

- (a) The Contracting Party consents to Sustainability Victoria publishing or otherwise making available information in relation to the Contracting Party and / or the Project as may be required:
 - (i) by the Auditor-General;
 - (ii) to comply with the Freedom of Information Act 1982 (Vic); and
 - (iii) to obtain advice from legal, financial, or any other professional advisor.
- (b) Except for information disclosed under clause 17(a), each Party shall keep the Confidential Information of the other Party confidential at all times, and shall not, without the prior consent of the other Party:
 - (i) make available, communicate or disclose any Confidential Information to any person; or
 - (ii) use or allow any person to use any of the Confidential Information for any purpose other than the performance of obligations under this Contract.
- (c) 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 18.
- (d) 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.
- (e) The Contracting Party 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.

- (f) The provisions of this clause 18 survive expiry or termination of this Contract.

19 INTELLECTUAL PROPERTY

- (a) The Contracting Party warrants that it has all necessary right, title and interest in and to and licences and consents (including any necessary consents to infringe Moral Rights) in relation to Intellectual Property in any materials, thing or process provided by it to Sustainability Victoria required or used to carry out the Project or to otherwise fulfil its obligations under this Contract (including granting the licences under clauses 18(d) and 18(e)).
- (b) The Contracting Party must hold, or obtain, consents from all third-party authors, including Sustainability Victoria, for any material used or adapted by the Contracting Party in respect of the Project 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 18; 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 18.
- (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.

- (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 ("testimonial") 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 18(d) and 18(e).

20 NOTICES

20.1 Form of notice

- (a) A notice, approval, consent, or other communication under this Contract will not be considered valid unless:
- (i) it is in writing; and
- (ii) sent or copied to the Representative of the Party.

20.2 Delivery

- (a) Such notice must be either:
- (i) left at the property address of the receiving Representative;
- (ii) sent by post to the property address of the receiving Representative;
- (iii) sent by facsimile machine to the facsimile number of the receiving Representative; or
- (iv) sent by email to the email address of the receiving Representative.

20.3 Receipt

- (a) Such notice is taken to be received:
- (i) if given or served by hand, at the time of delivery;
- (ii) if posted, on the second (seventh if posted to or from a place outside Australia) Business Day after posting;
- (iii) if sent by a facsimile machine, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the receiving Representative; or
- (iv) if emailed, on received date displayed by the receiving Representative's system.

21 ENTIRE AGREEMENT

- (a) Subject to variations as provided for in clause 8 and clause 4(f), 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.

22 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.

23 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.

24 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.

25 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.
- (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 24(c)(i), the cost of the third person providing Project will be deducted from the Rates or 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 25 will constitute a material breach of this Contract.

26 SECURITY

- (a) Sustainability Victoria may give notice to the Contracting Party requiring the Contracting Party to provide security in relation to and for an amount not more than the Milestone Amounts, over the relevant assets of the Project or the Project itself, for the purpose of securing the Contracting Party's obligations to repay the Milestone Amounts under clauses 9.3(e) or pursuant to clauses 13, 14 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 this clause 26(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.
- (c) The Parties acknowledge that any such security granted under this clause will rank second in priority to any security granted to any financial institution providing finance to the Contracting Party in relation to the Project.

27 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 without the prior written consent of Sustainability Victoria that 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.

28 GENERAL

28.1 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.

28.2 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.

29 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, acts, regulations and the like 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
- (b) 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)