

Funding agreement for Drive electric NSW EV kerbside charging grants round 1

The Crown in Right of the State of New South Wales, acting through NSW
Treasury (**Office**)

[insert] (**Recipient**)

Funding agreement

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Date ►

Between the parties

Office	Name	The Crown in right of the State of New South Wales, acting through NSW Treasury (ABN 55 437 667 728)
	Agency/ Division	Office of Energy and Climate Change
	Address	Level 10, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Recipient ('You')	Name	[insert]
	Address	[insert]
	ABN	[insert]
Recitals	<ol style="list-style-type: none">1. The Office administers the EV kerbside charging grant (as described in the Grant Guidelines), under which it may award grant funding to support recipients to install, own, operate and maintain EV kerbside charging infrastructure in eligible areas in NSW.2. You will carry out the Project as described in item 1 of the Details.3. The Office agrees to provide the Funds, and You agree to complete the Project and achieve the Objectives, subject to and in accordance with the terms of this agreement.	

The parties agree as follows:

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1 Details

Key project details		
1.	Project	Install, own, operate and maintain kerbside EV charging infrastructure as described in Annexure 2.
2.	Total project capital costs	[\$insert]
3.	Total grant funds	A maximum total amount of \$[insert] (inclusive of GST), \$[insert] (exclusive of GST)
4.	Project Installation date	[insert] [Drafting note: this date must be no later than 12 months from the date this agreement is executed.]
5.	Commencement Date <i>(refer to clause 3 – Term)</i>	The date this agreement is executed.
Other information		
6.	Public acknowledgement of support - The NSW Government logo and acknowledgement	<p>All recipients of NSW Government funding for infrastructure and capital works including the EV kerbside charging grants must acknowledge the NSW Government. The NSW Government logo and acknowledgement take precedence over those of all other funding contributors, with the exception of the Australian Government.</p> <p>To understand how to adhere to this requirement, the implementation process is provided in the Funding Acknowledgment Guideline for recipients of NSW Government infrastructure grants available here: https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgement-guidelines</p>
7.	Public disclaimer	<i>The Office may require You to include a disclaimer in all published materials relating to the Project, which will be included here (relevant to clause 10.4)</i>
8.	Office authorised officer <i>(refer to clause 20.2 – Notices)</i>	<p>Name</p> <hr/> <p>Position</p>

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		Address
		Telephone
		E-mail
9.	Your Authorised Officer <i>(refer to clause 20.2 – Notices)</i>	Name
		Position
		Address
		Telephone
		E-mail
10.	Third Party Material <i>(refer to clause 10.2(a))</i>	[insert]

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2 Interpretation and definitions

2.1 Interpretation

Unless the context requires otherwise, in this agreement:

- (a) the terms set out in the left-hand column of the Details have the meaning ascribed to them in the right-hand column of the Details;
- (b) where any time limit pursuant to this agreement falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or any part of it;
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning;
- (i) headings and bold type are for convenience only and do not affect the interpretation of this agreement;
- (j) the singular includes the plural and the plural includes the singular;
- (k) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement;
- (l) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (m) a reference to a party to a document includes that party’s successors and permitted assignees;
- (n) a reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (o) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) if an act prescribed under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (r) a reference to time is a reference to Sydney time; and

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(s) a reference to \$ is to Australian currency unless denominated otherwise.

2.2 Agreement components and inconsistency

This agreement includes any schedule or attachment. In the event of an inconsistency between the Details and any other part of this agreement, that other part of this agreement will prevail to the extent of the inconsistency.

2.3 Definitions

Abandon means circumstances in which no activities have been carried out in respect of the Project for 60 consecutive days, other than where the activities have not been carried out due to a Force Majeure Event and You have complied with your obligations in respect of that Force Majeure Event under clause 19.

Adjusted Total Funds has the meaning given to that term in Schedule 5.

AEMO means the Australian Energy Market Operator Limited (ABN 94 072 010 327).

Applicable Cure Period has the meaning given to that term in Schedule 3.

Application refers to the application for funding submitted by You via the EV kerbside charging grant application platform, in relation to the Project and all related supporting documentation provided to the Office in connection with the application.

Approved Cure Plan has the meaning given to that term in Schedule 3.

Assessment Criteria means the merit criteria for an Application referred to in the Grant Guidelines.

Asset means any items of tangible or intangible property which are purchased, leased, created or otherwise brought into existence by, for or on behalf of You as part of the Project, not including Project Material.

Authority means any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any other person having jurisdiction in connection with the Project, including AEMO and the Australian Energy Regulator.

Authorisation means any authorisation, approval, licence, permit, consent, determination, certificate, notice, requirement or permission from any Authority which must be obtained or satisfied (as the case may be) to undertake the Project.

Authorised Officer means the officer described in item 9 of the Details.

Bank Account has the meaning given to that term in clause 6.1(a).

Budget means the budget for the Project set out in Annexure 1, as may be amended from time to time in accordance with clause 9.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Change in Control means in relation to You or Your permitted successors (in this definition referred to as the **First Party**), means a person or persons who do not Control the First Party (in this definition referred to as the **Acquiring Party**) as at:

(a) the Commencement Date; or

(b) where the First Party is a party to this agreement because of a transfer approved under clause 21(h), the date of completion of that transfer, (in this definition referred to as the **Relevant Date**), acquiring Control of the First Party, unless the Acquiring Party is itself

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Controlled directly or indirectly by a person who Controlled the First Party immediately before the Relevant Date.

A Change in Control will not occur as a result of the transfer, issue, redemption, buyback, cancellation, repurchase or reorganisation of marketable securities in an entity that is listed or, in connection with the relevant transaction becomes listed, on a recognised public stock exchange (provided that such Change in Control does not result in the First Party ceasing to be listed as a result of such transaction).

Claim means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

Commencement Date is the date this agreement is executed.

Commissioned means the EV charging site is installed and operational for use by members of the public in accordance with the specifications set out in Annexure 2 and **Commission** has the corresponding meaning.

Confidential Information of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential;
- (b) has been designated as confidential by a party;
- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above,

but does not include information that:

- (e) is in the public domain; or
- (f) is independently known or developed by the party receiving the information other than as a result of a breach of this agreement or any other obligation of confidentiality owed by or to any other person.

Consequential Loss means:

- (a) loss for breach of contract that is not recoverable under the first limb of the rule in *Hadley v Baxendale* [1854] EWHC J70;
- (b) loss of profit or loss of revenue (excluding the Funds);
- (c) without limiting paragraphs (a) or (b) above, any diminution in the value of an asset or a business or any increased finance costs or loss of anticipated savings associated with this agreement not being performed in accordance with its terms; or
- (d) loss of opportunity.

Cost Savings has the meaning given to that term in Schedule 5.

Contract Management Agent means any person appointed by the Office in accordance with clause 20.4.

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Control means 'control' as defined in section 50AA of the Corporations Act as in force as at the Commencement Date and:

- (a) in the case of a corporation, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of a majority of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation;
- (b) in the case of a trustee of a trust, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the appointment or removal of the trustee of the trust, the composition of the board of directors of the trustee, the voting rights of the majority of units of the trust or the management of the affairs of the trust or the business operated by that trust;
- (c) in the case of a partnership, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the management of the affairs of the partnership; and
- (d) in the case of You, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly the manner in which the Project is developed, constructed, implemented or operated.

Controller has the meaning given to it in section 9 of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Correctly Rendered Invoice means an invoice rendered in accordance with the Office's Fact Sheet found at https://www.industry.nsw.gov.au/data/assets/pdf_file/0003/88158/fact-sheet-supplier-invoice-submission.pdf.

Debt Financier means a financial institution providing debt finance on a limited recourse basis to You for the purpose of funding the Project and any security trustee or agent of any such financial institution.

Determination Notice has the meaning given to that term in clause 5.2(b).

Dispute has the meaning given to that term in clause 20.1(a).

Dispute Notice has the meaning given to that term in clause 20.1(b).

Distributed Funds has the meaning given to that term in Schedule 5.

Draft Calculations has the meaning given to that term in Schedule 5.

Draft Cure Plan has the meaning given to that term in Schedule 3.

Electricity Supply Authority means an owner, controller or operator of an electricity network in NSW, and includes a Distribution Network Service Provider (as defined in the NER).

Electric Vehicle or **EV** means a vehicle that is fully electric and powered by an electric drive train, or a plug-in hybrid. EVs do not include hybrid vehicles.

EV charger means a unit of fuelling infrastructure that supplies electric energy for the recharging of electric vehicles, such as EVs.

Eligible Expenditure means expenditure (inclusive of GST but less related input tax credits You or Your representative member is entitled to claim in relation to that expenditure) incurred by You after the Commencement Date that:

- (a) qualifies as eligible expenditure under the Grant Guidelines; or
- (b) the Office otherwise approves (in its absolute discretion) as eligible expenditure for the purposes of this agreement.

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Eligible LGA means one of the eligible local government areas listed in the Grant Guidelines.

Excused Hours has the meaning given to that term in Schedule 3.

External Controller means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Force Majeure Event has the meaning given to that term in clause 19.1.

Funds means any funds paid or payable by the Office to You under this agreement (as the context requires).

Funds Payment Request means a funds payment request in the form set out in Schedule 4.

Good Industry Practice means practices followed when works and services are undertaken in accordance with all of the following:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill;
- (c) using materials of merchantable quality which are fit for the Project and enable it to achieve the Objectives;
- (d) to the standard expected of an experienced, suitably qualified and competent contractor experienced in:
 - (i) the design, engineering, procurement, supply, installation, testing, commissioning, maintenance and operation of projects and infrastructure comparable to the Project;
 - (ii) performing works; and
 - (iii) providing services,of the skill and quality to be expected of an experienced, suitably qualified continually compliant and competent contract, with particular experience in Australia;
- (e) in accordance with all applicable Laws; and
- (f) consistently with best practice for the performance of the design, engineering, procurement, supply, installation, testing, commissioning, maintaining and operating of a facility that has the same or similar performance requirements of the Project and the EV chargers (where applicable) and the performance of:
 - (i) design, engineering, procurement, supply, installation and testing of works that are similar to the works to be undertaken with respect to the Project; and
 - (ii) commissioning, maintaining and operating equipment that is similar to the Project or the EV chargers as applicable.

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

Grant means the EV kerbside charging grant which is a payment to installation, ownership, operation, and maintenance of EV kerbside charging infrastructure provided in accordance with the Grant Guidelines.

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Grants Administration Guide means the guidelines administered by the NSW Government for the creation, offering and management of grant opportunities as amended from time to time, which as at the Commencement Date can be found at:

https://www.nsw.gov.au/sites/default/files/2022-09/Grants%20Administration%20Guide%20-%20September%202022_0.pdf

Grant Guidelines means the guidelines for the Grants found at: <https://www.energy.nsw.gov.au/sites/default/files/2023-07/202307-EV-kerbside-charging-grant-guidelines-round-1.pdf>.

Green Products means any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset, certificate (including LGCs) or allowance, howsoever entitled or designated, that is recognised or arises under a Green Product Scheme, in each case resulting from, attributable to or associated with the benefits to the environment of a Renewable Energy generation facility and which is capable of being measured, verified or calculated and transferred.

Green Product Scheme means each scheme, Law, policy or arrangement established or regulated by an Authority, and that provides for the recognition or creation of a Green Product, including the RET Scheme.

Hour has the meaning given to that term in Schedule 3.

Insolvency Event means the occurrence of any of the following events:

- (a) in relation to a corporation (including in its capacity as trustee of a trust):
 - (i) its Liquidation;
 - (ii) the appointment of an External Controller to the corporation or any of its property;
 - (iii) it entering into or resolving to enter into a Scheme;
 - (iv) it ceasing or threatening to cease carrying on its business;
 - (v) it becoming insolvent within the meaning of section 95A of the Corporations Act, presumed to be insolvent under sub-section 459C(2) of the Corporations Act or otherwise stopping or suspending, or threatening to stop or suspend, payment of all or a class of its debts as and when they become due and payable;
 - (vi) it taken to have failed to comply with a statutory demand as a result of sub-section 459F(1) of the Corporations Act;
 - (vii) any distress, attachment or writ of execution in an amount greater than \$10 million being issued, levied or enforced against it or its property;
 - (viii) any judgment in an amount of greater than \$10 million being issued, levied or enforced against it or its property that is not set aside, satisfied or stayed (through appeal or otherwise) within 10 Business Days; or
 - (ix) any security interest being enforced against its property in respect of a liability in excess of \$10 million at any time;
- (b) in relation to any person, the person is served with a Claim or anything analogous to or having a similar effect to anything described above in this definition under the law of the relevant jurisdiction.

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Intellectual Property Rights or IP includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
- (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how, but does not include Moral Rights.

Interest Rate means the daily 11am cash rate quoted on Reuters page RBA30 provided that if that rate is no longer published:

- (a) then Interest Rate will be another rate which the parties agree to adopt; or
- (b) if the parties do not agree on another rate, the Interest Rate will be the rate nominated by an appropriately qualified independent expert as the rate which is closest in its scope and operation to the daily 11am cash rate quoted on Reuters page RBA30 on its last date of publication.

kW (kilowatt) refers to 1,000 watts and used as a unit of measurement to express the output of power, such as for EV electric motors.

kWh (Kilowatt-Hour) refers to the energy consumed by a device, such as an EV electric motor, in one hour.

Law means:

- (a) any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with this agreement is or is to be carried out or regulated, including the NER and the rules of any recognised stock exchange;
- (b) any applicable law, whether of a legislative, equitable or common law nature; and
- (c) any judgment, decree or similar order with mandatory effect or any binding requirement or mandatory approval of an Authority.

Legally Commit means at any time, a present or accrued obligation on You under contract or at Law to pay money to a third party. It does not include any future obligation to make payment to a third party:

- (a) which is subject to any outstanding condition to payment (other than the expiration of time) or other contingency that has not been satisfied at that time; or
- (b) which You have a right to cancel, suspend or terminate under the contract or under Law.

LGC means a Large-scale Generation Certificate created and registered pursuant to the *Renewable Energy (Electricity) Act 2000* (Cth).

Liquidation means a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, deregistration, or steps are taken (including the calling of meetings or the filing of applications), orders are made or resolutions are passed to give effect to any of the above.

Milestone means each of the milestones set out in Schedule 1.

Milestone 3 Completion Date has the meaning given to that term in Schedule 5.

Modern Slavery means slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices as defined in the Modern Slavery Laws.

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Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), and any other anti-Modern Slavery laws or regulations in force in Australia, and where relevant in other jurisdictions including anti-slavery and human trafficking Laws, international anti-slavery and human trafficking Laws.

Modern Slavery Offence means an offence of or in connection to Modern Slavery.

Moral Rights has the same meaning as in the *Copyright Act 1968* (Cth).

National Electricity Law means the national electricity law introduced by the *National Electricity (New South Wales) Act 1997* (NSW) and amended from time to time.

NER means the National Electricity Rules made under the National Electricity Law.

Notice means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this agreement.

Objectives means the objectives of the EV kerbside charging grants program as below:

- (a) support NSW's goal of being the easiest place in Australia to own and drive an EV;
- (b) increase EV charging options for EV drivers with limited or no access to off-street parking;
- (c) cater for an increasing number of EV drivers and instil confidence in those considering the transition to an EV;
- (d) test different kerbside charging technologies and commercial models to develop a sustainable kerbside charging market; and
- (e) provide information and support on planning approvals pathways for kerbside charging.

Office means the NSW Government department responsible for the administration of the EV kerbside charging grants, which at the time of publishing of the Grant Guidelines is the NSW Office of Energy and Climate Change.

Operational has the meaning given to that term in Schedule 3.

Operational Obligations means the obligations set out in Schedule 3.

Overseas Expenditure means any expenditure of Funds by You outside of Australia or payment of Funds by You to a non-Australian entity except where:

- (a) used for the purchase of equipment or materials for the Project; or
- (b) otherwise exempted from the definition of Overseas Expenditure by agreement of the Office in writing.

Payment Criteria means the criteria set out in clause 5.1.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Personnel means in relation to a party, any employee, officer, agent or professional adviser or subcontractor of that party.

Plans means the maintenance schedule, risk plan and decommissioning plan provided by You and accepted by the Office prior to signing this agreement.

Privacy Law means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW), the Office's privacy policies, and all other applicable privacy laws, codes and policies, including the *Privacy Act 1988* (Cth).

Project means the project as described in item 1 of the Details.

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Project Installation Date is the date specified in item 4 of the Details.

Project Material means material created as part of or in performance of the Project including any documents or data and including any documents and data included with the application for the Funding.

Refund Amount means the refund amount calculated in accordance with clause 1.3(b) of Schedule 5.

Related Body Corporate has the meaning in the Corporations Act.

Renewable Energy means energy that is produced from natural resources that do not run out when used – for example, solar or wind power.

RET Scheme means the Renewable Energy Target scheme established under the *Renewable Energy (Electricity) Act 2000* (Cth).

Report means a report provided by You to the Office, that includes evidence of the Activities having been completed and other details as specified in Schedule 2.

Scheme means an arrangement, assignment, composition, merger, amalgamation, reconstruction, or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under part 5.3A of the Corporations Act), other than for the purposes of a solvent reconstruction or amalgamation as approved by the Office.

Site Design means the design of the charging site(s) set out in Your Application.

Significant Asset means any asset or group of assets (including Assets, contractual rights or Authorisations) which is reasonably required by You to install, own, operate and maintain the Project in accordance with this agreement.

Subsequent Milestone means each Milestone other than Milestone 1.

Third Party Material means the material specified in item 10 of the Details.

Total Grant Funds is the amount of funds specified in item 3 of the Details.

Total Project Capital Costs is the total amount of capital costs for the Project specified in item 2 of the Details.

Update Period means the period of six months commencing on the Commencement Date and each six month period thereafter occurring partly or wholly during the Term.

Uptime Target has the meaning given to that term in Schedule 3.

Visitor has the meaning given to that term in clause 14(m).

WHS Laws means all applicable Law relating to work health and safety and electrical safety, and includes (without limitation):

- (a) *Work Health and Safety Act 2011* (Cth);
- (b) *Work Health and Safety Regulations 2011* (Cth); and
- (c) *Work Health and Safety Act 2011* (NSW).

3 Term

- (a) This agreement will commence on the Commencement Date.
- (b) Unless terminated earlier, this agreement will end after You have completed the Project to the Office's satisfaction and the Office has paid all Funding due.

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4 Obligations

4.1 Your obligations

Subject to the terms of this agreement, You must:

- (a) ensure the Funding is used only for the approved Project;
- (b) ensure that all EV charging sites listed in Annexure 2 are Commissioned by the Project Installation Date;
- (c) ensure that all EV charging sites listed in Annexure 2 are Operational for 12 months after the date that the relevant EV charging site is Commissioned;
- (d) comply with the reporting requirements set out in Schedule 2;
- (e) comply with the Operational Obligations;
- (f) maintain the EV charger(s) and ensure that it operates safely for the lifespan of the equipment, in accordance with Good Industry Practice;
- (g) comply with all applicable Commonwealth, State and Local government Laws;
- (h) not provide misleading, false or inaccurate information in or related to Your Application, the Project, the Grant or this agreement and notify the Office no later than 1 Business Day after becoming aware that any information provided to the Office in Your Application or otherwise related to this agreement is misleading, false or inaccurate;
- (i) comply with all policies, guidelines and reasonable directions the Office provides to You;
- (j) comply with all Plans in accordance with applicable Law and the requirements of council and Electricity Supply Authorities (where relevant);
- (k) ensure all EV chargers procured under this agreement meet the technical requirements listed in Table 4 of the Grant Guidelines or are on the NSW Government approved EV charger and software list;
- (l) ensure the Project meets the specifications as set out in Annexure 2;
- (m) ensure no other grant funding is used in payment, in part or in full, of any EV charger co-funded under this Grant, and notify the Office within 5 Business Days of becoming aware that there has been a breach of this obligation; and
- (n) notify the Office in writing, as soon as reasonably practicable, of any material delay or anticipated material delay to the progress of the Project.

5 Funding

5.1 Paying the funding

The Office will make payment in accordance with Schedule 1 on condition that the following **Payment Criteria** are satisfied:

- (1) You have achieved the relevant Milestone in accordance with Schedule 1;
- (2) You have provided all Plans and Reports in accordance with this agreement due to be provided before the date of payment;

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- (3) You have submitted a Correctly Rendered Invoice to the email address of the Office Authorised Officer specified in the Details that clearly identifies the payment You are claiming;
 - (4) You have submitted a Funds Payment Request;
 - (5) You are not in breach of any term of the Grant Guidelines or this agreement; and
 - (6) the total Funds requested, when taken with all other Funds previously provided to You under this agreement, do not exceed the Total Grant Funds.
- (b) Notwithstanding any other provision of this agreement, the Office's total liability under or in connection with this agreement, including all the Funds paid or payable, will not exceed the Total Grant Funds, unless otherwise agreed by the parties in writing.
- (c) The Office may reduce any money due for payment by the Office to You under this agreement against any money owed by You:
- (1) to the Office under this agreement or any other agreement between the parties under which the Office provides Funding to You; or
 - (2) to the NSW Government under another agreement.
- (d) Following the Milestone 3 Completion Date, the Total Grant Funds may be adjusted in accordance with the process set out in Schedule 5.

5.2 Funds Payment Request

- (a) You may submit a request for payment of the Funds, in the form of a Funds Payment Request:
- (1) on the Commencement Date in relation to achievement of Milestone 1 (**Milestone 1 Payment Request**); and
 - (2) upon achievement of a Subsequent Milestone (**Subsequent Milestone Payment Request**).
- (b) The Office must promptly after receipt of the Milestone 1 Payment Request, deposit the Funds payable upon achievement of Milestone 1 into the Bank Account or authorise release of the Funds payable upon achievement of Milestone 1 from the Bank Account, as applicable.
- (c) The Office must, within 20 Business Days of receipt of the Funds Payment Request and all other information reasonably required to determine whether or not the Payment Criteria are satisfied, provide You with a notice setting out the Office's determination as to whether or not the Payment Criteria have been satisfied (**Determination Notice**).
- (d) The Office must, within 20 Business Days of delivering a Determination Notice confirming that the Payment Criteria for a Subsequent Milestone have been satisfied:
- (1) deposit the Funds payable upon achievement of that Subsequent Milestone into the Bank Account; or
 - (2) authorise release of the Funds payable upon achievement of that Subsequent Milestone from the Bank Account, as applicable.

5.3 Use of the funds

- (a) You must apply or Legally Commit the Funds only:
- (1) for Eligible Expenditure;

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- (2) in accordance with, and as contemplated in, the then-current Budget as may be amended from time to time under clause 9;
- (3) so that at all times:
 - (A) no more than 80% of the total installation and equipment costs per EV charger incurred or expected to be incurred are sourced from the Funds;
 - (B) if applicable, no more than 80% of the cost of a three-year EV charger software subscription for each charging site incurred or expected to be incurred are sourced from the Funds; and
 - (C) the total Funds per charge port does not exceed \$10,000 (ex GST); and
- (4) in accordance with the terms and conditions set out in this agreement.
- (b) Without limiting clause 5.3(a), You must not spend more than 10% of the Funds on Overseas Expenditure unless otherwise agreed in writing by the Office.

5.4 Early payment of Undisbursed Funds

The Office may, in its sole discretion, pay to You or deposit into the Bank Account some or all of the Undisbursed Funds before the time otherwise specified for payment in this clause 5.

5.5 Invoices

You must cooperate with any request by the Office with respect to invoicing and payment where the Office advises that it is moving to a different payment system.

5.6 Withholding and suspension of funds

- (a) Without prejudice to any other right the Office may have, the Office's may, in its absolute discretion, withhold, suspend or reduce payment of the Funds where you have:
 - (1) provided any information or made any representations to the Office in Your Application, or as part of an audit carried out by the Office, that the Office considers may be inaccurate, misleading, deceptive, deceitful, or fraudulent and where further information is needed to resolve discrepancies and apparent inconsistencies; or
 - (2) been identified as not having complied with this agreement or the Grant Guidelines whether as a result of an audit or otherwise, such as but not limited to:
 - (A) the co-funded EV chargers not being installed in an Eligible LGA;
 - (B) not satisfying the obligations in clause 4.1; or
 - (C) inappropriate use of the co-funded EV chargers.
- (b) Without prejudice to any other right the Office may have, if you are not complying with this agreement or the Grant Guidelines, the Office may withhold or suspend payment until you comply with your obligations to the Office's satisfaction.
- (c) If the Office withholds or suspends any payment in accordance with clause 5.6, You must continue to perform Your obligations under this agreement.

5.7 Repayment of funds

- (a) Notwithstanding anything else in this agreement, the Office may, in its absolute discretion, require You to repay some or all of the Funds in the circumstances and to the extent specified below:
- (1) **(misspent funds)**: the amount of any Funds which, in the Office's opinion (acting reasonably) and at any time, has been spent or used other than in accordance with this agreement;
 - (2) **(wilful breach)**: if You have wilfully, fraudulently or recklessly breached this agreement, the full amount of any Funds which have been paid You by the Office under this agreement;
 - (3) **(Abandonment)**: within 10 Business Days after the Office gives You notice to make repayment following Abandonment, an amount equal to all the Funds provided under this agreement if You Abandon the Project prior to the achievement of Milestone 4 and do not resume performance of the Project;
 - (4) **(Change in Control or transfer)**: at any time, an amount equal to all the Funds provided under this agreement if the Office terminates this agreement under clause 15.1(a)(1) because You are in breach of clause 16.1(a) or clause 21(h);
 - (5) **(material change to Project costs)**: an amount equal to any Refund Amount calculated in accordance with Schedule 5; or
 - (6) **(misleading information)**: the amount of any Funds, which the Office subsequently determined (acting reasonably) that You received as a result of providing misleading, false, or inaccurate information but You were not entitled to receive.
- (b) The Office may give You a repayment notice requiring You to repay to the Office an amount which the Office is entitled to recover under clause 5.7(a). If the Office gives You such notice, You must, within 20 Business Days of the date of the repayment notice, repay the amount (including interest calculated as set out in clause 5.7(c)) specified in the repayment notice.
- (c) Unless otherwise stated by the Office, You must pay interest to the Office in connection with any amount notified as owing to the Office under clause 5.7(a). The rate of interest will be calculated:
- (1) on the amount to be repaid to the Office as set out in the Office's repayment notice;
 - (2) at the Interest Rate plus 3%;
 - (3) on a semi-annually compounding basis upon the principal amount specified in the notice as repayable to the Office; and
 - (4) from and including the date the amount is payable under clause 5.7(b) up to but excluding the day on which You repay the total amount specified in the notice as owing to the Office, without any set off, counter-claim, condition, abatement, deduction or withholding.
- (d) You acknowledge that the amounts to be paid to the Office under this clause 5.7 are a genuine pre-estimate of the losses incurred by the Office for the defaults described in this clause 5.7.
- (e) This clause 5.7 does not limit any other right or remedy of the Office.
- (f) Any repayment the Office claims from You under this clause 5.7 will be a debt due and owing by You to the Office.

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- (g) Failure to repay in accordance with this agreement may result in the Office excluding You from future funding rounds and future grants.

6 Bank Account

6.1 Bank Account requirements

You must:

- (a) ensure that the Funds are held in an account in Your name, and which is not controlled by any person other than the account bank, You, a Related Body Corporate of You or a Debt Financier, with a deposit-taking institution in Australia authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia (**Bank Account**);
- (b) notify the Office, prior to the receipt of any the Funds, of details sufficient to identify the Bank Account;
- (c) maintain a separate ledger in relation to the account for the sole purpose of accounting for, and administering, any Funds paid to You for this Project; and
- (d) identify the receipt and expenditure of the Funds separately within Your accounting records so that at all times the Funds are identifiable and ascertainable.

6.2 Withdrawal of funds from the Bank Account

You must not withdraw or transfer funds from a Bank Account other than in accordance with this agreement.

7 Contributions

Other than with respect to payment of the Funds in accordance with this agreement, You are responsible for providing or securing all funds and resources, and bearing all costs necessary, to complete the Project (including on account of cost overruns).

8 GST

- (a) All consideration for any supply under this agreement is inclusive of any GST imposed in relation to the supply, subject to clause 8(b).
- (b) If, despite any other provision of this agreement, GST is imposed on a supply, You will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply, the amount of the Funding is not to include any amount for GST for which You are entitled to an input tax credit.
- (c) If You are not registered under the GST Law, You will not be entitled to receive any additional amount for GST as provided under this clause 8.
- (d) If for any reason the Office pays You an amount under this clause 8 which is more than the GST imposed on the supply, You must repay the excess to the Office on demand, or the Office may set off the excess as specified in clause 5.1(c).

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9 Variations

9.1 Variations

Any variation of this agreement (including any Schedule) must be in writing and signed by the parties.

9.2 Variation requests

- (a) Subject to clause 9.3, You may request a variation of this agreement by providing the Office with written details of the proposed variation.
- (b) The Office may provide or withhold its consent in its absolute discretion to the extent the requested variation:
 - (1) is a change to the Project Installation Date (including a change to the Project Installation Date required to address a Force Majeure Event); or
 - (2) is otherwise not contemplated under clause 9.3.

9.3 Variations to Project

- (a) You acknowledge that the location, number and configuration of charging sites and other characteristics of the EV chargers proposed as part of Your Application were closely considered by the Office in deciding to award the Funding to You.
- (b) If You wish to request a variation to any material aspect of the Project, including:
 - (1) a change to the street address of a charging site;
 - (2) a change to the number of charge ports at a charging site;
 - (3) exclusion of a charging site from the Project without replacement; or
 - (4) any change to the Site Design or configuration; or
 - (5) any change to the EV charger hardware or a change to the EV charger software at a charging site.

You must provide written notice to the Office setting out details of the requested variation including the following:

- (6) details of the charging site the subject of the variation including its original and, if applicable, its proposed new street address;
- (7) the Eligible LGA in which the charging site is located;
- (8) letters of support from each council where proposed EV chargers are to be located, and for any EV chargers that interact with an Electricity Supply Authority asset (e.g. electricity pole mounted, lighting pole mounted or kiosk EV chargers) a letter of support from the relevant Electricity Supply Authority;
- (9) any actual or proposed Eligible Expenditure in relation to each relevant charging site and confirmation of any Activities that have been completed in respect of it;
- (10) the proportion of the Total Project Capital Costs assigned to the charging site;
- (11) if applicable, full details of any proposed variations to the charging site, including its configuration, the number of charge ports, and Your view as to how, following the proposed variations, the charging site will meet the Assessment Criteria;
- (12) reasons for the requested variation or exclusion; and

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- (13) any change in the costs (including Eligible Expenditure and the amount of total Funds proposed by You) in connection with the variation or exclusion and the reasons for the change.
- (c) The Office will act reasonably in providing or withholding its consent to a variation requested by You under this clause 9.3.

9.4 Reduction of funds due to Project variation

- (a) The Office may impose reasonable conditions on any consent to a variation under clause 9.3 including a reduction in the total Funding payable to You under this agreement to:
 - (1) reflect the decrease in Eligible Expenditure;
 - (2) ensure that the Office's Funding does not exceed:
 - (A) 80% of the total installation and equipment costs per EV charger incurred or expected to be incurred;
 - (B) if applicable, 80% of the cost of a three-year EV charger software subscription for each charging site incurred or expected to be incurred; and
 - (C) \$10,000 (ex GST) per charge port.
- (b) The Office may give effect to any reduction in Funding under clause 9.4(a) by:
 - (1) making one or more deductions from payments due in respect of any Subsequent Milestone(s) satisfied by You; or
 - (2) directing You to repay some or all of the Funds already paid by the Office to You.

9.5 Variations to Budget

- (a) Subject to clauses 9.5(b), You may amend the Budget without the consent of the Office.
- (b) You must not amend the Budget or otherwise apply or Legally Commit the Funds (without the prior written consent of the Office), if this will result in:
 - (1) the total Funds exceeding the amount originally approved;
 - (2) more than 80% of the total installation and equipment costs per EV charger incurred or expected to be incurred being sourced from the Funds;
 - (3) if applicable, more than 80% of the cost of a three-year EV charger software subscription for each charging site incurred or expected to be incurred being sourced from the Funds;
 - (4) the total Funds per charge port exceeding \$10,000 (ex GST); or
 - (5) the total Overseas Expenditure exceeding 10% of the Funds.
- (c) Within 20 Business Days of the end of each Update Period, You must provide the Office with a notice identifying any amendments made, and justification for these, to the Budget during that Update Period and attaching a copy of the amended Budget.

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10 Material and Information

10.1 Reporting requirements

- (a) You agree to provide the Office with written Reports at the times and containing the information specified in Schedule 2, in the form and substance satisfactory to the Office.
- (b) If the Office rejects the Report, You must reissue that Report in a form and substance that addresses the issues raised by the Office for the Office's approval or rejection under by the date specified by the Office (acting reasonably).
- (c) You must also provide any other information the Office reasonably requires from time to time concerning the Project.
- (d) If this agreement is terminated by the Office as a result of You:
 - (1) Abandoning the Project;
 - (2) failing to Commission all EV charging sites listed in Annexure 2 by the Project Installation Date; or
 - (3) failing to ensure that all EV charging sites listed in Annexure 2 are Operational for 12 months following the date that the relevant EV charging site is Commissioned,

within 30 Business Days after the termination, You must provide a report explaining the reasons for such termination and the information, knowledge and lessons learnt (both positive and negative) by You or Your Personnel from the Project. If such report contains information confidential to You, You must, on request by the Office, provide a further report that is suitable for public release explaining the reasons for such termination and the information, knowledge and lessons learnt (both positive and negative) by You or Your Personnel from the Project (to the extent possible).

- (e) If any Report contains information confidential to You, You should mark the relevant parts of the Report accordingly.

10.2 Intellectual Property

- (a) Intellectual Property Rights in all Project Material vests in You, unless otherwise stated in the Details.
- (b) On request from the Office, You will provide the Office with a copy of any Project Material in a format reasonably requested by the Office.
- (c) You grant to, or where You do not own the relevant Project Materials, obtain for, the Office a perpetual, irrevocable, transferable, sub-licensable and royalty free licence to use the IP in the Project Material and Reports.
- (d) You will use best endeavours to obtain any Moral Rights consents or waivers necessary to perform Your obligations under this agreement.
- (e) The parties acknowledge and agree that this agreement does not affect ownership of the Intellectual Property Rights in any Third Party Material.
- (f) If someone claims, or the Office reasonably believes that someone is likely to claim, that all or part of the Project Materials or their use in accordance with this agreement infringe their Intellectual Property Rights or Moral Rights, in addition to the indemnity under clause 13.2 and to any other rights that the Office may have, promptly, at Your expense:
 - (1) use its best efforts to secure the rights for the Office to continue to use the affected Project Materials free of any claim or liability for infringement; or

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- (2) replace or modify the affected Project Materials so that the Project Materials or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any other person without any degradation of the performance or quality of the affected Project Materials.

10.3 Privacy

You will:

- (a) ensure that Personal Information that is provided by the Office or collected by You under or in connection with this agreement is used only for the purposes of this agreement and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
 - (1) the individual to whom the Personal Information relates; or
 - (2) the Office, unless otherwise required or authorised by Law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998 (NSW)* when doing any act or engaging in any practice in relation to Personal Information as if You were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause 10.3) in any subcontract entered into for the provision of any of the Activities under this agreement.

10.4 Public Announcements and Acknowledgement

- (a) You must:
 - (1) acknowledge the financial and other support received from the Office in all publications, promotional and advertising materials, public announcements, events and activities in relation to the Project, and, if required by the Office, at each charging site;
 - (2) include a disclaimer as specified in item 7 of the Details or otherwise approved by the Office in all published material relating to the Project;
 - (3) promote and share via media and communications the Project and benefits of all EV charger(s) co-funded under this agreement;
 - (4) provide advance Notice to the Office of any public statements made by You related to the Project;
 - (5) immediately, and in any case by no later than 1 Business Day after receipt of a request by the Office, correct any incorrect statements made by You referring to the Office and/or the Project; and
 - (6) remove any public webpages, posts, statements, or disclosures as to the Project as reasonably requested by the Office.
- (b) The Office may:
 - (1) publish the title and brief description, including outcomes, of the Project and the amount of the Funding including but not limited to Your name and the name of Your business, the number, locations, and installation types of EV chargers co-funded; and
 - (2) publish details in relation to the Funding as required by the *Government Sector Finance Act 2018 (NSW)* and the Grants Administration Guide.

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11 Disclosure of Information

11.1 Confidentiality

- (a) Each party must maintain the confidentiality of all Confidential Information it receives from the other party, including the amount of the Funding, except in accordance with clause 10.4 and this clause 11, as required by Law or as otherwise agreed in writing.
- (b) Notwithstanding any other provision of this agreement, the Office may disclose Confidential Information it receives from You:
 - (1) to the Office's Personnel or advisers;
 - (2) to a house or a committee of the Parliament of New South Wales and/or the Parliament of Australia, or any of the Commonwealth or State or Territory Ombudsmen;
 - (3) to the Office's responsible Minister or to any NSW Government or Australian Government agency; or
 - (4) where required by Law.
- (c) Without limiting any other provision of this agreement, where You disclose Office Confidential Information to a third party, You must:
 - (1) give notice to the receiving party in writing that the information is Confidential Information; and
 - (2) only provide the Confidential Information if the receiving party agrees to keep the information confidential as if it were bound by the obligations of confidentiality imposed under this agreement.
- (d) You acknowledge that the Confidential Information You provided to the Office may be provided to a contractor for data handling and analysis services or incorporated into databases or other IT systems, and aggregated into documents or other media for public release, provided that arrangements are in place to maintain confidentiality of Your Confidential Information.

11.2 GIPA

- (a) You acknowledge that, under the *Government Information (Public Access) Act 2009*, the Office may be required to publicly disclose information about this agreement at <https://tenders.nsw.gov.au>. None of the disclosure obligations require the disclosure of:
 - (1) the commercial-in-confidence provisions of a contract;
 - (2) any matter that could reasonably be expected to affect public safety or security; or
 - (3) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.
- (b) In the event of a request made under the *Government Information (Public Access) Act 2009*, You may nominate any items You consider are confidential and why, to assist the Office in determining what items to disclose.

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12 Warranties

12.1 Warranties

You represent and warrant that:

- (a) **(corporate power)**: You have the corporate power to own Your assets and to carry on Your business as it is now being conducted;
- (b) **(authority)**: You have the right, power and authority to enter into, perform and observe Your obligations under this agreement;
- (c) **(authorisations)**: the execution, delivery and performance of this agreement has been duly and validly authorised by You;
- (d) **(binding obligations)**: this agreement constitutes legal, valid and binding obligations and is enforceable in accordance with its terms, subject to Laws generally affecting creditors' rights and to principles of equity;
- (e) **(transaction permitted)**: You will not be breaching any Law, Authorisation or agreement by signing and performing this agreement;
- (f) **(no misleading information)**: all information provided to the Office (including in the Application) is true, correct and complete in all material respects and is not misleading at the time given to the Office and, other than to the extent that You have given the Office prior notice in writing otherwise, as at the Commencement Date and the date each Funds Payment Request is submitted;
- (g) **(Plans)** all Plans provided in accordance with this agreement are compliant with applicable Law, the requirements of councils and Electricity Supply Authorities (where relevant);
- (h) **(not a trustee)**: You do not enter into this agreement as trustee of any trust (unless otherwise stated in this agreement);
- (i) **(conflicts of interest)**: to the best of Your knowledge after making diligent inquiry, and except as otherwise disclosed to the Office, no conflict of interest exists or is likely to arise in the performance of Your obligations under this agreement;
- (j) **(employee entitlements)**: You are not subject to any judicial decision against it relating to employee entitlements (not including decisions under appeal) where You have not paid the claim;
- (k) **(Project Materials)**: the Project Materials and to the best of Your knowledge the Office's use of the Project Materials in accordance with this agreement will not infringe the Intellectual Property Rights or Moral Rights of any person;
- (l) **(legal capacity)**: You have full legal capacity to own its own property, undertake the Project and enter into this agreement, and to carry out the transactions that each of these contemplate;
- (m) **(financial capacity)**: You have or will have, sufficient funds to complete the Project;
- (n) **(insolvency)**: no Insolvency Event has occurred, and there are no reasonable grounds to suspect that an Insolvency Event will occur, in respect of You; and
- (o) **(qualifications)**: You and your Personnel have the necessary experience, skill, knowledge, expertise and competence to undertake the Project and hold (or will hold when required) such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to undertake the Project, and are fit and proper people.

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12.2 Trustee warranties

[Drafting note: This clause 12.2 will be deleted if the Recipient is not a trustee of a trust.]

You enter into this agreement as a trustee of a trust (**Trust**), You represent and warrant that:

- (a) the Trust has been duly established;
- (b) the Office has been provided with a true and correct copy of the trust deed of the Trust;
- (c) You have been validly appointed as the sole trustee of the Trust and no action has been taken, or to Your knowledge has been proposed, to remove You as trustee;
- (d) You have full and valid power and authority to enter into this agreement and perform the obligations under it on behalf of the Trust;
- (e) You have entered into this agreement for the proper administration of the Trust;
- (f) You have obtained or duly satisfied all necessary resolutions, consents, approvals and procedures to enter into this agreement and perform the obligations under it;
- (g) You have the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this agreement;
- (h) You will not, without the consent of the Office, do anything which:
 - (1) amends the trust deed of the Trust in any manner which is likely to be adverse to the interests of the Office;
 - (2) reduces Your right of indemnity from the assets of the Trust;
 - (3) effects or facilitates the termination of the Trust; or
 - (4) effects or facilitates the resettlement of the assets of the Trust; and
- (i) You will exercise Your right of indemnity under the trust deed in respect of liabilities You incur under this agreement.]

12.3 Reliance on warranties

- (a) Each Warranty will, unless otherwise specified, be made on the signing of this agreement by You and be repeated each day of the term of this agreement.
- (b) As soon as practicable after becoming aware of any matter which is likely to impact upon the accuracy of a Warranty, or Your ability to comply with a warranty, You must give written notice to the Office detailing that matter and its likely impact on Your ability to comply with that Warranty.
- (c) You acknowledge and agree that the Office has entered into this agreement and performs this agreement in reliance on the Warranties.

13 Dealing with risk

13.1 Insurance

- (a) You must maintain, at Your own cost, and use reasonable endeavours to require Your subcontractors to maintain, the insurances that would be maintained by a prudent business undertaking the Project or operating the EV chargers (where applicable), including as may be reasonably required by the Office.

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- (b) You must not do, permit, or suffer any act, matter or thing or omission whereby any of the policies required under this clause lapse or may be vitiated, rendered void or voidable.
- (c) On request by the Office, You must provide a copy of valid and current certificates of currency or other sufficient evidence to satisfy the Office that such insurances have been procured and maintained and diligently pursue any claim under those insurances.

13.2 Indemnities

- (a) You must indemnify and keep indemnified the Office, the Crown in right of the State of New South Wales and its Personnel from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
 - (1) the carrying out of works or services, or the supply of goods or services, or the operation of an EV charger or other equipment or plant in connection with the Project;
 - (2) Your breach of this agreement;
 - (3) any unlawful or negligent act or omission by You, Your Personnel, Your Related Bodies Corporate or their Personnel in connection with this agreement;
 - (4) any illness, injury or death of any person You, Your Personnel, Your Related Bodies Corporate or their Personnel cause or contribute to, in connection with this agreement;
 - (5) any loss or damage to real or personal property You or Your Personnel cause or contribute to, in connection with this agreement; or
 - (6) any act or omission by You or Your Personnel in connection with this agreement that is in infringement of any Intellectual Property Rights, or privacy rights of the Office or any third party.
- (b) Your liability to indemnify the Office under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Office, its officers, employees, or agents contributed to the relevant loss or liability.
- (c) Your liability to indemnify the Office under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute, or the other terms of this agreement.
- (d) Neither party will be liable to the other party for Consequential Loss arising under or in connection with this agreement.

14 Undertakings and acknowledgements

You must:

- (a) **(cooperation)**: cooperate with the Office and other parties, and attend any meetings reasonably requested by the Office;
- (b) **(standards)**: undertake the Project diligently, efficiently, safely and to a high professional standard, in accordance with Good Industry Practice and in accordance with this agreement;
- (c) **(reporting)**: comply with the reporting requirements set out in Schedule 2 keep the Office regularly and fully informed regarding progress of the Project;

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- (d) **(Laws)**: comply with:
 - (1) all applicable Laws, including any WHS Laws;
 - (2) all relevant Australian industry standards, codes, best practice and guidelines or, where none apply, relevant international industry standards, best practice and guidelines including the Grant Guidelines; and
 - (3) applicable NSW government policies and all reasonable directions issued by the Office to You;
- (e) **(privacy)**: comply with all reasonable directions by the Office to You relating to the Office's compliance with Privacy Law or resolution of any complaint alleging a breach of Privacy Law relating to the Project;
- (f) **(GIPA)**: to the extent that You or any subcontractor is required to provide goods or services to the public on behalf of the Office, within 3 Business Days of receiving a written request by the Office, You, or any relevant subcontractor, must provide the Office with immediate access to information referred to in Section 121(1) of the *Government Information (Public Access) Act 2009* (NSW) contained in records held, and in such a medium, as the Office may reasonably require. The Office acknowledges that it will consult with You or relevant subcontractor before releasing any information obtained where required under section 54 of the *Government Information (Public Access) Act 2009* (NSW);
- (g) **(adverse effect notification)**:
 - (1) advise the Office as soon as possible, and in any event within 24 hours of becoming aware of any circumstances which have or which are reasonably likely to have a materially adverse effect on:
 - (A) Your ability to comply with this agreement,
 - (B) Your ability to complete the Project or achieve the Objectives;
 - (C) the Office's or the NSW Government's reputation; and
 - (2) notify the Office as soon as practicable of any significant concerns of local community groups of which You become aware;
- (h) **(transactions with a Related Body Corporate)**: ensure that any transaction between You and any of Your Related Bodies Corporate is on terms no less favourable to You than the terms of a comparable transaction negotiated at arms' length with an unrelated third party;
- (i) **(books and records)**: at Your own cost, during the period of this agreement, keep, and use reasonable endeavours to require Your subcontractors to keep, adequate books and records in sufficient detail to enable:
 - (1) all receipts and payments related to the Project to be identified and reported to the Office; and
 - (2) the amounts payable by the Office under this agreement to be determined or verified;
- (j) **(monitoring)**: meet with the Office at the times and in the manner reasonably required by the Office to discuss any issues in relation to this agreement or the Project;
- (k) **(information)**: provide any information reasonably requested by the Office in connection with this agreement, the Project or the Objectives;
- (l) **(conflicts)**: if, during the Project, a conflict of interest arises, or appears likely to arise, notify the Office promptly in writing, make full disclosure of all relevant information relating to the conflict and take such steps as the Office requires to resolve or otherwise deal with the conflict;

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- (m) **(visitations)**: during the term of this agreement and until 3 years after the end of the EV kerbside charging grant program:
 - (1) allow and provide the Office escorted visits by interested persons approved by the Office or You (**Visitors**) to sites under Your control where activities relating to the Project are conducted;
 - (2) use best endeavours to obtain permission for escorted visits by Visitors to sites not under Your control where the activities relating to the Project are conducted;
 - (3) demonstrate the activities relating to or arising from the Project to Visitors and relevant technology and provide detailed explanations where requested; and
 - (4) allow the Office representatives to be present at visits,provided that all Visitors must comply with any health, safety or other policies and procedures applicable to the relevant Project site as a condition of entry;
- (n) **(Bank Account)**: comply with the bank account requirements specified in clause 6; and
- (o) **(notification)**: notwithstanding any other provision of this agreement, notify the Office immediately if it becomes aware that:
 - (1) it has not undertaken the Project as required under this agreement or has not spent the Funds in accordance with this agreement;
 - (2) it has, or may have, committed a breach of this agreement;
 - (3) it has received, or requested to receive, other funds from the NSW Government or the Commonwealth for the Project;
 - (4) an Insolvency Event has occurred or is likely to occur with respect to You; or
 - (5) there is a material change to (after the Commencement Date) a legal and/or beneficial right to use, access or have title to any Significant Asset.

15 Terminating the agreement

15.1 Termination

- (a) The Office may terminate this agreement by Notice, with effect on the date stated in the Notice, if:
 - (1) You materially breach any of the following provisions: clause 4 (Obligations), clause 10.1 (Reporting Requirements), clause 16 (Change in Control) or clause 21(h) (Assignment);
 - (2) the Office considers that there has been a material change in circumstances in Your financial position, Your structure or Your identity; or
 - (3) subject to applicable Law, an Insolvency Event has occurred in respect of You.
- (b) The Office will provide You with an opportunity to remedy any breach or change in circumstances prior to exercising its right to terminate under clause 15.1(a)(1) or 15.1(a)(2) where it considers, acting reasonably, that it is appropriate to do so having regard to the nature and impact of any breach or change in circumstances.
- (c) This clause 15.1 does not exclude or reduce the rights of a party to terminate this agreement arising by operation of the common law or statute or the other terms of this agreement.

15.2 Rights and entitlements upon termination

- (a) On termination or expiry of this agreement:
 - (1) the Office is not obliged to pay to You any compensation, or any outstanding amount of Funding under this agreement;
 - (2) without limiting any other rights and remedies it may have, the Office is immediately entitled to recover any Undisbursed Funds and other moneys remaining in the Bank Account at the time of termination; and
 - (3) You must repay to the Office any amounts demanded by the Office in accordance with clause 5.7.
- (b) Termination of this agreement does not affect any accrued rights or remedies of a party.

16 Change in Control

16.1 Change in Control

- (a) You must obtain the prior written consent of the Office in respect of any Change in Control during the term of this agreement.
- (b) You must provide the Office with any information about the Change in Control reasonably requested by the Office to allow the Office to assess whether to provide its consent.
- (c) The Office may require as a condition to its consent that any person acquiring control of You enter into a deed in form and substance acceptable to the Office pursuant to which that person undertakes to ensure that You comply with its obligations under this agreement.

16.2 Impending Change in Control

You represent and warrant that You have disclosed to the Office any circumstances or intentions of which You are actually aware that are reasonably likely to give rise to a Change in Control on or before the date all Milestones have been achieved.

17 Assets

17.1 Assets generally

- (a) During the term of this agreement, You must:
 - (1) use any Asset only for the purposes of the Project or other purposes consistent with the Objectives;
 - (2) obtain and maintain good title to all Assets (other than Assets which You lease);
 - (3) hold the EV charger(s) listed in Annexure 2 and all other Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
 - (4) use all reasonable endeavours to maintain the EV charger(s) listed in Annexure 2 and all Assets in good working order;
 - (5) maintain all appropriate insurances in respect of any Assets;

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- (6) if required by Law, maintain registration and licensing of all Assets;
 - (7) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets; and
 - (8) if requested by the Office, maintain an Assets register as specified by the Office, and provide a copy of the register to the Office on request.
- (b) If prior to the date the last Milestone has been achieved any Asset is lost, damaged or destroyed, You must reinstate or replace the Asset (including by using the proceeds of insurance) without using any of the Funds and this clause 17.1 continues to apply to the reinstated or replaced Asset.

17.2 Sale of Significant Assets

Until the date the last Milestone has been achieved, You must not (unless otherwise agreed with the Office in writing) encumber or dispose of any Significant Asset or otherwise encumber or dispose of the Project, any EV charger listed in Annexure 2 or any Asset without the Office's prior approval which approval must not be unreasonably withheld.

18 Evaluation, audits and access

18.1 Evaluation

- (a) The Office may undertake an evaluation of the Project at any time, either directly or through a third party adviser.
- (b) You must, at your own cost, provide all reasonable assistance to the Office (and any adviser) for such review or evaluation.
- (c) Subject to clause 11, during the term of this agreement, You must provide, upon request by the Office, any information reasonably required by the Office on the implementation and progress of the Project in the format requested by the Office.
- (d) On request by the Office, You must meet with the Office to discuss progress of the Project.
- (e) You must participate in surveys or meetings the Office may set up to analyse the Grant's impact. The Office may ask You to provide information, including in relation to:
 - (1) community sentiment (in the case of councils);
 - (2) EV driver behaviour and sentiment;
 - (3) commercial viability of kerbside charging, including utilisation rates;
 - (4) effectiveness of different ownership/operation models;
 - (5) appropriateness of government subsidy;
 - (6) real-world experience of the NSW planning pathways for kerbside EV charging;
 - (7) effectiveness of minimum operational and maintenance requirements;
 - (8) market factors influencing uptake of EVs and usage of infrastructure; or
 - (9) other items that may help to assess the Grant's impact.

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18.2 Audits and access

- (a) Subject to clause 18.2(d), the Office or its nominee may:
 - (1) conduct audits relevant to the performance of Your obligations under this agreement and in respect of the Project; and
 - (2) upon giving You reasonable notice, access Your premises, require the provision of records and information in a form reasonably requested by the Office, and inspect and copy any documentation or records reasonably necessary for that purpose.
- (b) You must retain all relevant records relating to the Project for at least 7 years after the expiry or termination of this agreement.
- (c) You must provide all reasonable assistance to the Office and its nominee (if any) for such audit or access.
- (d) In carrying out an audit or accessing Your premises, the Office will, and will procure that any nominee, use reasonable endeavours to minimise any disruption to the activities contemplated in this agreement caused by any audit or access, and will comply with Your reasonable workplace and site access policies as notified by You to the Office in writing from time to time.
- (e) Where an audit under this clause 18.2 identifies, in the Office's opinion, that You are in breach of this agreement, then the Office may recover from You the costs incurred in conducting that audit. You acknowledge and accept that You are not permitted to use Funds to meet any such costs.

19 Force Majeure

19.1 Force Majeure Event defined

In this agreement, **Force Majeure Event** means any event or circumstance or combination of events or circumstances occurring after the Commencement Date:

- (a) that is not within the reasonable control or foresight of You;
- (b) the occurrence or effect of which You could not have avoided through compliance with Your obligations under this agreement and the exercise of reasonable care and conducting Your activities in accordance with Good Industry Practice; and
- (c) that causes or results in the prevention or delay of You from performing Your obligations under this agreement,

including the following, to the extent they satisfy clauses 19.1(a) to 19.1(c):

- (d) an act of God, including floods and fire but excluding inclement weather such as prolonged periods of precipitation;
- (e) war, hostilities, invasion, kidnapping, act of foreign enemies, military mobilisation or embargo;
- (f) acts or threats of terrorism;
- (g) rebellion, revolution or insurrection; or
- (h) riot, vandalism or sabotage.

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19.2 Exclusions

Notwithstanding clause 19.1, the following will not constitute a Force Majeure Event:

- (a) lack of funds, financial hardship or the inability of You or any of Your Related Bodies Corporate to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under this agreement;
- (b) the inability of You or any of Your Related Bodies Corporate to obtain financing or insurance, either completely or on commercially acceptable terms;
- (c) a shortage of materials, consumables, equipment or utilities required by You, except to the extent it is itself caused by a Force Majeure Event;
- (d) a breakdown or failure of Your equipment, property or an asset caused by normal wear and tear;
- (e) any event or circumstance arising due to a failure by You, Your Related Bodies Corporate, or their respective employees, agents or contractors to properly maintain any equipment, property or an asset or to hold sufficient stock of spares, except to the extent it is itself caused by a Force Majeure Event;
- (f) strikes, industrial disturbances or other industrial action other than on a national or state-wide basis;
- (g) the failure of any person (other than the Office or any Electricity Supply Authority) to perform an obligation it owes to You, except to the extent such failure is caused by any event or circumstance that, had it happened to You, would have been a Force Majeure Event under this agreement; or
- (h) failure or inability of any person to pay any sum due and payable.

19.3 Notification and diligence

You must:

- (a) notify the Office promptly of any Force Majeure Event that will have a material impact on Your ability to comply with this Agreement or which will materially impact the Uptime (as defined in Schedule 3) of any EV charger; and
- (b) use reasonable diligence consistent with Good Industry Practice to remedy or abate the Force Majeure Event as expeditiously as possible.

20 Other legal matters

20.1 Dispute Resolution

- (a) If a dispute arises in relation to this agreement (**Dispute**), a party must comply with this clause 20.1 before starting court proceedings except proceedings for urgent interlocutory relief.
- (b) A party claiming that a Dispute has arisen must notify the other party in writing giving details of the Dispute (**Dispute Notice**) in accordance with the requirements of clause 20.2.
- (c) Following receipt of a Dispute Notice, each party must immediately refer the Dispute to a senior representative, who:
 - (1) does not have prior direct involvement in the Dispute; and

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- (2) has authority to negotiate and settle the Dispute.
- (d) If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under clause 20.1 must immediately refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- (e) If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- (f) Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

20.2 Notices

- (a) Unless otherwise stated in this agreement, all Notices to be given under this agreement must be in writing, and hand-delivered, posted or emailed to the Authorised Officer and/or Office Authorised Officer (as applicable) specified in the Details or as otherwise notified in writing.
- (b) The receiving party will be deemed to have received the Notice as follows:
 - (1) if hand delivered, on the day on which it is delivered or left at the relevant address;
 - (2) if sent by post within Australia:
 - (3) if posted using express post, the priority letter service option of regular post, or the priority service option for registered mail, on the fourth Business Day after the day on which it is posted;
 - (4) if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
 - (5) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered; and
 - (6) if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- (c) Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in Liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

20.3 Modern Slavery

- (a) **Modern Slavery Compliance**
 - (1) You warrant that, as at the Commencement Date:
 - (A) any modern slavery information You have provided to the Office is, to the best of Your knowledge, complete and accurate;

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- (B) neither You, Your directors, officers, employees, related entities and Related Bodies Corporate, or to the best of Your knowledge, any subcontractor, have been convicted of a Modern Slavery Offence; and
 - (C) You are not aware of any circumstances within your operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
 - (2) You:
 - (A) must not, and must take reasonable steps to ensure that any subcontractor including the subcontractor's directors, officers, employees, related entities and Related Bodies Corporate, do not, engage in any activity or practice in the nature of Modern Slavery in its operations;
 - (B) must take reasonable steps to ensure that Modern Slavery is not occurring in Your supply chains, and to the best of Your knowledge, any subcontractors supply chains;
 - (C) must otherwise comply, and take reasonable steps to ensure that any subcontractor including the subcontractor's directors, officers, employees, related entities and Related Bodies Corporate, comply with the Modern Slavery Laws and its related offence provisions, to the extent applicable; and
 - (D) must provide and take reasonable steps to ensure that the subcontractor provides their respective directors, officers, employees, and suppliers with at least the minimum level of wages and other entitlements required by Law.
 - (3) You acknowledge and agree that the Funds support You to fulfil Your Modern Slavery obligations.
- (b) **Modern Slavery Information**
 - (1) You and any subcontractor must:
 - (A) subject to any restrictions under any applicable Laws by which You and any subcontractor are bound, provide to the Office, within 30 days of a request by the Office, any information and other assistance, as reasonably requested by the Office, to enable the Office to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements), including:
 - i. cooperating in any Modern Slavery audit undertaken by the Office (including by a third party on behalf of the Office) or the NSW Audit Office;
 - ii. providing reasonable access to the Office/NSW Audit Office's auditors to interview Your staff; and
 - iii. using best endeavours to procure that any subcontractor cooperate in any Modern Slavery audit;
 - (B) regardless of any requirement in the Modern Slavery Laws, provide a modern slavery statement which meets the requirements of the Modern Slavery Laws to the Office by 30 June each year; and
 - (C) notify the Office in writing as soon as You or any subcontractor become aware of either or both of the following:

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- i. a material change to any of the modern slavery information provided to the Office; and
 - ii. any actual or suspected occurrence of Modern Slavery in Your operations or supply chains (or in those of any subcontractor).
- (2) In providing modern slavery information to the Office as to any actual or suspected occurrence of Modern Slavery in Your operations or supply chains (or in those of any subcontractor), You must identify where the occurrence has arisen in those operations or supply chains and its scale and severity to enable the Office to be satisfied, acting reasonably, that You are taking reasonable steps to respond to and address that occurrence in accordance with any internal Modern Slavery policy and Your procedures and any relevant Code of Practice/Conduct or other guidance issued by the NSW Anti-slavery Commissioner.
- (3) Promptly following the Commencement Date, You must communicate to Your relevant staff (and those of any subcontractor):
 - (A) the name and contact details of Your specified representative whom staff are invited to contact in respect of any actual or suspected occurrence of Modern Slavery in Your operations and supply chains (or in those of any subcontractor); and
 - (B) where to access further information about Modern Slavery Laws, including contact details for the NSW Anti-slavery Commissioner.
- (4) In providing any requested modern slavery information to the Office, You must:
 - (A) make such inquiries in relation to Your operations and supply chains (and that of any subcontractor) as may be reasonably expected to inform Your response; and
 - (B) communicate openly about the extent to which the modern slavery information You provide is complete and accurate (including a statement as to the limitations of the modern slavery information provided).
- (5) You may provide any modern slavery information or report requested by the Office in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for modern slavery information from another Australian public sector agency, or refer the Office to its publicly available modern slavery statement, provided that such statement or report provides generally the same information as that sought by the Office.
- (6) You must, during the term of this agreement and for a further period of 7 years:
 - (A) maintain; and
 - (B) upon the Office's reasonable request, give the Office access to, and/or copies of,

a complete set of records in Your possession or control to trace, so far as practicable, the supply chain of all goods and services provided under this agreement and to enable the Office to assess Your compliance with this clause. You must also take reasonable steps to procure that any subcontractors retain such records.
- (7) You consent to the Office sharing modern slavery information obtained from You in respect of Modern Slavery, including records referred to in clause 20.3(b)(6), with any other NSW Government agency or entity:

- (A) for the purpose of identifying or addressing that actual or potential Modern Slavery; or
 - (B) to the extent the Office has a reasonable belief of Modern Slavery actually or potentially occurring in Your operations or supply chains or in any entity that You own or control.
- (8) You will take reasonable steps to obtain consent from subcontractors to consent to the information sharing referred to in clause 20.3. Where You could not obtain consent, You will notify the Office.
- (9) Without limiting any other provision of this clause 20.3, You:
 - (A) agree that the communication of such information to any Authority is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (B) release and indemnify the Office and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications.
- (c) **Modern Slavery policy, due diligence processes, staff programs and training**
 - (1) Without affecting the generality of clause 20.3(a)(2), if You or any subcontractor:
 - (A) submit a modern slavery statement which meets the requirements of the Modern Slavery Laws; or
 - (B) self-assess, using a methodology that is satisfactory to the Office (acting reasonably), as at high risk of causing or contributing to Modern Slavery in Your or the subcontractor's operations or supply chains,

You must, if, and to the extent, requested by the Office:
 - (2) develop and implement, and ensure that any subcontractor which is exposed to similar risks develops and implements, a Modern Slavery plan, which includes:
 - (A) a strategy on how to respond to and address an actual or suspected case of Modern Slavery; and
 - (B) due diligence processes in relation to Modern Slavery in Your operations and supply chains (or in those of any subcontractor);
 - (3) provide programs and training for Your staff about Modern Slavery, including to:
 - (A) ensure compliance with the Modern Slavery Laws and Your Modern Slavery strategies and due diligence processes (if any);
 - (B) promote awareness of the risks of Modern Slavery taking place in the Your operations and supply chains; and
 - (C) develop capacity to assess and effectively address such risks; and
 - (4) provide the Office with:
 - (A) a copy of each of the strategy and processes referred to in clause 20.3(c)(2) and modern slavery information on their implementation; and
 - (B) modern slavery information on implemented training and programs.

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(d) **Your subcontractors**

You must take reasonable steps to ensure that all subcontracts of the whole or part of this agreement contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause, having regard to the nature of the procurement.

(e) **Response to Modern Slavery incident**

(1) If You become aware of any actual or suspected occurrence of Modern Slavery in Your operations or supply chains (or in those of any subcontractor), You must take reasonable steps to respond to and address the occurrence in accordance with any applicable policies and guidance as identified in clause 20.3(b)(2).

(2) Any action taken by You under clause 20.3(d) will not affect any rights of the Office under this agreement.

(f) **Termination or make good on ground of Modern Slavery**

(1) In addition to any other right or remedy of the Office under this agreement or at law, including rights of termination or rights to damages, the Office may, in its sole discretion, terminate this agreement, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination, on any one or more of the following grounds:

(A) You have failed to disclose to the Office, prior to execution of this agreement, that You, or any subcontractor, have been convicted of a Modern Slavery Offence;

(B) You, or any Subcontractor, are convicted of a Modern Slavery Offence during the term of this agreement;

(C) in the Office's reasonable view, You have failed to notify the Office as soon as You became aware of an actual or suspected occurrence of Modern Slavery in Your operations or supply chains (or in those of any subcontractor);

(D) in the Office's reasonable view, You have failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in Your operations or supply chains (or in those of any subcontractor); or

(E) in the Office's reasonable view, You have otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause 20.3.

(2) As an alternative to exercising its right to terminate this agreement in accordance with clause 20.3(a)(1)(A), the Office can, in its sole discretion, require You to do one or more of the following on any of the grounds identified in clause 20.3(f)(1)(A) to (E):

(A) develop and implement, and ensure that any subcontractor which is exposed to similar risks develops and implements, a Modern Slavery plan, which includes:

i. a strategy on how to respond to and address an actual or suspected case of Modern Slavery and the timing for implementing that strategy; and

ii. due diligence processes in relation to Modern Slavery in Your operations and supply chains (or in those of the subcontractor);

- (B) provide programs and training for Your staff about Modern Slavery, including to:
 - i. ensure compliance with the Modern Slavery Laws and Your Modern Slavery strategy and due diligence processes (if any);
 - ii. promote awareness of the risks of Modern Slavery taking place in Your operations and supply chains; and
 - iii. develop capacity to assess and effectively address such risks; and
- (C) provide the Office with:
 - i. a copy of each of the strategy and processes referred to in clause 20.3(c)(2) and modern slavery information on their implementation; and
 - ii. modern slavery information on implemented training and programs.

20.4 Contract Management Agent

The Office may appoint from time to time a Contract Management Agent to perform contract management activities on its behalf including (but not limited to):

- (a) providing or withholding any consent required to be obtained from the Office under this agreement; and
- (b) exercising any decision-making authority or discretion given to the Office under this agreement,

in which case the Office will notify You in writing of the appointment. References to a Contract Management Agent in this agreement will be disregarded unless and until the Office appoints a Contract Management Agent in accordance with this clause 20.4.

20.5 Subcontracting

Where You subcontract any aspect of the Project, You are fully responsible for:

- (a) undertaking the Project, operating the EV charger(s) and for the performance of all of Your obligations under this agreement; and
- (b) the subcontractors' acts and omissions.

20.6 Costs and duty

- (a) Each party must pay its own costs of negotiating, preparing, executing and varying this agreement.
- (b) You must pay any taxes and duties payable in respect of this agreement and the Project.

21 General

- (a) **Survival:** The following clauses survive termination or expiry of this agreement: clause 2 (Interpretation and Definitions), clauses 4.1(e), 4.1(f) and 4.1(j) (Your Obligations), clause 5.1(b) and 5.1(c) (Paying the Funding), clause 5.7 (Repayment of Funds), clause 8 (GST), clause 10 (Material and Information), clause 11 (Disclosure of Information), clause 13 (Dealing with Risk), clause 14(g) (Undertakings and acknowledgements), clause 15

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(Terminating the agreement), clause 18 (Evaluation, audits and access), clause 20.1 (Dispute Resolution), clause 20.3 (Modern Slavery), clause 21(k) (Governing Law), this clause 21(a), and any other clause which by its nature is intended to survive this agreement.

- (b) **Entire agreement:** This agreement states all the express terms agreed by the parties as to the matters referred to in this agreement. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this agreement.
- (c) **Negation of employment, partnership or agency**
 - (1) This agreement does not create a relationship of agency, partnership, and/or employment between the parties.
 - (2) You must not represent Yourself as being an employee or agent of the Office or as otherwise able to bind or represent the Office.
- (d) **Parties must give effect to transaction**

Each party must do, at its own cost, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.
- (e) **Severability**

A term, or part of a term, of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms, or parts of the terms, of this agreement continue in force.
- (f) **Indemnities**
 - (1) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion and expiry of this agreement.
 - (2) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.
- (g) **Waiver**
 - (1) If a party fails to exercise any of its rights under this agreement, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect prevent a party from relying on the terms of this agreement to their full force and effect.
 - (2) Any waiver by a party of a breach of this agreement by the other party must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- (h) **Assignment:** You must not assign or novate Your obligations or interests under this agreement, without the prior written consent of the Office. The Office may assign its rights or novate any or all of its rights and obligations under this agreement if it is to an Authority or an entity where the ultimate legal or beneficial interest is held by an Authority. You agree to execute any documents reasonably required by the Office in order to give effect to an assignment or novation contemplated by this clause 21(h).
- (i) **Counterparts:** This agreement may be signed in any number of counterparts which taken together will constitute one instrument.
- (j) **Electronic Execution:**
 - (1) Each party consents to this agreement and any variations of this agreement being signed by electronic signature by the methods set out in this clause.

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- (2) This clause applies regardless of the type of legal entity of the parties. If this agreement or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
 - (3) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this agreement and any variation of it:
 - (A) insertion of an image (including a scanned image) of the person's own unique signature onto the agreement;
 - (B) insertion of the person's name onto the agreement; or
 - (C) use of a stylus or touch finger on a touch screen to sign the Deed;

provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the agreement;
 - (D) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the agreement; or
 - (E) as otherwise agreed in writing (including via email) between the parties.
 - (4) The parties agree that the above methods are reliable as appropriate for the purpose of signing this agreement and that electronic signing of this agreement by or on behalf of a party indicates that party's intention to be bound.
 - (5) A signed copy of this agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this agreement for all purposes.
- (k) **Governing Law:** The Laws of New South Wales govern this agreement and the parties submit to the exclusive jurisdiction of the courts in New South Wales.

Executed as an agreement

Office

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Office** by its authorised signatory but not so as to incur personal liability:

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date

[Drafting note: Use this if signing on behalf of a company with more than one director or a director and secretary]

[Electronic execution declaration to be deleted if agreement is not signed electronically]

You (Company/Organisation)

Signed, sealed and delivered for on and on behalf of >>**Grant recipient**<< in accordance with section 127 of the *Corporations Act 2001* by:

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Signature of Director(1)

Signature of Director(2)/Company Secretary

Name of Director (1)

Name of Director(2)/Company Secretary



You (Company/Organisation)

Date

Date

[Drafting note: Use this if signing on behalf of a company with a sole director]

You (Sole Director)

Signed, sealed and delivered for and on behalf of >>Grant recipient<< in accordance with section 127 of the *Corporations Act 2001* by:

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Signature of Sole
Director

Name of Sole
Director

Date

[Drafting note: Use this if signing as an individual]

You (Individual)

Signed, sealed and delivered by >>Grant recipient<<.

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Signature

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Signature of Witness

Name of Witness



You (Individual)

Date

Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

[Drafting note: Use this if signing as an authorised representative]

You (Authorised Signatory)

By entering into this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of >>Grant recipient<<

Signed, sealed and delivered for and on behalf of >>Grant recipient<< by its authorised signatory:

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Signature of Authorised Signatory

Electronic signature of me
[insert name] affixed by me
on [insert date] [insert time
pm/am]

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date

Schedule 1

Milestone payments

No.	Milestone description and Milestone deliverables	Nominal funding percentage	Amount to be paid (ex-GST)
1	Execution of funding agreement.	20%	
2	<p>At least 50% of all charging sites listed in Annexure 2 are operational and open to the public and acceptance by the NSW Government of the following documentation for each operational site:</p> <ul style="list-style-type: none"> • Landowner's consent • Electricity Supply Authority grid connection approval • Electricity Supply Authority facilities access agreement (if required) • Planning approval (if required) • Council traffic committee approval (if required) • Online Certificate Compliance Electrical Work (CCEW) • Evidence of the relevant charging sites being fully operational and open to the public, in a form and substance satisfactory to the Office • Evidence of the location details of each EV charger being on Google Maps and Plugshare • Evidence of availability details of each EV charger being on the Plugger app • Evidence of NSW Government branding on the relevant EV chargers • Invoices of installation costs incurred 	30%	
3	<p>All charging sites listed in Annexure 2 are operational and open to the public and acceptance by the NSW Government of the following documentation for each operational site:</p> <ul style="list-style-type: none"> • Landowner's consent • Electricity Supply Authority grid connection approval • Electricity Supply Authority facilities access agreement (if required) • Planning approval (if required) • Council traffic committee approval (if required) • Online Certificate Compliance Electrical Work (CCEW) 	40%	

Funding agreement

No.	Milestone description and Milestone deliverables	Nominal funding percentage	Amount to be paid (ex-GST)
	<ul style="list-style-type: none"> • Evidence of the relevant charging sites being fully operational and open to the public, in a form and substance satisfactory to the Office • Evidence of the location details of each EV charger being on Google Maps and Plugshare • Evidence of availability details of each EV charger being on the Plugger app • Evidence of NSW Government branding on all the EV chargers • Reports as required under Schedule 2 in respect of the relevant EV charger(s) • Invoices of installation costs incurred 		
4	<p>All charging sites listed in Annexure 2 are operational for 12-months following the date the site is Commissioned and acceptance by the NSW Government of the following documentation for each operational site:</p> <ul style="list-style-type: none"> • Reports as outlined in Schedule 2 • Evidence that the Operational Obligations have been met in the 12-months following the date of installation of each EV charger, including Your calculation of the Uptime % for each EV charger in accordance with Schedule 3 together with reasonable evidence and detail as to the EV charger's Uptime throughout each Hours of the relevant year, any Excused Hours and the impact of any Force Majeure Event on Uptime during those Excused Hours • Financial acquittal including closing financial statement for project signed by Chief Finance Officer. 	10%	

Schedule 2

Reporting requirements

You must provide to the Office, biannually for three years following the installation of each charging site and within 20 Business Days of a written request from the Office, reports in the form and using any template specified by the Office. Reports must include:

- (a) Details of energy usage and evidence of:
 - (1) energy sourced from onsite renewable resources equivalent to electricity consumption of all EV chargers; or
 - (2) voluntary surrender of Green Products equivalent to electricity consumption of all EVSE; or
 - (3) Green Power purchased equivalent to electricity consumption of all EV chargers;
- (b) Data on the usage of each EV charger, including:
 - (1) number of charging sessions per day / week / month;
 - (2) length of each charging session;
 - (3) electricity consumed (kWh) per charging session;
 - (4) post code of each unique user (where available); and
 - (5) other data reasonably requested by the Office that may be beneficial in assessing the usage of the EV charger; and
- (c) Data on maintenance and Uptime, including:
 - (1) copies of servicing and maintenance logs; and
 - (2) Your calculation of the Uptime % for each EV charger in accordance with Schedule 3 together with reasonable evidence and detail as to the EV charger's Uptime throughout all Hours of the relevant year, any Excused Hours and the impact of any Force Majeure Event on Uptime during those Excused Hours.

Schedule 3

Operational obligations

1.1 Uptime

You must use reasonable endeavours to ensure that a minimum uptime of 99% per Year is maintained across all of your chargers co-funded under the NSW Government EV kerbside charging grants program, for a period of 3 years following the installation of the last co-funded charger (**Uptime Target**).

An EV charger's % uptime will be calculated as follows:

$$\% \text{ uptime} = \left(\frac{\text{Number of hours Operational} + \text{Excused Hours annually}}{8760} \right) \times 100\%$$

For the purposes of this clause 1.1:

- (a) an EV charger will be considered to be **Operational** in an Hour if, for all or substantially all of that Hour, it was operational for use by members of the public in accordance with its specifications;
- (b) **Hour** means a period of 60 minutes commencing at midnight and each subsequent period of 60 minutes;
- (c) **Excused Hours** are hours in which the EV charger was prevented from being Operational due to the occurrence of a Force Majeure Event; and
- (d) **Year** means, in respect of an EV charger, a period of 12 months commencing upon completion of installation of the EV charger and each subsequent period of 12 months.

If in any Year You do not meet the Uptime Target in respect of an EV charger:

- (e) You must, within 20 Business Days after the end of the relevant Year in which You do not meet the Uptime Target in respect of an EV charger, provide the Office with a written plan (**Draft Cure Plan**) outlining:
 - (1) the steps You will take to remedy or otherwise address the ongoing issues or circumstances which directly or indirectly contributed to the failure to meet the Uptime Target in respect of an EV charger in the preceding Year (including the timeframes within which You will remedy such issues or circumstances); and
 - (2) the steps You will take to ensure that the issues or circumstances which directly or indirectly contributed to the failure to meet the Uptime Target in respect of an EV charger in the preceding Year do not recur.
- (f) Within 20 Business Days after receipt of a Draft Cure Plan, the Office must either:
 - (1) approve the Draft Cure Plan by notifying You; or
 - (2) reject the Draft Cure Plan by notifying You and providing reasons to You for its rejection.
- (g) If the Office rejects a Draft Cure Plan pursuant to paragraph (f)(2) of this Schedule 3, then You may, within 10 Business Days of the date You receive a notice of rejection from the Office, submit a further Draft Cure Plan to meet the reasonable

Funding agreement

- requirements of the Office, in which case paragraph (h) of this Schedule 3 will apply to the amended Draft Cure Plan.
- (h) If the Office rejects an amended Draft Cure Plan submitted under paragraph (g) of this Schedule 3 or if You fail to deliver an amended Draft Cure Plan under paragraph (g) of this Schedule 3 within 10 Business Days of receipt of a notice under paragraph (f) of this Schedule 3, then You will be deemed to be in breach of Your Operational Obligations.
- (i) If the Office approves a Draft Cure Plan pursuant to paragraph (f)(1) of this Schedule 3 (**Approved Cure Plan**), You must:
- (1) comply with, and diligently pursue the actions set out in the Approved Cure Plan; and
 - (2) remedy or cure the ongoing issues or circumstances which directly or indirectly contributed to the failure to meet the Uptime Target in respect of an EV charger in the preceding Year within the period allowed in that Approved Cure Plan (**Applicable Cure Period**).
- (j) If You fail to comply with any material aspect of an Approved Cure Plan, the Office may provide written notice to You of the details of the failure to comply. You will be in breach of Your Operational Obligations if the failure to comply is not remedied within 5 Business Days after the Office gives notice to You of the failure.

1.2 Renewable energy

You must source Renewable Energy for 100% of electricity used at all charging sites in perpetuity. Renewable Energy sources must be either on-site renewable energy generators, off-site renewable energy generators or surrender of Green Products that certify Renewable Energy Generation (e.g. LGCs) or a combination thereof.

1.3 Location

You must publish location details of each EV charger on at least the following online public platforms:

- (a) Google Maps; and
- (b) PlugShare.

1.4 Branding

You must clearly display a 'Supported by NSW Government' branded decal sticker on all co-funded EV chargers. Any third-party branding or advertising must not conceal the NSW Government branding.

Schedule 4

Form of funds payment request

To: NSW Treasury, NSW Government (ABN 55 437 667 728) (the Office)

Attention: *[insert]*

Date: *[insert]*

Funds Payment Request – NSW Treasury, Office of Energy and Climate Change, EV Kerbside Charging Grants dated *[insert]* between *[insert name of You]* (**You**) and the Office (**Funding Agreement**)

This is a Funds Payment Request for the purposes of the Funding Agreement.

Terms used but not defined in this Funds Payment Request have the meaning given to them in the Funding Agreement.

1 Submission of invoice

- (a) You submit the **attached** invoice for payment in accordance with the Funding Agreement.
- (b) The invoice is for the amount of A\$*[insert]* and is for *[identify Milestone to which the invoice relates]*.

2 Other matters

You warrant to the Office as of the date of this Funds Payment Request:

- (a) all Payment Criteria in respect of this Funds Payment Request have been met;
- (b) the Warranties set out in the Funding Agreement are true and correct in all material respects as at the date of this Funds Payment Request *[other than: *[insert]*]*;
- (c) no breach of the Funding Agreement by You is continuing or would result from the payment; and
- (d) You are able, and have sufficient funds, to Commission all charging sites listed in Annexure 2 by the Project Installation Date and ensure all charging sites listed in Annexure 2 are Operational for 12 months after the date that the site is Commissioned in accordance with the Funding Agreement.

Signed:

[insert name of signatory], being an authorised officer of [insert name of You] for the purposes of the Funding Agreement

Schedule 5

Adjustment of Total Grant Funds

1 Adjustment procedure

1.1 Acknowledgement

The parties acknowledge and agree that:

- (a) the Office determined the Total Grant Funds that could be provided under this agreement on the basis that You would be required to expend the Estimated Costs as set out in the Initial Budget to deliver the Project;
- (b) if the Final Costs are less than the Estimated Costs, the Total Grant Funds may be adjusted as outlined under clause 1.3 of this Schedule 5; and
- (c) if the Final Costs are greater than the Estimated Costs, the Total Grant Funds will not be increased.

1.2 Your calculation of adjustment to Total Grant Funds

- (a) Following the date that Milestone 3 is achieved (**Milestone 3 Completion Date**), but before submission of the relevant Funds Payment Request, You must calculate in good faith, and provide evidence of:
 - (1) the Final Costs;
 - (2) any difference between the Final Costs and the Estimated Costs (**Cost Savings**).
 - (3) the Total Grant Funds less the Costs Savings (**Adjusted Total Funds**).
 - (4) the aggregate amount of all Funds distributed to You under this agreement as at the Milestone 3 Completion Date (**Distributed Funds**).
- (b) If the Final Costs are greater than the Estimated Costs, the Cost Savings will be deemed to be zero.
- (c) You must notify the Office in writing of all amounts described in clause 1.2(a) of this Schedule 5 (**Draft Calculations**) along with reasonable supporting detail outlining the basis for those calculations (including an itemised breakdown of any variances between Final Costs and Estimated Costs) as part of the Milestone 3 Funds Payment Request.
- (d) No later than 30 Business Days after You notify the Office of the Draft Calculations, the Office must provide notice to You confirming whether the Office accepts or rejects the Draft Calculations.

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- (e) If within the required period for notification under clause 1.2(d) of this Schedule 5:
- (1) the Office notifies You that it accepts the Draft Calculations, or the Office fails to give a notification under clause 1.2(d) of this Schedule 5, then the Total Grant Funds will be deemed to be the Adjusted Total Grant Funds with effect on and from the date immediately before the Milestone 3 Completion Date; or
 - (2) if the Office notifies You that it rejects the Draft Calculations then either party may trigger the dispute resolution procedures set out in clause 20.1 of this agreement.

1.3 Reduction or refund

- (a) If the amount of the Adjusted Total Grant Funds is greater than the amount of Distributed Funds, the Office will continue to make Milestone payments under the agreement as scheduled, up to the amount of the Adjusted Total Grant Funds (or such greater amount as the Office may determine in its absolute discretion).
- (b) If the amount of the Distributed Funds is greater than the Adjusted Total Grant Funds, the Office may, in its absolute discretion, require You to refund the difference between the Distributed Funds and the Adjusted Total Grant Funds to the Office pursuant to clause 5.7(a)(5) of this agreement (up to the total amount of Funds actually distributed to You by the Office) (**Refund Amount**).

2 Definitions

The meanings of the terms used in this Schedule 5 are set out below.

Term	Meaning
Estimated Costs	the total amount of Eligible Expenditure as set out in the Initial Budget.
Final Costs	the total amount of Eligible Expenditure as set out in the Final Budget
Initial Budget	the Budget for the Project as at the Commencement Date.
Final Budget	the updated Budget for the Project as at achievement of Milestone 3.

Term	Meaning
Milestone 3 Completion Date	has the meaning given to that term in clause 1.2 of this Schedule 5.

Annexure 1

Budget

[Drafting note: Details included in the table below are for example only.]

Site number	Total installation and equipment cost (TIEC) ex. GST	Co-funding approved for TIEC ex. GST	Co-funding approved for software ex. GST
1	\$25,000	\$20,000	\$400
2	\$22,500	\$18,000	\$400
TOTAL	\$47,500	\$38,000	\$800



Annexure 2

Project specifications

[Drafting note: Details included in the table below are for example only.]

Site number	Site address	Number of charge ports	Charger type and power output	Charger model number	Software name	Non-app based payment options	Services provided (e.g. advertising, signage, etc.)
1	14 Smith Street, Blacktown	2	22kW AC	TR-34x	Chargefox	Credit card reader	Advertising