

**EV Fast Charging Grants  
Funding Agreement**



**Funding Agreement for  
EV Fast Charging Grants  
Round Four**

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The Crown in the Right of the State of New South Wales, acting through the Department of Climate Change, Energy, the Environment and Water (the **Department**)

*[insert Recipient]* (**Recipient**)

*[[insert Recipient's Guarantor's name]* (**Recipient's Guarantor**)

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## Funding Agreement

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Date ►

Between the parties

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Department                      The Crown in Right of the State of New South Wales, acting through the Department of Climate Change, Energy, the Environment and Water  
ABN 27 578 976 844  
Level 13, 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW, 2150

Agency / Division              Department of Climate Change, Energy, the Environment and Water

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Recipient                        *[insert Recipient's full legal name]*  
*ABN [●]*  
*Recipient's address]*

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*[Recipient's Guarantor]*              *[insert Recipient's Guarantor's full legal name]*  
*ABN [●]*  
*Recipient's Guarantor's address]*

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- Recitals
- 1    The Department administers the EV Fast Charging Grant (as described in the Guidelines), under which it may award grant funding to support recipients to build, own and operate fast charging stations across NSW.
  - 2    The Recipient will carry out the Project as described in item 5 of the Project Details.
  - 3    *[The Recipient's Guarantor has agreed to guarantee the Recipient's performance of its obligations under this agreement.]*
  - 4    The Department agrees to provide the Funds, and the Recipient agrees to complete the Project and achieve the Outcomes, subject to and in accordance with the terms of this agreement.
  - 5    The maximum total Funding that may be available to the Recipient from the Department in accordance with this agreement is \$ [...].
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The parties agree as follows:

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## 1 Project Details

Project overview		
1	<b>Project title</b>	[Recipient] – EV Fast Charging Round 4
2	<b>Reference number</b>	[Insert grant application number]
3	<b>Recipient</b>	[Recipient must be an entity incorporated under the Corporations Act, state-owned corporation or subsidiary of same, or NSW local gov/council.]
4	<b>Guidelines</b>	Electric Vehicle fast charging grants: Funding guidelines – Round Four, dated December 2025.
Key project details		
5	<b>Project</b>	[Recipient to include Project description.]
6	<b>Outcomes</b>	Refer to item 1.2 of <a href="#">Schedule 1</a> .
7	<b>Total Project Value</b> (Funding (excluding Additional Funding) + Recipient Contributions)	\$ [...] (ex GST) <b>[Note: Total Project Value excludes Additional Funding, if applicable. For the total project cost including Additional Funding, see row 9 'Overall Project Cost' below.]</b>
8	<b>Total Grant Funds</b>	\$ [...] (ex GST) <b>[Note: Total Grant Funds excludes any Additional Funding]</b>
9	<b>Overall Project Cost</b> (Funding (including Additional Funding) + Recipient Contributions)	\$ [...] (ex GST) <b>[Note: Overall Project Cost includes Additional Funding (Pull Through Bay Funding, Additional Bay Funding and OPEX Forward Payment, as applicable)]</b>
10	<b>[Pull Through Bay Funding]</b>	\$ 20,000 per Pull Through Station <b>[Note: Only include if applicable.]</b>
11	<b>[Additional Bay Funding]</b>	\$ 10,000 per Additional Bay <b>[Note: Only include if applicable.]</b>
12	<b>[OPEX Forward Payment (Remote only)]</b>	\$ [...] <b>[Note: Include for Remote only. Up to 3x proven annual OPEX, capped at \$90,000]</b>
13	<b>Requested Percentage (per Station)</b>	Metropolitan Stations [insert]% <b>[Note: Up to 40% of total Station project cost capped at \$300,000 (ex GST) per Station]</b>

		<p>Regional Stations <i>[insert]</i>%</p> <p><b><i>[Note: Up to 50% of total Station project cost capped at \$550,000 (ex GST) per Station]</i></b></p> <p>Remote Stations <i>[insert]</i>%</p> <p><b><i>[Note: Up to 90% of total Station project cost capped at \$700,000 (ex GST) per Station]</i></b></p>
14	<b>Recipient Contributions</b>	\$ <i>[Recipient to include total.]</i>
15	<b>Other Contributions</b>	\$ <i>[Recipient to include total.]</i>
16	<b>Project Participants</b>	<i>[Recipient to include.]</i>
17	<b>Other information</b>	
18	<b>Public acknowledgement of support</b> – The NSW Government logo and acknowledgement	<p>All recipients of NSW Government funding for infrastructure and capital works including the EV Fast 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 recipients adhere to this requirement, the implementation process is provided in the Funding Acknowledgment Guideline for recipients of NSW Government infrastructure grants available here:  <a href="https://www.energy.nsw.gov.au/business-and-industry/programs-grants-and-schemes/electric-vehicles/ev-charger-funding">https://www.energy.nsw.gov.au/business-and-industry/programs-grants-and-schemes/electric-vehicles/ev-charger-funding</a></p>
19	<b>Public disclaimer</b>	<i>[The Department may require the Recipient to include a disclaimer in all published materials relating to the Project, which will be included here (relevant to clause 18)]</i>
20	<b>Recipient Confidential Information</b>	<i>[Recipient to identify any Recipient Confidential Information and the duration of confidentiality that should apply. This information may be disclosed in accordance with clause 19.]</i>
21	<b>Address for invoices</b>	<a href="mailto:evfc@environment.nsw.gov.au">evfc@environment.nsw.gov.au</a>
22	<b>Address for Notices</b>	<p><b>Department</b></p> <p><a href="mailto:evfc@environment.nsw.gov.au">evfc@environment.nsw.gov.au</a></p> <p>EV Fast Charging Grants Team – Net Zero Transport Team, Locked Bag 5022, (Level 12) Parramatta NSW 2124</p> <p><b>Recipient</b></p> <p><i>[Recipient to insert email and postal address.]</i></p>

## 2 Definitions and Interpretation

### 2.1 Definitions

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

Term	Meaning
<b>AANA</b>	the Australian Association of National Advertisers.
<b>Abandoned</b>	circumstances in which no Activities have been carried out in respect of the Project for 60 consecutive days, other than to the extent the Recipient's obligations to carry out such Activities have been excused in accordance with clause 20 (Force Majeure). <b>Abandon</b> and <b>Abandonment</b> each have a corresponding meaning.
<b>Activities</b>	substantive work or activities (whether on-site or otherwise) to further the development of the Project.
<b>Additional Bay</b>	additional EV charging bays beyond the minimum bays required for each Stream, as set out in the Guidelines.
<b>Additional Bay Funding</b>	a one-off per bay payment for each Station with Additional Bays, as set out in item 11 of the Project Details.
<b>Additional Funding</b>	Additional Bay Funding, Pull Through Bay Funding and/or OPEX Forward Payment (as applicable). <b>Additional Funds</b> has a corresponding meaning.
<b>Adjusted Total Grant Funds</b>	has the meaning given to that term in clause 1.2(a) of <a href="#">Schedule 3</a> .
<b>Adjustment Dispute Notice</b>	has the meaning given to that term in clause 1.3(a) of <a href="#">Schedule 3</a> .
<b>Agreement Material</b>	any Material created by, for, or on behalf of the Recipient on or following the Commencement Date, for the purpose of, or as a result of, performing its obligations under this agreement, including modifications required under clause 14.1(g)(3).
<b>Applicable Cure Period</b>	has the meaning given to that term in clause 22.2(d)(2).

Term	Meaning
<b>Application</b>	the application submitted by, for, or on behalf of the Recipient for funding under the EV Fast Charging Grant in relation to the Project and all related supporting documentation provided to the Department in connection with the application.
<b>Approved Cure Plan</b>	has the meaning given to that term in clause 22.2(d).
<b>Assessment Criteria</b>	the assessment criteria for an Application referred to in the Guidelines (including the eligibility and merit criteria referred to in the Guidelines).
<b>Assets</b>	any items of tangible or intangible property which are purchased, leased, created or otherwise brought into existence by, for or on behalf of the Recipient or the Project Company as part of the Project, not including Agreement Material.
<b>Authorisation</b>	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.
<b>Authority</b>	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 the Australian Energy Market Operator and the Australian Energy Regulator.
<b>Bank Account</b>	has the meaning given to that term in clause 7.1(a).
<b>Budget</b>	the Project budget provided to the Department in the Application in accordance with the merit criteria of the Guidelines, as may be amended from time to time in accordance with clause 9.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.
<b>Change in Control</b>	in relation to the Recipient or the Project Company or its permitted successors (in this definition referred to as the <b>First Party</b> ), means a person or persons who do not Control the First Party (in this definition referred to as the <b>Acquiring Party</b> ) as at:



Term	Meaning
	<p>1 the Commencement Date; or</p> <p>2 where the First Party is a party to this agreement because of a transfer approved under clause 29.3(a), the date of completion of that transfer,</p> <p>(in this definition referred to as the <b>Relevant Date</b>), acquiring Control of the First Party, unless the Acquiring Party is itself Controlled directly or indirectly by a person who Controlled the First Party immediately before the Relevant Date.</p> <p>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).</p>
<b>Change Request Form</b>	<p>means:</p> <p>1 a completed and signed "Fast Charging Variation Request" in the form prescribed in One GMS, or such other change request form as may be prescribed by the Department from time to time; and</p> <p>2 in respect of the Project Details and/or each Schedule the Recipient is requesting a variation of, a proposed new form of the Project Details and/or the Schedule.</p>
<b>Claim</b>	a distress, attachment or other execution levied or enforced upon or against the assets of a person, and in the case of legal proceedings or other order or process requiring payment (other than a statutory demand or a bankruptcy notice) which is not withdrawn or dismissed within 10 Business Days.
<b>Commencement Date</b>	the date of this agreement.
<b>Commissioning</b>	the time when the Station is installed and operational for use by members of the public in accordance with the consolidated funding details and Outcomes set out in item 1 of <a href="#">Schedule 1</a> . <b>Commission</b> and <b>Commissioned</b> each have a corresponding meaning.
<b>Commissioning Checklist</b>	has the meaning given in item 1.3 of <a href="#">Schedule 1</a> .
<b>Commonwealth</b>	Commonwealth of Australia.

Term	Meaning
<b>Confidential Information</b>	information including information about the terms of this agreement that is by its nature confidential and which a party knows or ought to know is confidential, but not including information that is or becomes public knowledge otherwise than by breach of this agreement or any other confidentiality obligation.
<b>Consequential Loss</b>	<ol style="list-style-type: none"> <li>1 loss for breach of contract that is not recoverable under the first limb of the rule in <i>Hadley v Baxendale</i> [1854] EWHC J70;</li> <li>2 loss of profit or loss of revenue (excluding the Funds);</li> <li>3 without limiting paragraphs 1 or 2 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</li> <li>4 loss of opportunity.</li> </ol>
<b>Contract Management Agent</b>	any person appointed by the Department in accordance with clause 29.2.
<b>Control</b>	<p>means 'control' as defined in section 50AA of the Corporations Act as in force as at the Commencement Date and:</p> <ol style="list-style-type: none"> <li>1 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;</li> <li>2 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;</li> <li>3 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</li> <li>4 in the case of the Recipient, 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.</li> </ol>
<b>Controller</b>	has the meaning given to it in section 9 of the Corporations Act.

Term	Meaning
<b>Corporations Act</b>	<i>Corporations Act 2001 (Cth).</i>
<b>Correctly Rendered Invoice</b>	has the meaning given to that term in clause 6(b).
<b>Cost Savings</b>	has the meaning given to that term in clause 1.2(a) of <a href="#">Schedule 3</a> .
<b>Curable Termination Event</b>	has the meaning given to that term in clause 24.2(a).
<b>Dealing</b>	has the meaning given to that term in clause 29.3(a).
<b>Debt Financier</b>	<ol style="list-style-type: none"> <li>1 a financial institution providing debt finance on a limited recourse basis to the Recipient for the purpose of funding construction of the Project and</li> <li>2 any security trustee or agent of any such financial institution.</li> </ol>
<b>Department Confidential Information</b>	Confidential Information provided by the Department to the Recipient under or in connection with this agreement.
<b>Department Observer</b>	has the meaning given to that term in clause 11(b).
<b>Determination Notice</b>	has the meaning given to that term in clause 5.3(b).
<b>Dispute</b>	has the meaning given to that term in clause 26(a).
<b>Distributed Funds</b>	has the meaning given to that term in clause 1.2(a) of <a href="#">Schedule 3</a> .
<b>Draft Calculations</b>	has the meaning given to that term in clause 1.2(c) of <a href="#">Schedule 3</a> .
<b>Draft Cure Plan</b>	has the meaning given to that term in clause 22.1(a).
<b>Eligible Expenditure</b>	expenditure (inclusive of GST but less related input tax credits the Recipient or its representative member is entitled to claim in relation to that expenditure) incurred by, or where the context

Term	Meaning
	<p>requires, expected to be incurred by, the Recipient on the Project after the Commencement Date that:</p> <ol style="list-style-type: none"> <li>1 qualifies as eligible expenditure under the Guidelines; or</li> <li>2 the Department otherwise approves (in its absolute discretion) as eligible expenditure for the purposes of this agreement.</li> </ol>
<b>End Date</b>	<p>the earlier of:</p> <ol style="list-style-type: none"> <li>1 the date Milestone 3 is achieved; and</li> <li>2 the date on which this agreement is terminated in accordance with its terms.</li> </ol>
<b>Expert</b>	has the meaning given to that term in clause 26(f).
<b>Final Commissioning Date</b>	the first date on which all of the Stations are fully operational.
<b>[FIRB Approval]</b>	<p>in respect of an action means:</p> <ol style="list-style-type: none"> <li>1 the relevant person has received written notice under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth), by or on behalf of the Treasurer of the Commonwealth of Australia stating that the Commonwealth Government does not object to the action taking place; or</li> <li>2 the Treasurer of the Commonwealth of Australia becomes precluded from making an order in relation to such action; or</li> </ol> <p>if an interim order is made under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) in respect of the relevant period, the subsequent period for making a final order prohibiting such action elapses without a final order being made.</p>
<b>Force Majeure Event</b>	has the meaning given to that term in clause 20.1.
<b>Funds</b>	any funds paid or payable by the Department to the Recipient under this agreement (as the context requires), including Additional Funding. <b>Funding</b> has a corresponding meaning.
<b>Funds Payment Request</b>	a funds payment request in the form set out in <a href="#">Schedule 4</a> .
<b>Good Industry Practice</b>	practices followed when works and services are undertaken in accordance with all of the following:

Term	Meaning
	<ol style="list-style-type: none"> <li>1 in a sound and workmanlike manner;</li> <li>2 with due care and skill;</li> <li>3 using materials of merchantable quality which are fit for the Project and enable it to achieve the Outcomes;</li> <li>4 to the standard expected of an experienced, suitably qualified and competent contractor experienced in: <ul style="list-style-type: none"> <li>– the design, engineering, procurement, supply, construction, testing, commissioning, maintenance and operation of projects and infrastructure comparable to the Project;</li> <li>– performing works; and</li> <li>– providing services,</li> </ul> of the skill and quality to be expected of an experienced, suitably qualified continually compliant and competent contract, with particular experience in Australia;</li> <li>5 in accordance with all applicable Laws; and</li> <li>6 consistently with best practice for the performance of design, engineering, procurement, supply, construction, testing, commissioning, maintaining and operating of a facility that has the same or similar performance requirements of the Project and the Project Equipment (where applicable) and the performance of: <ul style="list-style-type: none"> <li>– design, engineering, procurement, supply, construction and testing of works that are similar to the works to be undertaken with respect to the Project; and</li> <li>– commissioning, maintaining and operating equipment that is similar to the Project or Project Equipment (as applicable).</li> </ul> </li> </ol>
<b>Green Product Scheme</b>	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.
<b>Green Products</b>	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.
<b>GST Law</b>	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

Term	Meaning
<b>GST Recipient</b>	has the meaning given to that term in clause 27(c).
<b>Guidelines</b>	the NSW Government Guidelines entitled “EV fast charging grants: Funding guidelines – Round Four” dated December 2025, as updated by the Department from time to time.
<b>Independent Certifier</b>	an independent certifier that may be appointed by the Department from time to time and in its discretion.
<b>Insolvency Event</b>	<p>in respect of a person:</p> <ol style="list-style-type: none"> <li>1 an order is made that the person or any of its Parent Entities be wound up or otherwise dissolved;</li> <li>2 an order is made to appoint a liquidator or provisional liquidator in respect of that person or any of its Parent Entities;</li> <li>3 an application is made to a court for an order described in items 1 or 2 of this definition and that application is not withdrawn or discharged within 14 days;</li> <li>4 a liquidator or provisional liquidator is appointed (whether or not under an order) in respect of that person or any of its Parent Entities;</li> <li>5 that person or any of its Parent Entities enters into or resolves to enter into: <ul style="list-style-type: none"> <li>• a scheme of arrangement;</li> <li>• a deed of company arrangement;</li> <li>• a composition with all or any class of its creditors; or</li> <li>• an assignment for the benefit of all or any class of its creditors;</li> </ul> </li> <li>6 that person or any of its Parent Entities is or resolves or gives notice of its intention to be: <ul style="list-style-type: none"> <li>• wound up or otherwise dissolved; or</li> <li>• placed under administration;</li> </ul> </li> <li>7 any of the following are appointed over any assets or undertaking of that person or any of its Parent Entities: <ul style="list-style-type: none"> <li>• a Controller; or</li> <li>• a trustee in bankruptcy;</li> </ul> </li> <li>8 that person or any of its Parent Entities is or states that it is insolvent;</li> <li>9 as a result of the operation of section 459F(1) of the Corporations Act or, in respect of a person or any of its Parent Entities not incorporated in Australia, any applicable</li> </ol>

Term	Meaning
	<p>corresponding Law, that person or any of its Parent Entities is taken to have failed to comply with a statutory demand;</p> <p>10 that person or any of its Parent Entities is insolvent or presumed to be insolvent under the Corporations Act or, in respect of a person or any of its Parent Entities not incorporated in Australia, any applicable corresponding Law;</p> <p>11 that person or any of its Parent Entities takes any step to obtain protection or is granted protection from its creditors under any law;</p> <p>12 any writ of execution, attachment, distress or similar process is:</p> <ul style="list-style-type: none"> <li>made, levied or issued against or in relation to a substantial portion of the assets of that person or any of its Parent Entities; and</li> <li>not satisfied or withdrawn within 21 days; or</li> </ul> <p>13 anything which is analogous or has an effect which is substantially similar to any of the events in items 1 to 12 of this definition occurs under any Law.</p>
<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including:</p> <p>1 copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;</p> <p>2 any application or right to apply for registration of any of the rights referred to in paragraph 1; and</p> <p>3 all rights of a similar nature to any of the rights in paragraphs 1 and 2 which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.</p>
<b>Interest Rate</b>	<p>the daily 11am cash rate quoted on Reuters page RBA30 provided that if that rate is no longer published:</p> <p>1 then Interest Rate will be another rate which the parties agree to adopt; or</p> <p>2 if the parties do not agree on another rate, the Interest Rate will be the rate nominated by an 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.</p>
<b>Law</b>	<p>1 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;</p>

Term	Meaning
	<ol style="list-style-type: none"> <li>2 any applicable law, whether of a legislative, equitable or common law nature; and</li> <li>3 any judgment, decree or similar order with mandatory effect or any binding requirement or mandatory approval of an Authority.</li> </ol>
<b>Legally Committed</b>	<p>at any time, a present or accrued obligation on the Recipient under contract or at Law to pay money to a third party.</p> <p>It does not include any future obligation to make payment to a third party:</p> <ol style="list-style-type: none"> <li>1 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</li> <li>2 which the Recipient has a right to cancel, suspend or terminate under the contract or under Law.</li> </ol>
<b>LGC</b>	a large-scale generation certificate created and registered pursuant to the REE Act.
<b>Licensed Materials</b>	<ol style="list-style-type: none"> <li>1 Pre-existing Material included, embodied in or attached to the Agreement Material</li> <li>2 Third Party Material; and</li> <li>3 Agreement Material.</li> </ol>
<b>Material</b>	includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
<b>Material Breach</b>	means any breach by the Recipient of clauses 4(a) ('Recipient to undertake the Project'), 5.6 ('Use of Funds'), 7 ('Bank Account'), 8(b) ('Contributions'), 13 ('Liability and indemnity') 14.1(d) ('Compliance with Law'), 15.1(a) ('Change in Control'), 16.2 ('Sale of Significant Assets'), 25 ('Repayment of the Funds') and 29.3(a) ('Assignment') of this agreement.
<b>Metropolitan Station</b>	a Station that is identified in Table 1.3 in <a href="#">Schedule 1</a> as forming part of the 'Metropolitan' stream described in the Guidelines.
<b>Milestone 2 Completion Date</b>	the date that Milestone 2 is achieved.



Term	Meaning
<b>Milestone 2 Deliverables</b>	has the meaning given to that term in Table 1.3 in <a href="#">Schedule 1</a> .
<b>Milestone 3 Completion Date</b>	the date that Milestone 3 is achieved.
<b>Milestone 3 Deliverables</b>	has the meaning given to that term in Table 1.3 in <a href="#">Schedule 1</a> .
<b>Milestone Long Stop Date</b>	means, in respect of a Subsequent Milestone, the date specified in Table 1.3 in <a href="#">Schedule 1</a> for that Milestone.
<b>Milestone Payment</b>	means the amount of Funds payable on a per Station basis upon achievement of a Milestone as set out in Tables 1.3 and 1.4 of <a href="#">Schedule 1</a> . <b>Milestone 1 Payment</b> , <b>Milestone 2 Payment</b> , <b>Milestone 3 Payment</b> each have a corresponding meaning.
<b>Milestones</b>	the milestones set out in item 1.3 of <a href="#">Schedule 1</a> .
<b>Minor Variation</b>	<p>a variation:</p> <ol style="list-style-type: none"> <li>1 by way of extension to the dates specified in the Project Details or <a href="#">Schedule 1</a> (other than a variation to the Milestone Long Stop Dates); or</li> <li>2 to elements of the Project as described in item 1.1 of <a href="#">Schedule 1</a>,</li> </ol> <p>that does not and is not likely to materially affect the Project or the achievement of the Outcomes.</p>
<b>Modern Slavery</b>	has the meaning given in section 4 of the <i>Modern Slavery Act 2018</i> (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.
<b>Modern Slavery Laws</b>	the <i>Modern Slavery Act 2018</i> (Cth), the <i>Modern Slavery Act 2018</i> (NSW), Divisions 270 and 271 of the <i>Criminal Code 1995</i> (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.
<b>Moral Rights</b>	has the meaning given to that term in the <i>Copyright Act 1968</i> (Cth) and includes a right of a similar nature that is conferrable by statute and that exists or comes to exist anywhere in the world.

Term	Meaning
<b>National Electricity Law</b>	the national electricity law introduced by the <i>National Electricity (New South Wales) Act 1997 (NSW)</i> and amended from time to time.
<b>NER</b>	the National Electricity Rules made under the National Electricity Law.
<b>Non-Compliance Event</b>	has the meaning given to that term in clause 21.2(a).
<b>Notice of Dispute</b>	has the meaning given to that term in clause 26(b).
<b>Notice of Non-Compliance</b>	has the meaning given to that term in clause 21.2(a).
<b>NSW Government</b>	the government of the State of New South Wales, including any governmental agency, department or authority of New South Wales.
<b>One GMS</b>	the NSW Government's One Grants Management System, which is currently hosted by GMS.
<b>Operating Obligations</b>	those operating obligations for the Project as set out in <a href="#">Schedule 2</a> (as may be amended from time to time with the written consent of the Department).
<b>OPEX Forward Payment</b>	a one-off per Station payment to Remote Stations to assist with ongoing running costs, including eligible operating costs described in the Guidelines.
<b>Other Contributions</b>	the financial and in-kind contributions specified in item 15 of the Project Details.
<b>Outcomes</b>	the outcomes for the Project as set out in item 6 of the Project Details.
<b>Overall Project Cost</b>	the amount set out in item 9 of the Project Details.

Term	Meaning
<b>Overseas Expenditure</b>	any expenditure of Funds by the Recipient (other than Permitted Overseas Expenditure) outside of Australia or payment of Funds by the Recipient to a non-Australian entity.
<b>Parent Entity</b>	in respect of an entity, each entity which controls that entity in accordance with section 50AA of the Corporations Act.
<b>Payment Criteria</b>	the payment criteria specified in clause 5.4.
<b>Permitted Overseas Expenditure</b>	<p>means any expenditure of Funds by the Recipient incurred outside of Australia or payment of Funds by the Recipient to a non-Australian entity that is:</p> <ol style="list-style-type: none"> <li>1 used for the purchase of equipment or materials for the Project; or</li> <li>2 otherwise exempted from the definition of Overseas Expenditure by agreement of the Department in writing.</li> </ol>
<b>Personnel</b>	in relation to a party, any employee, officer, agent or professional adviser or subcontractor of that party.
<b>Plan</b>	a plan required to be provided by the Recipient under item 3.1 of <a href="#">Schedule 1</a> .
<b>Pre-existing Material</b>	Material owned by a party before execution of this agreement.
<b>Privacy Law</b>	the <i>Privacy and Personal Information Protection Act 1998</i> (NSW), the <i>Health Records and Information Privacy Act 2002</i> (NSW), the Department's privacy policies, and all other applicable privacy laws, codes and policies, including the <i>Privacy Act 1988</i> (Cth).
<b>Project</b>	the Project described in the approved Application and consisting of the Stations set out in Table 1.4 of <a href="#">Schedule 1</a> .
<b>Project Company</b>	the Project Company identified the Project Details (if any) and any other entity (not including the Recipient) that owns the Project during the term of this agreement.
<b>Project Details</b>	the Project Details set out in clause 1.

Term	Meaning
<b>Project Equipment</b>	the EV charging equipment and related infrastructure located at each Station.
<b>Project Information</b>	has the meaning given to that term in clause 18(b).
<b>Project Participants</b>	the entities specified in item 16 of the Project Details.
<b>Project Steering Committee</b>	has the meaning given to that term in clause 11.
<b>Pull Through Bay</b>	a charging bay that is sized to accommodate a longer vehicle or a vehicle towing a trailer or caravan, provided that the charging bay must accommodate a vehicle of 5.3 metres in length that is connected to a caravan or boat trailer of 8 metres in length.
<b>Pull Through Bay Funding</b>	the additional funding payable in respect of a Pull Through Station as set out in item 10 of the Project Details.
<b>Pull Through Station</b>	a Station in respect of which at least one Pull Through Bay (including the relevant charger) is installed and operational for use by members of the public.
<b>Quarter</b>	a three-month period beginning on 1 January, 1 March, 1 July or 1 October, as applicable.
<b>Recipient Confidential Information</b>	Confidential Information of the Recipient which is identified in item 20 of the Project Details for the period of time specified in that item.
<b>Recipient Contributions</b>	the financial contributions specified in item 14 of the Project Details.
<b>REE Act</b>	the <i>Renewable Energy (Electricity) Act 2000</i> (Cth).
<b>Refund Amount</b>	refund amount calculated in accordance with clause 1.4(b) of <a href="#">Schedule 3</a> .
<b>Regional Station</b>	a Station that is identified in Table 1.3 in <a href="#">Schedule 1</a> as forming part of the 'Regional' stream described in the Guidelines.

Term	Meaning
<b>Related Body Corporate</b>	has the meaning given to 'related body corporate' in the Corporations Act, but on the basis that 'subsidiary' has the meaning given to Subsidiary in this agreement and that 'body corporate' includes any entity or trust.
<b>Related Party</b>	has the meaning given to that term in section 228 of the Corporations Act, provided that for purposes of this definition: <ol style="list-style-type: none"> <li>1 'public company' refers to any body corporate, trust or partnership; or</li> <li>2 'director' includes a shareholder (in the case of a company), unitholder or beneficiary (in the case of a trust) and partner (in the case of a partnership; and</li> <li>3 'control' has the meaning given to that term in this agreement.</li> </ol>
<b>Remediable</b>	has the meaning given to that term in clause 21.2(b)(2).
<b>Remote Station</b>	a Station that is identified in Table 1.3 in <a href="#">Schedule 1</a> as forming part of the 'Remote' stream as described in the Guidelines.
<b>Renewable Energy</b>	energy that is produced from natural resources that do not run out when used – for example, solar or wind power.
<b>Report</b>	any report to be provided by the Recipient to the Department under this agreement.
<b>Reporting Period</b>	in respect of a Station, the period beginning on the first date the Station is fully operational and ending on the later of: <ul style="list-style-type: none"> <li>• 24 months after the first date that Station becomes operational; and</li> <li>• .</li> </ul>
<b>Requested Percentage</b>	in respect of a: <ol style="list-style-type: none"> <li>1 Metropolitan Station;</li> <li>2 Regional Station; and</li> <li>4 Remote Station,</li> </ol> the applicable percentage specified in item 13 of the Project Details on a per Station basis.

Term	Meaning
<b>Response Notice</b>	has the meaning given to that term in clause 24.2(b).
<b>RET Scheme</b>	the Renewable Energy Target scheme established under the <i>Renewable Energy (Electricity) Act 2000</i> (Cth).
<b>Scheme</b>	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 Department.
<b>Show Cause Notice</b>	has the meaning given to that term in clause 24.2(a).
<b>Significant Asset</b>	means any asset or group of assets (including Assets, contractual rights or Authorisations) which is reasonably required by the Recipient or the Project Company to develop, construct, commission or operate the Project in accordance with this agreement.
<b>Statement of Compliance</b>	<p>a statement, certificate or letter that:</p> <ol style="list-style-type: none"> <li>1 is issued by: <ol style="list-style-type: none"> <li>(a) the Independent Certifier; or</li> <li>(b) a suitably qualified independent firm approved by the Department (acting reasonably), with demonstrated relevant market experience, suitably qualified personnel and capability in preparing similar statements, certificates or letters;</li> </ol> </li> <li>2 is able to be relied upon by the Department with reliance language acceptable to it; and</li> <li>3 certifies that the relevant Plan: <ol style="list-style-type: none"> <li>(a) has been developed satisfactorily;</li> <li>(b) complies with all applicable Laws;</li> <li>(c) is prepared in accordance with Good Industry Practice; and</li> <li>(d) is being appropriately implemented.</li> </ol> </li> </ol>
<b>Station</b>	each charging station listed in Table 1.4 in <a href="#">Schedule 1</a> , including software and other Project Equipment.

<b>Term</b>	<b>Meaning</b>
<b>Subcontractor</b>	any person to which the Recipient has subcontracted work in connection with the Project.
<b>Subsequent Milestone</b>	each Milestone other than Milestone 1.
<b>Subsidiary</b>	has the meaning given to 'subsidiary' in the Corporations Act but so that: <ol style="list-style-type: none"> <li>1 a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and</li> <li>2 a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.</li> </ol>
<b>Supplier</b>	has the meaning given to that term in clause 27(c).
<b>Surrender</b>	the voluntary surrender of LGCs to the Clean Energy Regulator pursuant to the REE Act.
<b>Suspected Breach</b>	has the meaning given to that term in clause 21.1(a).
<b>Term</b>	has the meaning given to that term in clause 3.
<b>Termination Event</b>	has the meaning given to that term in clause 24.1.
<b>Third Party Material</b>	Material owned by another person that is: <ol style="list-style-type: none"> <li>1 included, embodied in or attached to the Agreement Material; or</li> <li>2 used in undertaking the Project including operation of the Project Equipment (if applicable).</li> </ol>
<b>Total Grant Funds</b>	the maximum aggregate amount of Funds payable for Eligible Expenditure by the Department under this agreement, as set out in item 8 of the Project Details (as may be reduced in accordance with this agreement). For the avoidance of doubt, this does not include Pull Through Bay Funding, Additional Bay Funding or the OPEX Forward Payment (as applicable).

Term	Meaning
<b>Tripartite Agreement</b>	a tripartite agreement in favour of the Recipient's Debt Financier, in a form and substance approved by the Department, acting reasonably.
<b>Trust</b>	has the meaning given to that term in clause 12.2.
<b>Undisbursed Funds</b>	the Total Grant Funds less any amounts already paid to the Recipient under this agreement.
<b>Update Period</b>	the period of six months commencing on the Commencement Date and each six month period thereafter occurring partly or wholly during the Term.
<b>Vandalism</b>	in relation to a plug, means deliberate damage to the charger, plug or any part thereof which renders such plug non-operational or incapable of performing its ordinary function.
<b>Visitors</b>	has the meaning given in clause 14.1(p)(1).
<b>Warranty</b>	a representation and warranty in clause 12.
<b>WHS Laws</b>	all applicable Law relating to work health and safety and electrical safety, and includes (without limitation): <ol style="list-style-type: none"> <li>1 <i>Work Health and Safety Act 2011</i> (Cth);</li> <li>2 <i>Work Health and Safety Regulations 2011</i> (Cth); and</li> <li>3 <i>Work Health and Safety Act 2011</i> (NSW).</li> </ol>
<b>Zone</b>	one of the 'eligible zones' listed in the Guidelines, including metropolitan, regional and remote zones.

## 2.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.



- (d) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual.
- (e) 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.
- (f) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (g) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (h) A reference to a party to a document includes that party's successors and permitted assignees.
- (i) 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.
- (j) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) A reference to time is a reference to Sydney time.
- (o) A reference to \$ is to Australian currency unless denominated otherwise.

### **2.3 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### **2.4 Inclusive expressions**

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### **2.5 Agreement components and inconsistency**

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

### 3 Term

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This agreement begins on the Commencement Date and expires on the End Date.

### 4 Recipient to undertake the Project

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- (a) Subject to the terms of this agreement, the Recipient must:
  - (1) ensure the Funding is used only for the Project;
  - (2) undertake the Project and achieve the Outcomes;
  - (3) progress the Project in a timely and expeditious manner;
  - (4) use reasonable endeavours to meet the Milestone Long Stop Date for the Milestones as set out in the table in item 1.3 of [Schedule 1](#);
  - (5) use reasonable endeavours to Commission the Project by the Milestone 2 Long Stop Date;
  - (6) comply with the Operating Obligations;
  - (7) maintain each Station comprising the Project and ensure that each such Station is operated safely and in accordance with Good Industry Practice at all times;
  - (8) not provide misleading, false or inaccurate information in or related to an Application, the Project or this agreement and notify the Department no later than 1 Business Day after becoming aware that any information provided to the Department in its Application or otherwise related to this agreement is misleading, false or inaccurate;
  - (9) ensure no other grant funding is used in payment, in part or in full, for any part of the Project co-funded under this agreement, and notify the Department within 5 Business Days of becoming aware that there has been a breach of this obligation; and
  - (10) comply with any Plan set out in item 3.1 of [Schedule 1](#).
- (b) Without limiting clause 9.2, the Department may (but is not obliged to), in its absolute discretion, extend the Milestone 2 Long Stop Date for any reason, by up to three (3) consecutive months.
- (c) The Recipient must:
  - (1) notify the Department in writing, as soon as reasonably practicable, of any material delay or anticipated material delay to the progress of the Project or achievement of a Subsequent Milestone or an Outcome, such notice to include:
    - (A) the reason for the material delay;
    - (B) the anticipated impact on the Project; and
    - (C) the steps the Recipient is taking or will take to overcome the material delay;
  - (2) keep the Department updated as to the status of any such material delay; and
  - (3) within 5 Business Days of a request by the Department, provide the Department with a notice setting out reasonably detailed evidence of

progress towards the achievement of each Subsequent Milestone in respect of a Project, including any documentation (whether finalised or in draft) which is prescribed in the table in item 5 of Schedule 1, and any other evidence the Department requests, acting reasonably.

- (d) Without limiting the Recipient's obligations under clause 4(b), within 20 Business Days of the end of each Update Period the Recipient must provide the Department with a notice identifying any revisions made to the expected achievement date for a Subsequent Milestone or Outcome during that Update Period.
- (e) The Recipient must promptly notify the Department if, after a Station becomes operational, the Station ceases to operate in accordance with the Operating Obligations for more than 20 consecutive days or 20 days in aggregate in any 3-month period. If requested by the Department, the Recipient must promptly provide the Department with information about the reasons for the divergence from the Operating Obligations.

## 5 Funds

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### 5.1 Funds

- (a) Subject to satisfaction of the Payment Criteria, the Department will pay the Funds to the Recipient in accordance with item 2.2 of [Schedule 1](#), this clause 5 and subject to any reduction of Funds under clause 9.4.
- (b) Notwithstanding any other provision of this agreement, the Department's total liability under or in connection with this agreement, including all the Funds paid or payable, will not exceed the sum of:
  - (1) the Total Grant Funds; plus
  - (2) any Additional Funding,
 unless otherwise agreed by the parties in writing.
- (c) The Department may set-off or reduce any amount for payment by the Department to the Recipient under this agreement against or by (respectively) any amount owed to:
  - (1) the Department by the Recipient or any of its Related Bodies Corporate under an agreement under which the Department provides funding to the Recipient or any of its Related Bodies Corporate (including this agreement); or
  - (2) the NSW Government by the Recipient under another agreement.
- (d) Following the Milestone 2 Completion Date, the Total Grant Funds may be adjusted in accordance with the process set out in [Schedule 3](#).

### 5.2 Additional Funds

- (a) The Pull Through Bay Funding and Additional Bay Funding in respect of a Station is conditional on occurrence of the Milestone 2 Completion Date by the Milestone 2 Long Stop Date and is payable when all the Milestone 2 Deliverables are completed for that Station.
- (b) The OPEX Forward Payment in respect of a Station is:

- (1) conditional on:
  - (A) occurrence of the Milestone 2 Completion Date by the Milestone 2 Long Stop Date;
  - (B) the Recipient submitting proof of its actual eligible operational costs (as set out in the Guidelines) reasonably incurred during the first year of a Station's operation; and
  - (C) the Department's verification of such costs through invoices and purchase orders submitted by the Recipient; and
- (2) payable when all the Milestone 3 Deliverables are completed for that Station.
- (c) For the avoidance of doubt, Additional Funding is available per Station and is not subject to the maximum funding caps set out in clause 9.4.

### 5.3 Funds Payment Request

- (a) Upon achievement of any relevant Subsequent Milestone in accordance with item 1.3 of [Schedule 1](#), the Recipient may submit a request for payment of the Funds, in the form of a Funds Payment Request.
- (b) The Department must, within 20 Business Days of its receipt from the Recipient of the Funds Payment Request and all other information reasonably required to determine whether or not the Payment Criteria for a Subsequent Milestone are satisfied, provide the Recipient with a notice setting out:
  - (1) the Department's determination as to whether or not the Payment Criteria have been satisfied; and
  - (2) if the Department has determined that the Payment Criteria have not been satisfied, the reasons for that determination and what is required from the Recipient to satisfy the Payment Criteria,

**(Determination Notice).**
- (c) The Department 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, as applicable.
- (d) The Recipient may, at the same time as it submits a Funds Payment Request in accordance with this clause 5.3, also request the Department to pay:
  - (1) the Pull Through Bay Funding and/or Additional Bay Funding to the Recipient in respect of a Pull Through Station and/or Additional Bay (as applicable) which is, at the time, installed and operational for use by members of the public; and
  - (2) the OPEX Forward Payment.
- (e) For the avoidance of doubt, the Pull Through Bay Funding, Additional Bay Funding and OPEX Forward Payment (as applicable) are each a one-off payment for each Station eligible for such payment. If the Department has paid the Pull Through Bay Funding, Additional Funding or OPEX Forward Payment to the Recipient in respect of a Station, the Recipient is not entitled to any

further Pull Through Bay Funding, Additional Funding or OPEX Forward Payment for that Station.

#### 5.4 Payment Criteria

The Recipient must satisfy the following **Payment Criteria**, each in a form and substance that is acceptable to the Department, as a condition precedent to payment or release of the Funds in connection with a Subsequent Milestone:

- (a) the Recipient must have submitted a Correctly Rendered Invoice which complies with the requirements set out in clause 6;
- (b) the Recipient must have submitted a Funds Payment Request;
- (c) the Recipient must have achieved the relevant Subsequent Milestone and provided the relevant Commissioning Checklist to the Department in accordance with item 3.1 of [Schedule 1](#);
- (d) the Recipient must have provided all Plans and Reports in accordance with clause 10 and item 3 of [Schedule 1](#) due to be provided before the date for payment;
- (e) the Department must be satisfied that the Recipient has achieved the relevant Subsequent Milestone;
- (f) the total Funds requested (other than Additional Funding), when taken with all other Funds previously provided to the Recipient under this agreement (other than Additional Funding), must not exceed the Total Grant Funds; and
- (g) the Department, acting reasonably, must be satisfied that the Recipient is not in breach of this agreement at the relevant time (including clause 8).

#### 5.5 Referral to Expert

If the Department determines under clause 5.3(b) that the Payment Criteria has not been satisfied, then either party may refer the Dispute to an Expert under clause 26(f).

#### 5.6 Use of the Funds

- (a) The Recipient must apply or Legally Commit the Funds only:
  - (1) for Eligible Expenditure;
  - (2) in accordance with, and as contemplated in, the then-current Budget as may be amended from time to time under clause 9; and
  - (3) so that at all times no more than the applicable Requested Percentage of the amounts needed for Eligible Expenditure in respect of a Metropolitan Station, Regional Station or Remote Station (as applicable and on a per Station basis) are incurred or expected to be incurred are sourced from the Funds (other than the Additional Funds); and
  - (4) in accordance with the terms and conditions set out in this agreement.
- (b) Without limiting clause 5.6(a), the Recipient must not spend more than 10% of the Funds on Overseas Expenditure unless otherwise agreed in writing by the Department.

## 5.7 Early payment of Undisbursed Funds

- (a) The Department may, in its sole discretion, pay to the Recipient or deposit into the Bank Account some or all of the Undisbursed Funds before the time otherwise specified for payment in this clause 5.
- (b) In respect of Undisbursed Funds that the Department pays early under clause 5.7(a), the Department retains the right to:
  - (1) make one or more deductions from payments due in respect of any subsequent Milestone(s) satisfied by the Recipient; or
  - (2) direct the Recipient to repay some or all of such Undisbursed Funds, if at the time otherwise specified for the payment in this clause 5, a threshold condition that would otherwise apply to the payment is not satisfied (e.g. the Milestone has not been achieved by the Milestone Long Stop Date).
- (c) For the avoidance of doubt, if under clause 5.7(a) the Department pays the Milestone 2 Payment for a Project prior to the achievement of Milestone 2, clause 5.7(b) allows the Department to reduce the Milestone 3 Payment for that or any other Station under this agreement, or to the Recipient to repay such Funds if Milestone 2 is not completed by the Milestone 2 Long Stop Date.

## 6 Invoices

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- (a) An invoice submitted by the Recipient must be a Correctly Rendered Invoice.
- (b) A Correctly Rendered Invoice must:
  - (1) include a valid registered ABN in the Recipient's name;
  - (2) clearly identify the payment the Recipient is claiming;
  - (3) be accompanied by a Funds Payment Request (where applicable);
  - (4) meet the requirements of a tax invoice as set out in the GST Law;
  - (5) be in a form approved by the Department; and
  - (6) set out:
    - (A) any reference number provided by the Department and Project title; and
    - (B) the amount of Funding to be paid by the Department together with the supporting documentation and any other evidence specified in [Schedule 1](#) or required by the Department; and
  - (7) include any other details reasonably requested by the Department from time to time.
- (c) The Recipient must:
  - (1) submit invoices to the email address listed in item 21 of the Project Details; and
  - (2) cooperate with any request by the Department with respect to invoicing and payment where the Department advises that it is moving to a different payment system.

## 7 Bank Account

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### 7.1 Bank Account requirements

Unless the Department otherwise agrees in writing, the Recipient must:

- (a) ensure that the Funds are held in an account in the Recipient's name, and which is not controlled by any person other than the account bank, the Recipient, a Related Body Corporate of the Recipient 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 Department, prior to the receipt of any Funds, of details sufficient to identify the Bank Account;
- (c) maintain an appropriate and robust accounting system for the sole purpose of accounting for, and administering, any Funds paid to the Recipient for this Project; and
- (d) identify, including by way of its accounting system in paragraph (c), the receipt and expenditure of the Funds separately within the Recipient's accounting records so that at all times the Funds are identifiable and ascertainable. At the Department's reasonable request, the Recipient must promptly provide such records, including an expenditure report or equivalent statement verifying details relating to the use of the Funds, to the Department.

### 7.2 Withdrawal of funds from the Bank Account

The Recipient must not withdraw or transfer Funds from a Bank Account other than in accordance with this agreement.

## 8 Contributions

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- (a) Other than with respect to payment of the Funds in accordance with this agreement, the Recipient is responsible for providing or securing all funds and resources, and bearing all costs necessary, to complete the Project (including on account of cost overruns).
- (b) Unless otherwise agreed by the Department and the Recipient in writing:
  - (1) the Recipient must ensure that the Recipient Contributions are provided and used for the Project in accordance with item 2.1 of [Schedule 1](#); and
  - (2) the Recipient must ensure that any Other Contributions are provided and used for the Project in accordance with items 2.2 and 2.3 of [Schedule 1](#).

## 9 Variations

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### 9.1 Variations

- (a) Subject to clause 9.1(b), any variation of this agreement must be in writing and signed by the parties.
- (b) The parties may vary any item in a Schedule or the Project Details, other than:
  - (1) an item which directly prescribes, or which otherwise affects, any amount of Funding provided under this agreement (including items 7 to 13 of the Project Details and items 2.1 to 2.2 of Schedule 1); or
  - (2) the withdrawal or replacement (except for a location change consented to by the Department under clause 9.3) of a Station from the Project,
- (c) without both parties needing to sign an amending agreement. Such variation will only be effective on and from the date that the Department provides notice to the Recipient that the Department accepts the replacement form of Schedule and/or Project Details attached to or included in the relevant Change Request Form as submitted in accordance with the process set out in clauses 9.2 and 9.3, or on and from such other date as determined by the Department.

### 9.2 Variation requests

- (a) Subject to clause 9.3, the Recipient may request a variation of this agreement by providing the Department with a Change Request Form through One GMS.
- (b) Subject to clauses 9.2(c), 9.3 and 9.4, where the requested variation is a Minor Variation or a variation reasonably required to address a Force Majeure Event, the Department will act reasonably in providing or withholding its consent (which may include the Department carrying out a due assessment of a varied Project against the criteria the Department applies to assess an Application).
- (c) The Department may provide or withhold its consent in its absolute discretion to the extent the requested variation is:
  - (1) a change to a Milestone Long Stop Date (including a change to a Milestone Long Stop Date required to address a Force Majeure Event); or
  - (2) otherwise not contemplated under clause 9.2(b).

### 9.3 Variations to Project

- (a) The Recipient acknowledges that the specific location, number and capacity of charging bays and other characteristics of the Stations it proposed as part of its Application were closely considered by the Department in deciding to award the Funding to the Recipient in accordance with the Assessment Criteria.
- (b) If the Recipient wishes to request a variation to any material aspect of a Station it is required to deliver as part of the Project including:
  - (1) a change in its location;
  - (2) a reduction in its on-site generation or energy storage;
  - (3) a change to the number of charging bays; or
  - (4) the withdrawal of a Station from the Project without replacement,



it must provide written notice to the Department setting out details of the requested variation including the following:

- (5) details of any Station the subject of the variation including its original and proposed street address;
  - (6) the Zone in which the Station is located;
  - (7) any actual or proposed Eligible Expenditure in relation to each relevant Station and confirmation of any works that have occurred in respect of it;
  - (8) the proportion of the Total Project Value assigned to:
    - (A) the Station; and/or
    - (B) if applicable, the on-site generation or storage infrastructure the Recipient wishes to materially reduce;
  - (9) if applicable, full details of any proposed variations to Station(s), including its charging bays, on-site electricity generation or storage, and the Recipient's view as to whether the alternative location meets the Assessment Criteria;
  - (10) detailed reasons for the requested variation or withdrawal; and
  - (11) any change in the costs (including Eligible Expenditure and the amount of total Funds proposed by the Recipient) in connection with the variation or withdrawal and the reasons for the change.
- (c) If the Recipient wishes to request a variation for a location change or withdrawal of a Station from the Project pursuant to clauses 9.3(b)(1) or 9.3(b)(4):
- (1) the Recipient may only do so within 12 months after the Commencement Date, except to the extent that such change is as a result of a Force Majeure Event affecting the original location or Station; and
  - (2) the Recipient must demonstrate to the Department (with supporting evidence) that the Station cannot be constructed and operated by the Recipient on any commercially reasonable basis at its original location due to the occurrence of Force Majeure Event and the Recipient has satisfied clauses 20.1(a) to 20.1(c) including by undertaking:
    - (A) appropriate actions at the time of making its Application to identify, assess and mitigate the risk of that Force Majeure Event occurring; and
    - (B) proper due diligence, site assessments and negotiations with relevant stakeholders (including relating to network connection, site conditions, third party approvals, property, planning, land access/tenure and other regulatory matters).
- (d) The Department will act reasonably in providing its consent (subject to clause 9.4) or withholding its consent to a variation requested by a Recipient under this clause 9.3, except that nothing in this clause requires the Department to consider or consent to:
- (1) any reduction in the number of charging bays or plugs, or the charging capacity of a charging bay, at a particular Station;
  - (2) any change in location of a Station where the proposed new location is not within the same Zone as set out in Table 1.4 in [Schedule 1](#); or

- (3) the withdrawal from the Project, or change in location, of a Station unless the Department is satisfied that the Recipient has complied with clause 9.3(c); or :
- (4) any variation that would be inconsistent with the basis upon which the Department formed a view at the time the Application was assessed that the Project:
  - (A) met the Assessment Criteria; or
  - (B) was eligible to receive the Funds,
  - (C) was the most competitively assessed station within the zone.

#### 9.4 Reduction of Funds due to Project variation

- (a) If the Department proposes to consent to a variation under clause 9.3 it may impose reasonable conditions on that consent including a reduction in the total Funding payable to the Recipient under this agreement.
- (b) Any such reduction may, without limitation, be calculated and imposed by the Department to:
  - (1) reflect the decrease in Eligible Expenditure;
  - (2) ensure that the Funding available to the Recipient under this agreement does not exceed:
    - (A) \$300,000 on average per Metropolitan Station;
    - (B) \$550,000 on average per Regional Station; or
    - (C) \$700,000 on average per Remote Station; and/or
  - (3) ensure that:
    - (A) the Department's Funding in respect of a Metropolitan Station does not exceed 40% of Eligible Expenditure for that Station;
    - (B) the Department's Funding in respect of a Regional Station does not exceed 50% of Eligible Expenditure for that Station; and
    - (C) the Department's Funding in respect of a Remote Station does not exceed 90% of Eligible Expenditure for that Station.

All references to "Funding" and "Eligible Expenditure" in clauses 9.4(b)(2) and 9.4(b)(3) do not include any Additional Funding and Eligible Expenditure in respect of Additional Funding respectively for the purposes of clauses 9.4(b)(2) and 9.4(b)(3).

- (c) The Department 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 the Recipient; or
  - (2) directing the Recipient to repay some or all of the Funds already paid by the Department to the Recipient.

## 9.5 Variations to Budget

- (a) Subject to clause 9.5(b), the Recipient may amend the Budget without the consent of the Department.
- (b) The Recipient must not amend the Budget (without the prior written consent of the Department), if this will result in:
  - (1) more than the applicable Requested Percentage of the amounts needed for Eligible Expenditures in respect of any Station incurred or expected to be incurred being sourced from the Funds (other than the Additional Funding); or
  - (2) the total Overseas Expenditure exceeding 10% of the Funds.
- (c) Within 20 Business Days of the end of each Update Period, the Recipient must provide the Department with a notice identifying any amendments made to the Budget during that Update Period and attaching a copy of the amended Budget.

# 10 Reporting and plans

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## 10.1 Reporting obligations

The Recipient must provide the Department with:

- (a) the Reports and plans in accordance with the requirements set out in item 3.1 of [Schedule 1](#) and in the form and substance satisfactory to the Department;
- (b) from time to time, at the time and in the manner reasonably required by the Department, reports or any other information requested by the Department (including in relation to any significant developments concerning the Project or any significant delays or difficulties encountered in undertaking the Project); and
- (c) if this agreement is terminated by the Department as a result of the Recipient Abandoning the Project or for failing to achieve a Subsequent Milestone by the relevant Milestone Long Stop Date, within 30 Business Days after the termination, a report for public release explaining the reasons for such termination and the information, knowledge and lessons learnt (both positive and negative) by the Recipient, its Personnel or Subcontractors from the Project.

## 10.2 Certification of Plans

- (a) Where the Recipient is required to provide a risk management plan or work, health and safety plan under item 3.1 of [Schedule 1](#), the Recipient must, if requested to do so by the Department, provide a Statement of Compliance in respect of that Plan on or prior to achievement of the second Milestone.
- (b) The Department may reasonably require the Recipient to provide a Statement of Compliance for any other Plan provided under item 3.1 of [Schedule 1](#).

## 10.3 Acceptance or rejection of Reports or Plans

- (a) The Department must use reasonable endeavours to, within 30 Business Days of receiving a Report or Plan:

- (1) accept the Report or Plan, if it considers, acting reasonably, that the Report or Plan satisfies all the requirements set out under item 3.1 of [Schedule 1](#), as applicable; or
  - (2) reject the Report or Plan, if it considers, acting reasonably, that the Report or Plan does not satisfy all the requirements set out under item 3.1 of [Schedule 1](#) as applicable.
- (b) If the Department rejects the Report or Plan, it must provide the Recipient with written reasons for the rejection and a date (acting reasonably) for the Recipient to reissue that Report or Plan. The Recipient must reissue that Report or Plan by that date in a form and substance that addresses the issues raised by the Department for the Department's approval or rejection under clause 10.3(a).

## 11 Project governance

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Where a steering committee, group or body is established for the purpose of overseeing and/or coordinating the delivery of the Project (including in relation to the development and construction of the Project) (**Project Steering Committee**), the parties acknowledge and agree that:

- (a) the Recipient must promptly notify the Department of the establishment of the Project Steering Committee;
- (b) the Department may, in its absolute discretion, send a representative to observe any meeting of the Project Steering Committee (**Department Observer**);
- (c) all decisions or recommendations made, and actions taken, by the Project Steering Committee are based on the Project Steering Committee's own information, enquiries, independent advice, and/or considerations;
- (d) the Department Observer will have no vote or other decision-making powers on behalf of the Project in connection with their attendance at any Project Steering Committee meeting;
- (e) neither the Department Observer nor the Department will have any liability to the Recipient in connection with the Department Observer's attendance at any Project Steering Committee meeting; and
- (f) the Project Steering Committee's decisions, recommendations and actions will not bind the Department.

## 12 Warranties

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### 12.1 Warranties

The Recipient represents and warrants that:

- (a) (**corporate power**): it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) (**authority**): it has the right, power and authority to enter into, perform and observe its obligations under this agreement;
- (c) (**authorisations**): the execution, delivery and performance of this agreement has been duly and validly authorised by it;

- (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)**: it will not be breaching any Law, Authorisation or agreement by signing and performing this agreement;
- (f) **(no misleading information)**: all information provided to the Department (including in the Application) is true, correct and complete in all material respects and is not misleading at the time given to the Department and, other than to the extent that the Recipient has given the Department prior notice in writing otherwise, as at the Commencement Date and the date each Funds Payment Request is submitted;
- (g) **(not a trustee)**: it does not enter into this agreement as trustee of any trust (unless otherwise stated in this agreement);
- (h) **(conflicts of interest)**: to the best of its knowledge after making diligent inquiry, and except as otherwise disclosed to the Department, no conflict of interest exists or is likely to arise in the performance of its obligations under this agreement;
- (i) **(employee entitlements)**: neither it, nor any Project Company, is subject to any judicial decision against it relating to employee entitlements (not including decisions under appeal) where it has not paid the claim;
- (j) **(Licensed Materials)**: the Licensed Materials and to the best of the Recipient's knowledge the Department's use of the Licensed Materials in accordance with this agreement will not infringe the Intellectual Property Rights or Moral Rights of any person;
- (k) **(legal capacity)**: it, and any Project Company has 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;
- (l) **(financial capacity)**: it, and any Project Company, has, or will have, sufficient funds to complete the Project;
- (m) **(insolvency)**: no Insolvency Event has occurred, and there are no reasonable grounds to suspect that an Insolvency Event will occur, in respect of the Recipient, or any Project Company; and
- (n) **(qualifications)**: the Recipient, any Project Company and its respective Personnel and Subcontractors (as applicable) 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.

## 12.2 Trustee warranties

If the Recipient enters into this agreement as a trustee of a trust (**Trust**), the Recipient represents and warrants that:

- (a) the Trust has been duly established;
- (b) the Department has been provided with a true and correct copy of the trust deed of the Trust;
- (c) the Recipient has been validly appointed as the sole trustee of the Trust and no action has been taken, or to its knowledge has been proposed, to remove it as trustee;

- (d) the Recipient has full and valid power and authority to enter into this agreement and perform the obligations under it on behalf of the Trust;
- (e) the Recipient has entered into this agreement for the proper administration of the Trust;
- (f) the Recipient has obtained or duly satisfied all necessary resolutions, consents, approvals and procedures to enter into this agreement and perform the obligations under it;
- (g) the Recipient has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this agreement;
- (h) the Recipient will not, without the consent of the Department, 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 Department;
  - (2) reduces its 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) the Recipient will exercise its right of indemnity under the trust deed in respect of liabilities it incurs under this agreement.

### 12.3 Reliance on Warranties

- (a) Each Warranty will, unless otherwise specified, be made on the signing of this agreement by the Recipient 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 the Recipient's ability to comply with a warranty, the Recipient must give written notice to the Department detailing that matter and its likely impact on the Recipient's ability to comply with that Warranty.
- (c) The Recipient acknowledges and agrees that the Department has entered into this agreement and performs this agreement in reliance on the Warranties.

## 13 Liability and indemnity

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- (a) The Recipient will at all times indemnify the Department and its Personnel (referred to in this clause 13 as **those indemnified**) from and against any loss, damage, cost, expense or liability (including legal costs on a solicitor and own client basis) arising out of or as a consequence of:
  - (1) the carrying out of works or services, or the supply of goods or services, or the operation of a Station (including the Project Equipment) (where applicable) or other equipment or plant in connection with the Project;
  - (2) the Licensed Materials (including the use of the Licensed Materials by the Department or its Personnel, but excluding any Pre-existing Materials owned by the Department) infringing or allegedly infringing the Intellectual Property Rights or Moral Rights of any person;

- (3) without limiting the previous paragraphs:
  - (A) any breach of this agreement by the Recipient or the Project Company; or
  - (B) negligence in relation to the Project on the part of the Recipient, the Project Company, or their respective Related Parties, Subcontractors or Personnel; or
  - (C) wrongful or unlawful act or omission in relation to the Project on the part of the Recipient, any Project Company, or their respective Related Parties, Subcontractors or Personnel.
- (b) The Recipient's liability to indemnify those indemnified will be reduced proportionally to the extent that any breach of this agreement by those indemnified, or any wrongful, unlawful or negligent act or omission of those indemnified, contributed to the loss.

## 14 Undertakings and acknowledgements

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### 14.1 Undertakings

The Recipient must:

- (a) **(cooperation)**: cooperate with the Department and other parties, and attend any meetings reasonably requested by the Department;
- (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 item 3 of [Schedule 1](#) and keep the Department regularly and fully informed regarding progress of the Project;
- (d) **(Laws)**: comply with and ensure that any Project Company complies 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 Guidelines; and
  - (3) applicable NSW government policies and all reasonable directions issued by the Department to the Recipient;
- (e) **(privacy)**: comply with all reasonable directions by the Department to the Recipient relating to the Department'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 the Recipient or any Subcontractor is required to provide goods or services to the public on behalf of the Department, within 3 Business Days of receiving a written request by the Department, the Recipient, or any relevant Subcontractor, must provide the Department 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 Department may reasonably require. The Department acknowledges that it will consult with the Recipient or relevant Subcontractor

before releasing any information obtained where required under section 54 of the *Government Information (Public Access) Act 2009* (NSW);

(g) **(Intellectual Property):**

- (1) on request from the Department, provide the Department with a copy of any Agreement Material in the format reasonably requested by the Department;
- (2) grant to, or, where the Recipient does not own the relevant Licensed Materials, use reasonable endeavours to obtain for, the Department a perpetual, irrevocable, world-wide, royalty-free, fee-free, non-exclusive licence to use, reproduce, adapt, modify, communicate, broadcast, distribute, publish, disseminate and sublicense the Licensed Materials (but excluding any Pre-existing Materials owned by the Department) for the purposes of the Department:
  - (A) exercising any right under this agreement;
  - (B) exercising any purpose set out in the Guidelines; or
  - (C) carrying out any objective under Part 6A the *Energy and Utilities Administration Act 1987* (NSW),

provided that nothing in this clause 14.1(g)(2) will grant the Department or any other person a licence to exploit the Licensed Materials for commercial purposes;

- (3) if someone claims, or the Department reasonably believes that someone is likely to claim, that all or part of the Licensed 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 and to any other rights that the Department may have, promptly, at the Recipient's expense:
  - (A) use its best efforts to secure the rights for the Department to continue to use the affected Licensed Materials free of any claim or liability for infringement; or
  - (B) replace or modify the affected Licensed Materials so that the Licensed 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 Licensed Materials;

(h) **(Moral Rights):** use best endeavours to obtain all consents (including any Moral Rights consents or waivers) necessary to perform its obligations under this agreement;

(i) **(adverse effect notification):**

- (1) advise the Department as soon as possible of any circumstances which have or which are reasonably likely to have a materially adverse effect on:
  - (A) the Recipient's ability to comply with this agreement,
  - (B) the Recipient's ability to complete the Project or achieve the Outcomes;
  - (C) the Department's or the NSW Government's reputation; and
- (2) notify the Department as soon as practicable of any significant concerns of local community groups of which the Recipient or the Project Company becomes aware;



- (j) **(insurance)**: in connection with the Project:
- (1) maintain (and ensure that any Project Company maintains), and use reasonable endeavours to require its respective Subcontractors to maintain, the insurances that would be maintained by a prudent business undertaking the Project or operating the Project Equipment (where applicable), including as may be reasonably required by the Department; and
  - (2) if requested by the Department, provide certificates or other sufficient evidence to satisfy the Department that such insurances have been procured and maintained and diligently pursue any claim under those insurances;
- (k) **(transactions with a Related Party)**: ensure that any transaction between the Recipient or the Project Company and any of their respective Related Party is on terms no less favourable to the Recipient or the Project Company than the terms of a comparable transaction negotiated at arms' length with an unrelated third party;
- (l) **(books and records)**: at its own cost, during the period of this agreement, keep (and ensure that any Project Company keeps), and use reasonable endeavours to require its and the Project Company's 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 Department; and
  - (2) the amounts payable by the Department under this agreement to be determined or verified;
- (m) **(monitoring)**: meet with the Department at the times and in the manner reasonably required by the Department to discuss any issues in relation to this agreement or the Project;
- (n) **(information)**: provide any information reasonably requested by the Department in connection with this agreement, the Project or the Recipient's compliance with the Outcomes;
- (o) **(conflicts)**: if, during the Project, a conflict of interest arises, or appears likely to arise, notify the Department promptly in writing, make full disclosure of all relevant information relating to the conflict and take such steps as the Department requires to resolve or otherwise deal with the conflict;
- (p) **(visitations)**: during the term of this agreement and the 2 years after the expiry or termination of this agreement:
- (1) allow and provide the Department escorted visits by interested persons approved by the Department or the Recipient (**Visitors**) to Stations under the Recipient's (or, as applicable, any Project Company's) control where activities relating to the Project are conducted;
  - (2) use best endeavours to obtain permission for escorted visits by Visitors to Stations not under the Recipient's (or, as applicable, any Project Company's) 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 Department 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 Station as a condition of entry.

- (q) **(Bank Account)**: comply with the bank account requirements specified in clause 7;
- (r) **(notification)**: notwithstanding any other provision of this agreement, notify the Department 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 the Recipient or any Project Company; or
  - (5) there is a material change to any of the following (after the Commencement Date):
    - (A) Recipient Contributions;
    - (B) Other Contributions; or
    - (C) a legal and/or beneficial right to use, access or have title to any Significant Asset;
- (s) **(advertising)**: ensure that any advertising structure or material displayed, broadcasted or otherwise communicated on the co-funded Stations:
  - (1) complies with all applicable planning requirements, as may be updated from time to time, including but not limited to the *State Environment Planning Policy (Transport and Infrastructure) 2021* (NSW);
  - (2) complies with all applicable Laws, accepted industry standards and voluntary codes of conduct established by the advertising industry, as may be updated from time to time, including but not limited to:
    - (A) AANA Code of Ethics and AANA Code of Ethics Practice Note;
    - (B) section 28 of *Fair Trading Act 1987* (NSW);
    - (C) Classification (Publications, Films and Computer Games) Enforcement Act 1995 (NSW);
    - (D) Live Performance Australia Ticketing Code of Practice;
    - (E) Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising and its explanatory notes;
    - (F) AANA Children's Advertising Code and AANA Children's Advertising Code Practice Note;
    - (G) AANA Practice Guidelines: Managing Images of Children and Young People;
    - (H) AANA Food & Beverages Advertising Code and AANA Food & Beverages Code Practice Note;
    - (I) Therapeutic Goods Advertising Code;

- (J) Weight Management Code of Practice;
- (K) AANA Environmental Claims Code and AANA Environmental Claims Code Practice Note; and
- (L) the ABAC Responsible Alcohol Marketing Code;
- (3) does not depict or include any material:
  - (A) which may, or is designed to, influence support for a political party, an individual elected to, or that is a candidate for an election to the Parliament of New South Wales and/or the Parliament of Australia or any matter that is subject to impending Parliamentary consideration;
  - (B) that contains the name, or depicts the voice or image of a Minister, any other member of, or a candidate for an election to, the Parliament of New South Wales and/or the Parliament of Australia; or
  - (C) that contains the name, logo, slogan or policy of a political party or an independent member of, or a candidate for an election to, the Parliament of New South Wales and/or the Parliament of Australia;
- (4) does not have an adverse effect on the NSW Government's brand or reputation; and
- (t) does not depict the NSW Government's trademarks or logos without the Department's prior written consent or as part of the public acknowledgement of support of the NSW Government as required in accordance with this agreement.

## 14.2 Acknowledgements

- (a) The parties acknowledge and agree that:
  - (1) this agreement does not affect ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material; and
  - (2) all Intellectual Property Rights in Agreement Material vest in the Recipient upon creation.
- (b) The Recipient acknowledges that the Department may be required to publish on the NSW eTendering website certain information concerning this funding agreement in accordance with sections 27–35 of the *Government Information (Public Access) Act 2009* (NSW).
- (c) The Recipient acknowledges that the Recipient's identity and participation in this grant program will be disclosed on the NSW Government Grant Finder website.

## 15 Change in Control

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### 15.1 Change in Control

- (a) The Recipient must obtain the prior written consent of the Department in respect of any Change in Control of the Recipient or any Project Company during the period beginning on the Commencement Date and ending on the date Milestone 3 has been achieved.

- (b) The Department must not unreasonably withhold its consent under clause 15.1.
- (c) For purposes of clause 15.1(b) and without limitation, the parties acknowledge that it will be reasonable to withhold consent where the Department has formed the view, acting reasonably, that:
  - (1) the Change in Control would be inconsistent with the basis upon which the Department formed a view that the Recipient:
    - (A) met the Assessment Criteria;
    - (B) was eligible to receive Funds; or
    - (C) was capable of undertaking the Project or operating the Project Equipment (as applicable),
 at the time its Application was assessed by the Department;
  - (2) the Change in Control would result in the Recipient and the Project Company collectively not having the financial, technical or commercial capability to develop, construct, Commission or operate the Project or perform the obligations under this agreement;
  - (3) the Change in Control would materially reduce the likelihood of the Project achieving the Outcomes; or
  - (4) the Change in Control would result in any Project Company ceasing to be wholly owned and controlled by the Recipient.
- (d) The Recipient must provide the Department with any information about the Change in Control reasonably requested by the Department to allow the Department to assess whether to provide its consent, including any information relating to the matters set out in clause 15.1(c).
- (e) The Department may require as a condition to its consent that any person acquiring control of the Recipient enters into a deed in form and substance acceptable to the Department pursuant to which that person undertakes to ensure that the Recipient complies with its obligations under this agreement.

## 15.2 Impending Change in Control

The Recipient represents and warrants that it has disclosed to the Department any circumstances or intentions of which it is actually aware that are reasonably likely to give rise to a Change in Control of the Recipient or the Project Company on or before the date all Milestones have been achieved.

# 16 Assets

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## 16.1 Assets generally

- (a) During the term of this agreement, the Recipient must, and must ensure that any Project Company does (unless otherwise agreed with the Department in writing):
  - (1) use any Asset only for the purposes of the Project or other purposes consistent with the Outcomes;
  - (2) obtain and maintain good title to all Assets (other than Assets which the Recipient leases);

- (3) hold the Stations including the Project Equipment forming part of the Project and all other Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
  - (4) use all reasonable endeavours to maintain the Project Equipment forming part of the Project (if applicable) and all Assets in good working order;
  - (5) maintain all appropriate insurances in respect of any Assets;
  - (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 Department, maintain an Assets register as specified by the Department, and provide a copy of the register to the Department on request.
- (b) If prior to the date Milestone 3 has been achieved any Asset is lost, damaged or destroyed, the Recipient must reinstate or replace or, if applicable, must ensure that any Project Company reinstates or replaces, the Asset (including by using the proceeds of insurance) without using any of the Funds and this clause 16.1 continues to apply to the reinstated or replaced Asset.

## 16.2 Sale of Significant Assets

Until the date Milestone 3 has been achieved, the Recipient must not (unless otherwise agreed with the Department in writing) encumber or dispose of any Significant Asset or otherwise encumber or dispose of the Project, any Station or the Project Equipment forming part of the Project (if applicable) or any Asset without the Department's prior approval which approval must not be unreasonably withheld.

# 17 Evaluation, audits and access

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## 17.1 Evaluation

- (a) The Department may undertake an evaluation of the Project at any time, either directly or through a third party adviser.
- (b) The Recipient must, at its own cost, provide all reasonable assistance to the Department (and any adviser) for such review or evaluation.
- (c) Subject to clause 19, during the term of this agreement, the Recipient must provide, upon request by the Department, any information reasonably required by the Department on the implementation and progress of the Project in the format requested by the Department.

## 17.2 Audits and access

- (a) Subject to clause 17.2(d), during the term of this agreement, and for 5 years after the expiry or termination of this agreement, the Department or its nominee may:
  - (1) conduct audits relevant to the performance of the Recipient's obligations under this agreement and in respect of the Project; and

- (2) upon giving the Recipient reasonable notice, access the Recipient's premises and/or any Station, require the provision of records and information, and inspect and copy any documentation or records reasonably necessary for that purpose.
- (b) The Recipient must retain all relevant records relating to the Project for at least 7 years after the expiry or termination of this agreement.
- (c) The Recipient must provide all reasonable assistance to the Department and its nominee (if any) for such audit or access.
- (d) In carrying out an audit or accessing the Recipient's premises, the Department 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 the Recipient's reasonable workplace and site access policies as notified by the Recipient to the Department in writing from time to time.
- (e) Where an audit under this clause 17.2 identifies, in the Department's opinion, that the Recipient is in breach of this agreement, then the Department may recover from the Recipient the costs incurred in conducting that audit. The Recipient acknowledges and accepts that it is not permitted to use Funds to meet any such costs.

## 18 Acknowledgement, disclaimer and publicity

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- (a) The Recipient must (and must ensure that any Project Participants) acknowledge the financial and other support received from the Department in all publications, promotional and advertising materials, public announcements, events and activities in relation to the Project, or any products, processes or inventions developed as a result of it, and, if required by the Department, at each Station. The form of acknowledgement must be as specified in item 18 of the Project Details or as otherwise approved by the Department (after having received at least 10 Business Days' notice) prior to their use.
- (b) The Department reserves the right to publicise and report on the awarding of the Funds, and may include the name of the Recipient, Recipient's shareholders and Project Participants, the amount of the Funds and a brief description of the Project (which may include address, specifications and project status) (**Project Information**). The Recipient acknowledges that the Department may use the Project Information in connection with such publicity or report without notifying the Recipient.
- (c) If reasonably requested by the Department, the Recipient must procure, and provide to the Department as soon as practicable, artists' impressions or renders which demonstrate the anticipated appearance of any works constructed or goods developed in connection with the Project upon completion.
- (d) The Recipient must (and must ensure that any Project Participants):
  - (1) include a disclaimer as specified in item 19 of the Project Details or otherwise approved by the Department in all published material relating to the Project; and
  - (2) before making a public announcement in connection with this agreement or any transaction contemplated by it, obtain the Department's written consent to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange), in

which case the Department should be notified of any such requirement as soon as practicable.

## 19 Confidentiality

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- (a) The Department must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to another person.
- (b) Notwithstanding any other provision of this agreement, the Department may disclose Recipient Confidential Information and information of the type specified in clause 1:
  - (1) to the Department's Personnel or advisers (subject to such advisers agreeing to keep such information confidential on customary terms);
  - (2) where applicable, to other lenders or financial institutions involved in the Project;
  - (3) 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;
  - (4) to the Department's responsible Minister or to any NSW Government or Australian Government agency; and
  - (5) where required by Law.
- (c) Subject to clause 19(d), the Recipient must not, without the prior written consent of the Department, disclose any Department Confidential Information to another person.
- (d) Notwithstanding any other provision of this agreement, the Recipient may disclose Department Confidential Information with:
  - (1) its employees and officers of the Recipient and its Related Bodies Corporate, to the extent reasonably necessary to ensure that the Recipient complies with its obligations under this agreement;
  - (2) to contractors and subcontractors engaged by the Recipient in connection with the Project, to the extent reasonably necessary to ensure that the Recipient complies with its obligations under this agreement;
  - (3) to professional advisors (including legal and financial advisors);
  - (4) to regulators;
  - (5) to Debt Financiers or bona fide potential Debt Financiers; and
  - (6) as required by Law;
- (e) Without limiting any other provision of this agreement, where the Recipient discloses the Department Confidential Information to a third party pursuant to clause 19(c) or clause 19(d), the Recipient 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.

- (f) The Recipient acknowledges that Recipient Confidential Information provided to the Department 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 Recipient Confidential Information.
- (g) Notwithstanding any other provision of this agreement (and without limiting any other right the Department has under this agreement), the Department reserves the right to disclose information that contains a description of the Project and the Outcomes, and the total Funds available and/or paid under this agreement.

## 20 Force Majeure

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### 20.1 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 the Recipient;
- (b) the occurrence or effect of which the Recipient could not have avoided through compliance with its obligations under this agreement and the exercise of reasonable care and conducting its activities in accordance with Good Industry Practice; and
- (c) that causes or results in the prevention or delay of the Recipient from performing its obligations under this agreement,

including the following, to the extent they satisfy clauses 20.1(a) to 20.1(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.

### 20.2 Exclusions

Notwithstanding clause 20.1, the following will not constitute a Force Majeure Event:

- (a) lack of funds, financial hardship or the inability of the Recipient or any of its 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 the Recipient or any of its 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 the Recipient, except to the extent it is itself caused by a Force Majeure Event;
- (d) a breakdown or failure of the Recipient's equipment, property or an asset caused by normal wear and tear;



- (e) any event or circumstance arising due to a failure by the Recipient, its 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 Department) to perform an obligation it owes to the Recipient, except to the extent such failure is caused by any event or circumstance that, had it happened to the Recipient, 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.

### **20.3 Non-performance excused**

- (a) Subject at all times to clauses 20.3(b) and 20.4, non-performance (wholly or in part) as a result of a Force Majeure Event by a Recipient of any obligation required by this agreement to be performed will, other than as explicitly set out in this agreement:
  - (1) be excused during the time and to the extent that the Force Majeure Event prevents such performance, wholly or in part; and
  - (2) not give rise to any liability to the Department or any liability of any kind arising out of, or in any way connected with, that non-performance.
- (b) Nothing in this clause 20.3 will affect any Milestone Long Stop Date or any right the Department may have under clause 24.1(f).

### **20.4 Notification and diligence**

The benefit of clause 20.3 is conditional on the Recipient complying with all of the following at all applicable times:

- (a) notifying the Department as soon as reasonably possible:
  - (1) of full particulars of the Force Majeure Event;
  - (2) the date of commencement and expected duration of the Force Majeure Event;
  - (3) providing an estimate of the period of time required to enable it to resume full performance of its obligations;
- (b) keeping the Department informed of any material changes or developments to any of the matters referred to in clause 20.4(a);
- (c) using all reasonable diligence and means consistent with Good Industry Practice to remedy or abate the Force Majeure Event as expeditiously as possible;
- (d) resuming performance as expeditiously as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent that permits resumption of performance (in whole or in part); and
- (e) notifying the Department when the Force Majeure Event has terminated or abated to an extent that permits resumption of performance (in whole or in part) to occur.

## 20.5 Withdrawal of Station for prolonged Force Majeure Event

If, in respect of a Station, non-performance by the Recipient due to a Force Majeure Event continues for a period of more than 6 months in aggregate in any 12-month period, the Department may, by giving the Recipient written notice, require that the Recipient withdraw that Station by varying the agreement in accordance with clause 9.

## 21 Default and suspension

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### 21.1 Suspension for Suspected Breach

- (a) If the Department, acting reasonably believes that:
- (1) the Recipient has, or is reasonably likely to have, breached this agreement;
  - (2) the Recipient is unlikely to be able to perform the Outcomes or manage the Funds in accordance with this agreement; or
  - (3) there is a serious concern relating to the Recipient's performance of its obligations under this agreement or its conduct of the Project that requires investigation,
- (each a **Suspected Breach**),
- the Department may, by written notice to the Recipient, immediately suspend the Department's obligations to provide any Funds under this agreement pending resolution of the Suspected Breach under this clause 21.1.
- (b) The Department will take all reasonable steps to investigate the Suspected Breach as expeditiously as possible. The Recipient must respond to any requests for information or provide any assistance reasonably required to allow the Department to complete its investigation.
- (c) If, on completion of its investigation, the Department reasonably concludes that the Suspected Breach is unsubstantiated, its obligations to provide Funding under this agreement will resume and the Department will promptly notify the Recipient.
- (d) If, on completion of its investigation, the Department reasonably concludes that the Suspected Breach is substantiated, the Suspected Breach will be treated as a breach of this agreement and clause 21.2 will apply.

### 21.2 Notice of Default

- (a) If the Department becomes aware that:
- (1) the Recipient has breached this agreement;
  - (2) the Recipient has Abandoned the Project; or
  - (3) the Recipient or any Project Company has become required to accelerate repayment under any loan agreement or similar document related to financing provided by any third party as a result of an event of default or termination event (however defined),
- (each a **Non-Compliance Event**) it may give the Recipient written notice (**Notice of Non-Compliance**).

- (b) A Notice of Non-Compliance must set out the circumstances giving rise to the Non-Compliance Event and indicate whether the Department considers the Non-Compliance Event to be:
  - (1) a Material Breach of this agreement or not; or
  - (2) capable of remedy (**Remediable**) or not capable of remedy.
- (c) Without limiting any other rights the Department may have under this agreement, if the Department considers the Non-Compliance Event to be a Material Breach, then the Department may, in its sole discretion:
  - (1) require the Recipient to provide a Draft Cure Plan under clause 22.1(a); or
  - (2) issue the Recipient a Show Cause Notice under clause 24.2(a).

### 21.3 Suspension of payment during Applicable Cure Period

If the Department considers a Non-Compliance Event to be a Material Breach that is Remediable, the Department may, in its sole discretion, suspend its obligation to provide Funds under this agreement until the Non-Compliance Event has been remedied under clause 22.2.

### 21.4 Suspension during Force Majeure Event

If, in respect of a Station, non-performance by the Recipient due to a Force Majeure Event continues for more than 30 consecutive days, or 30 days in aggregate in any 12-month period, the Department may, by written notice to the Recipient, immediately suspend the Department's obligations to provide any Funds in respect of that Project pending resolution of the Force Majeure Event.

## 22 Cure Plan

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### 22.1 Draft Cure Plan

- (a) Where required by the Department under clause 21.2(c)(1) or where the Recipient has elected to provide the Department with a Response Notice under clause 24.2(b), the Recipient must provide the Department with a written plan (**Draft Cure Plan**) outlining:
  - (1) in the case of a Curable Termination Event or a Non-Compliance Event that the Department has determined to be Remediable, the steps it will take to remedy or otherwise address the Curable Termination Event or Non-Compliance Event (including the timeframes within which the Recipient will remedy the Curable Termination Event or Non-Compliance Event); and
  - (2) in the case of a Curable Termination Event or Non-Compliance Event that the Department has not determined to be Remediable, the steps it will take to ensure that the Curable Termination Event or Non-Compliance Event does not recur.
- (b) If the Recipient does not submit a Draft Cure Plan within 20 Business Days after the date the Department issues the relevant request to provide a Draft Cure Plan under clause 21.2(c)(1) or issues a Show Cause Notice under

clause 24.2(a) then the Department may terminate this agreement under clause 24.1(c).

## 22.2 Department acceptance or rejection of Cure Plan

- (a) Within 20 Business Days after receipt of a Draft Cure Plan, the Department must (acting reasonably) either:
  - (1) approve the Draft Cure Plan by notifying the Recipient; or
  - (2) reject the Draft Cure Plan by notifying the Recipient and providing reasons to the Recipient for its rejection.
- (b) If the Department (acting reasonably) rejects a Draft Cure Plan pursuant to clause 22.2(a)(2), then the Recipient may, within 10 Business Days of the date the Recipient receives a notice of rejection from the Department, submit a further Draft Cure Plan to meet the reasonable requirements of the Department, in which case clause 22.2(a) will apply to the amended Draft Cure Plan.
- (c) If the Department (acting reasonably), rejects an amended Draft Cure Plan submitted under clause 22.2(b) or if the Recipient fails to deliver an amended Draft Cure Plan under clause 22.2(b) within 10 Business Days of receipt of a notice under clause 22.2(a)(2), then the Department may terminate this agreement under clause 24.1(d).
- (d) If the Department approves a Draft Cure Plan pursuant to clause 22.2(a)(1) (**Approved Cure Plan**), the Recipient must:
  - (1) comply with, and diligently pursue the actions set out in the Approved Cure Plan; and
  - (2) if the Department has indicated that it considers the Curable Termination Event or Non-Compliance Event to be Remediable, remedy or cure the Curable Termination Event or Non-Compliance Event within the period allowed in that Approved Cure Plan (**Applicable Cure Period**).
- (e) If the Recipient fails to comply with any material aspect of an Approved Cure Plan (including, if applicable, failure to cure or remedy a Non-Compliance Event or Curable Termination Event both of which the Department has indicated that it considers to be Remediable, within the Applicable Cure Period), the Department (acting reasonably) may:
  - (1) provide written notice to the Recipient of the details of the failure to comply; and
  - (2) terminate this agreement under clause 24.1(f).

## 23 Guarantee and indemnity

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### 23.1 Guarantee and indemnity

The Recipient's Guarantor:

- (a) unconditionally and irrevocably guarantees to the Department on demand, the due and punctual performance of the Recipient's obligations under this agreement; and

- (b) as a separate and additional liability, indemnifies the Department against all loss, actions, proceedings and judgments of any nature, incurred by, brought, made or recovered against the Department arising from any default or delay in the due and punctual performance of the Recipient's obligations under this agreement.

## **23.2 Extent of guarantee and indemnity**

The liability of the Recipient's Guarantor under this clause 23 is not affected by anything that, but for this clause 23, might operate to release or exonerate the Recipient's Guarantor in whole or in part from its obligations including any of the following, whether with or without the consent of the Recipient's Guarantor:

- (a) the grant to the Recipient, the Recipient's Guarantor or any other person of any time, waiver or other indulgence, or the discharge or release of the Recipient, the Recipient's Guarantor or any other person from any liability or obligation;
- (b) any transaction or arrangement that may take place between the Department, the Recipient, the Recipient's Guarantor or any other person;
- (c) the Department exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against the Recipient, the Recipient's Guarantor or any other person;
- (d) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part and either with or without consideration, of any security now or in the future held by the Department from the Recipient, the Recipient's Guarantor or any other person or by the taking of or failure to take any security;
- (e) the failure or omission or any delay by the Department or the Recipient to give notice to the Recipient's Guarantor of any default by the Recipient or any other person under this agreement; and
- (f) any legal limitation, disability, incapacity or other circumstances related to the Recipient, the Recipient's Guarantor or any other person.

## **23.3 Principal and independent obligation**

This clause 23 is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation and extends to cover this agreement as amended, varied, supplemented, renewed or replaced.

## **23.4 Continuing guarantee and indemnity**

This clause 23 is a continuing obligation of the Recipient's Guarantor and remains in full force and effect for so long as the Recipient has any liability or obligation to the Department under this agreement and until all of those liabilities or obligations have been fully discharged.

## **23.5 No set off**

The Recipient's Guarantor has no right to set off, deduct or withhold any moneys that it may be or become liable to pay under this clause 23, against any moneys that the Department may be, or become, liable to pay to the Recipient or the Recipient's Guarantor whether under this agreement or otherwise.]

## 24 Termination

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### 24.1 Termination Events

Subject to clauses 24.2 and 24.3, the Department may terminate this agreement pursuant to this clause 25 if any of the following **Termination Events** occur:

- (a) the Recipient Abandons the Project;
- (b) the Recipient has committed a Material Breach of this agreement;
- (c) the Recipient fails to submit a Draft Cure Plan as required under clause 22.1(b);
- (d) the Department rejects an amended Draft Cure Plan under clause 22.2(c);
- (e) the Recipient fails to deliver an amended Draft Cure Plan as set out in clause 22.2(b) within 10 Business Days of receipt of a notice under clause 22.2(a)(2);
- (f) the Recipient fails to comply with any material aspect of an Approved Cure Plan as set out in clause 22.2(d);
- (g) the Recipient has not achieved a Subsequent Milestone by the applicable Milestone Long Stop Date;
- (h) the Recipient has:
  - (1) wilfully, fraudulently or recklessly breached this agreement; or
  - (2) wilfully, fraudulently or recklessly made any materially false or misleading statements to the Department in relation to the Project or the Funds (including as part of its Application); or
- (i) the Recipient becomes subject to an Insolvency Event.

### 24.2 Curable Termination Events

- (a) The Department may not exercise its right to terminate this agreement as a result of an event described in clause 24.1(a) or 24.1(b) (**Curable Termination Event**), unless the Department first gives the Recipient a notice (**Show Cause Notice**):
  - (1) specifying details of the Curable Termination Event; and
  - (2) stating whether the Department considers the Curable Termination Event to be Remediable.
- (b) The Recipient may, within 20 Business Days of its receipt of a Show Cause Notice, elect to provide the Department with a response (**Response Notice**):
  - (1) describing the Recipient's reasons why the Department should not terminate this agreement; and
  - (2) attaching a Draft Cure Plan prepared in accordance with clause 22.
- (c) If the Recipient complies with an Approved Cure Plan within the Applicable Cure Period (with any variations or extensions as may be agreed by the Department in its discretion), then the Department must give notice to the Recipient that the Recipient has sufficiently shown cause and the Department will have no further right to terminate this agreement for that Curable Termination Event.

### 24.3 Termination

Subject to clause 24.2(c), where a Curable Termination Event occurs, the Department may terminate this agreement effective immediately by giving notice of termination to the Recipient as follows:

Circumstances	Clause	Earliest time when notice of termination may be given
The Department has given to the Recipient a Show Cause Notice in respect of that Curable Termination Event and the Recipient has failed to provide a Response Notice under clause 24.2(b)	24.1(a) 24.1(b) 24.2(b)	20 Business Days after the Show Cause Notice
The Recipient fails to submit a Draft Cure Plan when required under clause 22.1(b).	24.1(c)	20 Business Days after the relevant request to provide a Draft Cure Plan under clause 21.2(c)(1) or Show Cause Notice
The Department rejects an amended Draft Cure under clause 22.2(c) or the Recipient fails to deliver an amended Draft Cure Plan as set out in clause 22.2(b).	24.1(d)	10 Business Days after the notice is provided to the Recipient under clause 22.2(a).
The Recipient fails to comply with an Approved Cure Plan.	24.1(f)	5 Business Days after the Department provides notice under clause 22.2(e)
A Subsequent Milestone is not achieved by the Milestone Long Stop Date.	24.1(g)	Immediately on written notice to the Recipient
The Recipient, wilfully, fraudulently or recklessly breached this agreement or wilfully, fraudulently or recklessly made any materially false or misleading statements to the Department.	24.1(h)	Immediately on written notice to the Recipient
The Recipient is subject to an Insolvency Event.	24.1(i)	Immediately on written notice to the Recipient

### 24.4 Rights and entitlements upon termination

- (a) If this agreement is terminated under clause 24.1:

- (1) the Department is not obliged to pay to the Recipient any compensation, or any outstanding amount of Funding under this agreement;
  - (2) without limiting any other rights and remedies it may have, the Department is immediately entitled to recover any Undisbursed Funds and other moneys remaining in the Bank Account at the time of termination; and
  - (3) the Recipient must repay to the Department any amounts demanded by the Department under clause 25.
- (b) If this agreement is terminated under clause 20 ('Force Majeure'), the Department is liable to the Recipient only for payments due under clause 5.1(a) before the effective date of termination in accordance with this agreement, but only to the extent that those monies have been spent or Legally Committed on Eligible Expenditure.
- (c) Termination of this agreement does not affect any accrued rights or remedies of a party.
- (d) The Recipient agrees, on receipt of the notice of termination under this clause 24, to:
- (1) take all available steps to minimise loss resulting from the termination; and
  - (2) report on, and subject to clauses 24.4(b) and 25, return any part of the Funds to the Department, or otherwise deal with the Funds, as directed by the Department.

## 24.5 Survival

Clauses 2 (Definitions and Interpretation); 4(e) (Recipient to undertake each Project); 5.1(b) and 5.1(c) (Funds); 5.7(b) (Early payment of Undisbursed Funds); 9.4 (Reduction of Funds due to Project variation); 10.1(c) (Reporting obligations); 13 (Liability and indemnity); 14.1(e) (privacy); 14.1(f) (GIPA); 14.1(g) (Intellectual Property); 14.1(l) (Books and records); 17.2 (Audits and access); 18 (Acknowledgement, disclaimer and publicity); 19 (Confidentiality); 24.4 (Rights and entitlements upon termination); 24.5 (Survival); 25 (Repayment of the Funds); 26 (Dispute resolution); 27 (GST); and 29.16 (Governing law) survive the expiry or termination of this agreement, together with any provision of this agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this agreement.

## 25 Repayment of the Funds

### 25.1 Circumstances giving rise to repayment

Notwithstanding anything else in this agreement other than clause 25.2(c), the Department may, in its absolute discretion, require the Recipient to repay some or all of the Funds in the circumstances and to the extent specified below:

- (a) **(misspent funds)**: the amount of any Funds which, in the Department's opinion (acting reasonably) and at any time, has been spent or used other than in accordance with this agreement;
- (b) **(wilful breach)**: an amount equal to all the Funds paid to the Recipient if the Recipient has wilfully, fraudulently or recklessly breached this agreement, the



full amount of any Funds which have been paid the Recipient by the Department under this agreement;

- (c) **(Abandonment)**: within 10 Business Days after the Department gives the Recipient notice to make repayment following Abandonment, an amount equal to all the Funds provided under this agreement if the Recipient Abandons the Project prior to the achievement of Milestone 2 and does not resume performance of the Project;
- (d) **(Change in Control or transfer)**: at any time, an amount equal to all the Funds provided under this agreement if the Department terminates this agreement under clause 24.1(b) because the Recipient is in breach of clause 15.1(a) or clause 29.3(a);
- (e) **(material change to Project costs)**: an amount equal to any Refund Amount calculated in accordance with [Schedule 3](#);
- (f) **(misleading information)**: the amount of any Funds, which the Department subsequently determined (acting reasonably) that the Recipient has received as a result of providing misleading, false, or inaccurate information but the Recipient was not entitled to receive; or
- (g) **(FIRB Abandonment)** an amount equal to all the Funds provided under this agreement if any action that is required for the development or construction of the Project (including the acquisition of interests in land, acquisition of shares, or the provision of equity or debt funding for the Project) requires FIRB Approval and:
  - (1) FIRB Approval for such action is applied for and either approval is denied or the applicant withdraws its application without prompt re-submission; or
  - (2) FIRB Approval is not obtained in circumstances where failure to do so comprises a breach of the *Foreign Acquisitions and Takeovers Act 1975* (Cth),
 and such matters cause or materially contribute to the Abandonment of the Project.]

## 25.2 Repayment notice

- (a) The Department may give the Recipient a repayment notice requiring the Recipient to repay to the Department an amount which the Department is entitled to recover under clause 25.1. If the Department gives the Recipient such notice, the Recipient must, within 20 Business Days of the date of the repayment notice, repay the amount (including interest calculated as set out in clause 25.3) specified in the repayment notice.
- (b) The Department can (in its absolute discretion) elect to require repayment of a lesser amount of the Funds than otherwise required under clause 25.1.
- (c) Where the right to require repayment arises under clause 25.1(e), the Department will act reasonably when exercising its rights, having regard to the impact such repayment would have on the overall viability of the Project.

## 25.3 Interest on amounts to be repaid

Unless otherwise stated by the Department, the Recipient must pay interest to the Department in connection with any amount notified as owing to the Department under clauses 25.1. The rate of interest will be calculated:

- (a) on the amount to be repaid to the Department as set out in the Department's repayment notice;
- (b) at the Interest Rate plus 3%;
- (c) on a semi-annually compounding basis upon the principal amount specified in the notice as repayable to the Department; and
- (d) from and including the date the amount is payable under clause 25.2(a) up to but excluding the day on which the Recipient repays the total amount specified in the notice as owing to the Department, without any set off, counter-claim, condition, abatement, deduction or withholding.

#### 25.4 Acknowledgement and limitations

- (a) The Recipient acknowledges that the amounts to be paid to the Department under this clause 25 are a genuine pre-estimate of the losses incurred by the Department for the defaults described in this clause 25.
- (b) The Department and the Recipient agree that the amount of any repayments payable to the Department by the Recipient under this clause 25 shall not exceed the amount of the Funds paid to the Recipient.
- (c) This clause 25 does not limit any other right or remedy of the Department.

## 26 Dispute resolution

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- (a) Any party must comply with this clause 26 in relation to any dispute, controversy or claim arising out of, relating to or in connection with this agreement, including any question regarding its existence, validity or termination (**Dispute**), before starting court proceedings except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 26.
- (b) Any party claiming a Dispute has arisen must give the other parties to the Dispute a notice setting out details of the Dispute (**Notice of Dispute**).
- (c) Within 10 Business Days after a Notice of Dispute is received (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use all reasonable endeavours through a meeting of senior officers of each of the Recipient and the Department having the authority to bind their respective parties to resolve the Dispute.
- (d) Subject to clauses 26(e) and 26(f), any Dispute which remains unresolved 20 Business Days after the meeting under clause 26(c) (unless such period is extended by agreement of the parties) shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be three.
- (e) Each party retains the right to apply to any court of competent jurisdiction for provisional, interim and/or conservatory relief, including injunctions, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.
- (f) Notwithstanding clause 26(d), where a Dispute relates solely to:
  - (1) the determination or calculation of a financial amount,

- (2) whether a Subsequent Milestone has been achieved for purposes of clause 5.4;
- (3) amounts to be determined by an Expert under [Schedule 3](#),  
the Dispute will be referred to an appropriately qualified independent expert (**Expert**) appointed by the Recipient and approved by the Department, in each case acting reasonably. The costs of the expert will be borne by the Recipient.
- (g) If an Expert has not been appointed within 45 days after the meeting under clause 26(c) (unless such period is extended by agreement of the parties), the Dispute may be referred to arbitration under clause 26(d).

## 27 GST

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- (a) In this clause 27:
  - (1) unless otherwise stated, words and expressions which are not defined in this agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
  - (2) a reference to a party or an entity includes the representative member of any GST group of which the relevant party or entity is a member.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided to the Department under this agreement are exclusive of GST.
- (c) Subject to this clause 27, if a party (**Supplier**) makes a taxable supply to another party (**GST Recipient**) under or in connection with this agreement in respect of which GST is payable, the GST Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount is payable at the same time that any part of the consideration for the supply is first paid or provided, subject to the Supplier providing a tax invoice to the GST Recipient.
- (d) If an adjustment event arises in respect of a taxable supply made by the Supplier under this agreement, the amount payable by the GST Recipient will be recalculated to reflect the adjustment event and a payment will be made by the GST Recipient to the Supplier or by the Supplier to the GST Recipient as the case requires. The Supplier must provide an adjustment note to the GST Recipient in accordance with the GST Law.
- (e) If the GST payable in relation to a supply is less than the amount the GST Recipient has paid the Supplier under clause 27(c), the Supplier is only obligated to pay a refund of GST to the GST Recipient to the extent the Supplier receives a refund of that GST from the Commissioner.
- (f) If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which that loss, cost or expense relates.
- (g) This clause 27 will survive the termination of this agreement by any party.

## 28 Notices and other communications

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- (a) Any notice, approval, consent or other communication must be:
  - (1) in writing, in English and from a person duly authorised by the party; and
  - (2) sent by express post or by email to the recipient's address (as applicable) specified in item 22 of the Project Details (or as updated by notice from time to time).
- (b) Any notice, approval, consent or other communication takes effect when it is taken to be received and is taken to be received:
  - (1) if sent by express post, on the Business Day after the date it was mailed if mailed before 5.00pm or otherwise on the second Business Day after it was mailed;
  - (2) if sent by email, on the day and at the time it is sent (as recorded on the sender's equipment), unless the sender receives an automated message that the email has not been delivered, or the intended recipient of the notice notifies the sender within 1 Business Day that the email has not been delivered, but if the delivery or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day in the receiver's locality.

## 29 Miscellaneous

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### 29.1 Modern Slavery

- (a) The Recipient acknowledges that it is not aware of any Modern Slavery in its supply chain.
- (b) Should the Recipient become aware of any:
  - (1) Modern Slavery risks in its supply chain or operations, it must notify the Department of those risks and advise the Department of the steps it is taking to eliminate or minimise those risks; or
  - (2) Modern Slavery practices being carried out within its operations or supply chain, it must:
    - (A) in writing, immediately notify the Department of those practices and of the remediation action it proposes to take; and
    - (B) at its cost, take any such additional remediation action required by the Department (acting reasonably and after due consultation with the Department).
- (c) If the Recipient is a 'reporting entity' for the purposes of any Modern Slavery Laws, it must comply with such legislation and provide the Department with a copy of any report it is required to prepare under that legislation at the Department's request.

## 29.2 Contract Management Agent

The Department 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 Department under this agreement; and
- (b) exercising any decision-making authority or discretion given to the Department under this agreement,

in which case the Department will notify the Recipient in writing of the appointment. References to a Contract Management Agent in this agreement will be disregarded unless and until the Department appoints a Contract Management Agent in accordance with this clause 29.2.

## 29.3 Assignment

- (a) Subject to clause 29.4, the Recipient must not assign, transfer, create any security interest or other interest in or deal in any other way with any of its right, title to or interest (**Dealing**) in this agreement without obtaining the prior written consent of the Department, not to be unreasonably withheld or delayed. For the purposes of the Department's consent to a Dealing under this clause 29.3(a), the parties acknowledge and agree that clauses 15.1(c) to 15.1(e) (inclusive) apply in respect of a Dealing as if such Dealing were a Change in Control.
- (b) The Department 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. The Recipient agrees to execute any documents reasonably required by the Department in order to give effect to an assignment or novation contemplated by this clause 29.3.

## 29.4 Debt Financier Security and Tripartite Agreement

- (a) The Recipient may grant a security interest over its right, title to or interest in this agreement to a Debt Financier without obtaining the prior written consent of the Department.
- (b) The Department must (at the request and cost of the Recipient) execute and deliver a Tripartite Agreement to the Recipient.

## 29.5 Subcontracting

Where the Recipient subcontracts any aspect of the Project, it is fully responsible for:

- (a) undertaking the Project, operating the Project Equipment (if applicable) and for the performance of all of its obligations under this agreement; and
- (b) the Subcontractors' acts and omissions.

## 29.6 Costs and duty

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

## 29.7 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

## 29.8 Electronic execution

- (a) 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.
- (b) 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.
- (c) 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:
  - (1) insertion of an image (including a scanned image) of the person's own unique signature onto the agreement;
  - (2) insertion of the person's name onto the agreement; or
  - (3) 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;

  - (4) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the agreement; or
  - (5) as otherwise agreed in writing (including via email) between the parties.
  - (6) 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.
- (d) 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.

## 29.9 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

## 29.10 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.

**29.11 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.

**29.12 Exercise of rights and waiver**

- (a) Except where this agreement expressly states otherwise, a party may, in its absolute discretion, give conditionally or unconditionally, or withhold, any acceptance, agreement, approval or consent under this agreement.
- (b) Waiver of any provision of or right under this agreement must be in writing and signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.

**29.13 No partnership**

This agreement does not create a relationship of employment, agency or partnership between the parties. The parties must not represent themselves, and must ensure that their officers, employees, agents and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

**29.14 Consequential Loss**

Neither party will be liable to the other party for Consequential Loss arising under or in connection with this agreement.

**29.15 Indemnities**

- (a) 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.
- (b) 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.

**29.16 Governing law**

This agreement is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

## Schedule 1

### 1 The Project

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#### 1.1 Project

*[Recipient to include Project description.]*

#### 1.2 Outcomes

The Recipient must construct, Commission by the Milestone 2 Long Stop Date, and operate all Stations listed in Table 1.4 of **Schedule 1** in accordance with the technical and operational requirements set out in the Guidelines.

#### 1.3 Milestones (Table 1.3)

The Department will provide operational templates for those requirements stated in the Milestone table below once this agreement has been signed. The Commissioning Checklist is available at *[Link to Commissioning Checklist will be inserted at the time of execution of the Funding Agreement]*.

Milestone	Key deliverables/ description	Nominal funding percentage	Milestone Long Stop Date
M1	Payable upon execution of this agreement.	20% of Total Grant Funding across all co-funded Stations.  Refer to Table 1.4 below.	<i>[Recipient to insert]</i>
M2	Payable on a per-station basis.  <u>Deliverables</u> <ul style="list-style-type: none"><li>Expenditure report proving that Total Project Value has been reached or exceeded on Eligible Expenditure (excluding expenditure for Additional Funding).</li><li>Commissioning Checklist completed and submitted through the GMS.</li></ul>	65% of individual Station co-funding.  Additional funding for pull-through bays or additional bays (if applicable).  Refer to Table 1.4 below.	24 months from the Commencement Date



Milestone	Key deliverables/ description	Nominal funding percentage	Milestone Long Stop Date
	<ul style="list-style-type: none"> <li>All equipment installed and Station is fully Operational.</li> <li>Evidence provided of Pull-through Bays / Additional Bays (if applicable) and Project completion per the below.</li> </ul> <p><u>Evidence of Project completion</u></p> <ul style="list-style-type: none"> <li>Photographs of completed Project</li> <li>CCEWs</li> <li>As-built drawings</li> <li>Single Line Diagrams of electrical infrastructure</li> <li>DNSP connection agreements</li> <li>Evidence of compliant accessible bay</li> <li>Evidence of compliant NSW Government branding</li> <li>Station listed on plugshare.com and Charge at Large</li> </ul> <p>(together, the <b>Milestone 2 Deliverables</b>).</p>		
<b>M3</b>	<p>The Stations outlined in this agreement have been operational for 12 months.</p> <p>The Station has reached the required level of uptime as required in the Guidelines.</p> <p>Evidence and verification of proven OPEX costs (for Remote Stations only).</p> <p>(together, the <b>Milestone 3 Deliverables</b>).</p>	<p>15% of individual Station co-funding.</p> <p>Additional OPEX payment (for Remote Stations only).</p> <p>Refer to Table 1.4 below.</p>	<p>[Recipient to insert]</p>

1.4 Consolidated funding details (Table 1.4)

Station #	Address, Zone and Stream	Number of Bays	Site KVA	On-site renewable capacity (kWh)	Size of battery storage (kWh)	Co-Funding Request	TPV	M1	M2	M3	Total Grant Funds	Additional Bay Funding	Pull-Through Bay Funding	OPEX Yes/No	Milestone Long Stop Date
		[Minimum bays: Additional Bays: Pull-Through Bays]													

## 2 Funding and Payment

### 2.1 Recipient Contributions

Please complete. This table should include contributions from the Recipient's equity investors / shareholders

Person	Contribution (GST exclusive)	Due date or timing
TOTAL		

### 2.2 Other Contributions (financial)

Please complete. This table should include contributions from the Recipient's non-equity financiers.

Person	Contribution (GST exclusive)	Due date or timing
TOTAL		

### 2.3 Other Contributions (in-kind)

Please complete. As stated in the Guidelines, in-kind contributions are not required (and not suitable substitutes for cash contributions).

Person	Contribution (GST exclusive)	Due date or timing
<b>TOTAL</b>		

### 3 Reporting and Plans

#### 3.1 Specific Reports

The Recipient must provide Reports to the Department.

Regular meetings (face to face or virtually) will be scheduled for up to one hour between the assigned project manager and the recipient's allocated project manager on a bi-monthly basis for the duration of the project.

Reporting will include but is not limited to requirements set out as follows:

Report Type	Date	Requirements
Progress Reports	If a milestone has not been reached in a six-month period, the Recipient must provide a progress report.	<p>Each Progress Report must include:</p> <ol style="list-style-type: none"> <li>1 the name of the Recipient and all Subcontractors;</li> <li>2 the Project title and number;</li> <li>3 the period to which the Report relates;</li> <li>4 a Budget update (including cost to completion) (in a format similar to that set out in Attachment 1), including: <ul style="list-style-type: none"> <li>• a report on Eligible Expenditure incurred to date against the heads of expenditure in the Budget;</li> <li>• an explanation of whether the Project is proceeding in accordance with the Budget and, if it is not, an explanation of why the Budget is not being met, the effect this will have on the Project and the action the Recipient proposes to take to address this;</li> </ul> </li> <li>5 where payment of Funds will be determined based on payment in arrears and/or funds Legally Committed, reasonable evidence of those costs;</li> </ol>

Report Type	Date	Requirements
		<p>6 a statement of the Funds, Recipient Contributions and Other Contributions provided and spent certified by an authorised officer of the Recipient;</p> <p>7 a description and analysis of the progress of the Project, including:</p> <ul style="list-style-type: none"> <li>• progress on achieving the Outcomes;</li> <li>• evidence of completion of those aspects of the Project due to be completed in accordance with item 1 of this <a href="#">Schedule 1</a>;</li> <li>• any major issues or developments which have arisen and the effect they will have on the Project; and</li> <li>• any proposed changes to the Project; and</li> <li>• a brief update on the progress of the Project suitable for public dissemination</li> </ul> <p>8 any other information reasonably requested by the Department for the purposes of evaluating the Project against the objectives set out in the Guidelines and/or the Outcomes.</p>
Bi-monthly reports	Twice a month through charging station development (until Milestone 2 Completion Date).	Grantees will be required to submit bi-monthly progress reports through charging station development.
Operational reporting	From Milestone 2 Completion Date until Milestone 3 Completion Date.	Following construction, grantees are required to share operational and usage data for one year after the charging station becomes operational.
Final Report	<p><b>[Note: link to Final Report template will be included at the time of Execution of Funding Agreement]</b></p> <p>Please insert date.</p>	<p>The Final Report must include:</p> <ol style="list-style-type: none"> <li>1 the name of the Recipient and all Subcontractors;</li> <li>2 the Project title and number;</li> <li>3 the period to which the Report relates;</li> <li>4 a Budget update (including cost to completion) (in a format similar to that set out in Attachment 1), including <ul style="list-style-type: none"> <li>• a report on Eligible Expenditure incurred to date against the heads of expenditure in the Budget;</li> <li>• an explanation of whether the Project proceeded in accordance with the Budget and, if not, an explanation of why the</li> </ul> </li> </ol>

Report Type	Date	Requirements
		<p>Budget was not met, any effect this had on the Project; and</p> <ul style="list-style-type: none"> <li>any other information reasonably requested by the Department for the purposes of the Final Report;</li> </ul> <p>5 where payment of Funds will be determined based on payment in arrears and/or funds Legally Committed, reasonable evidence of those costs;</p> <p>6 a statement of the Funds, Recipient Contributions and Other Contributions provided and spent certified by an authorised officer of the Recipient;</p> <p>7 a description and analysis of the outcome of the Project, including:</p> <ul style="list-style-type: none"> <li>evidence that the Project has been completed, and the Milestones have been achieved;</li> <li>details of the extent to which the Project achieved the Outcomes;</li> <li>any highlights, breakthroughs or difficulties encountered; and</li> <li>conclusions or recommendations (if any) arising from the Project;</li> <li>details of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project;</li> <li>statistics for employment generated by or in connection with the Project; and</li> <li>a brief overview of completion of the Project for public dissemination.</li> </ul> <p>8 any other information reasonably requested by the Department for the purposes of evaluating the Project against the objectives set out in the Guidelines and/or the Outcomes.</p>
Audited financial statements prepared by an Approved Auditor in accordance with Accounting Standards in respect of the Funds, Recipient Contributions and	Within 3 months after the end of each financial year during the term of this agreement or otherwise at the Department's request	<p>The audited financial statements must include:</p> <ol style="list-style-type: none"> <li>a definitive statement as to whether the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records;</li> <li>a separate declaration from the Recipient's directors that the Recipient is solvent, a going concern and able to pay its debts as and when they fall due; and</li> </ol>

Report Type	Date	Requirements
Other Contributions		3 detail of any of the Funds returned to the Department by the Recipient and the reasons for such refund.
Risk Register and Management Plan, to be provided by the Recipient to the Department	This will be incorporated into the Final Report.	This will take the same form as the Risk Management Plan in this agreement.

In Schedule 1, the following terms have the following meaning:

- (a) **Accounting Standards** means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia;
- (b) An **Approved Auditor** is a person who is:
- (1) registered as a company auditor under the Corporations Act or an appropriately qualified member of the Institute of Chartered Accountants in Australia, CPA Australia or the Institute of Public Accountants;
  - (2) not a principal, member, shareholder, officer, agent, Subcontractor or employee of the Recipient, a Project Participant or a related body corporate of the Recipient or a Project Participant; and
  - (3) not the Recipient's accountant.

## Risk Management Plan

The below template is a guide, If you have your own risk management plan, please include.

Please complete the below tables, if any of the risk descriptions do not apply to you, please mark as NA. Please add any risks that are not included.

This risk register and management plan provided below utilises the following risk likelihood and consequence matrix.

For the duration of this agreement, the Recipient must develop, implement and update a Risk Management Plan for the Project which includes the following features:

1. clear identification and documentation of all key Project risks and categorisation of those risks covering both likelihood of occurrence.
2. the proposed mitigation strategies and associated action plans that the Recipient determines necessary to eliminate the risks or, if this is not possible, minimise the likelihood and consequences of those risks occurring; and
3. a process for regularly monitoring and updating the Risk Management Plan and reporting to the Recipient's internal management, board, Project Participants and joint venture partners (if applicable), and is consistent with relevant industry standards and best practice for this type of project and the types of risks it has.

LIKELIHOOD	CONSEQUENCES				
	Insignificant (minor problem handled by day to day processes)	Minor (some disruption possible, damage/ costs between \$150K - \$500K)	Moderate (significant time/ resource required, damage/ costs up to \$1million)	Major (operations severely damaged e.g. damage/ costs above \$1 million)	Catastrophic (business survival is at risk)
<b>Almost certain</b> (e.g. > 90% chance)	Low	Medium	Medium	High	High
<b>Likely</b> (e.g. between 50% and 90% chance)	Low	Low	Medium	High	High
<b>Moderate</b> (e.g. between 10% and 50% chance)	Low	Low	Medium	Medium	Medium



LIKELIHOOD	CONSEQUENCES				
	Insignificant (minor problem handled by day to day processes)	Minor (some disruption possible, damage/ costs between \$150K - \$500K)	Moderate (significant time/ resource required, damage/ costs up to \$1million)	Major (operations severely damaged e.g. damage/ costs above \$1 million)	Catastrophic (business survival is at risk)
<b>Unlikely</b> (e.g. between 3% and 10% chance)	Low	Low	Low	Low	Medium
<b>Rare</b> (e.g. <3% chance)	Low	Low	Low	Low	Low

## Risk register –

	Risk description (Please delete examples below if not applicable or add relevant risks)	Current Risk Rating			Mitigation treatment, strategies, Action	Timeframe to complete	Post Mitigation Risk Level		
		Consequence	Likelihood	Risk Rating			Consequence	Likelihood	Risk Rating
1	Costs exceed initial project forecasts > 10%	Minor	Moderate	Low	<ul style="list-style-type: none"> <li>Example: Seek indicative pricing from at least 4 suppliers prior to establishing funding agreement.</li> <li></li> </ul>	Complete	Minor	Rare	Low
2	Work is not on track to be completed within two years after signing the FA				<ul style="list-style-type: none"> <li></li> </ul>				
3	Site constraints prevents build				<ul style="list-style-type: none"> <li></li> </ul>				

	Risk description (Please delete examples below if not applicable or add relevant risks)	Current Risk Rating			Mitigation treatment, strategies, Action	Timeframe to complete	Post Mitigation Risk Level		
		Consequence	Likelihood	Risk Rating			Consequence	Likelihood	Risk Rating
5	Poor quality workmanship or damage to property				•				
6	Injury to contractor or Recipient during construction /installation				•				
7	Safety issue								
8	Injury or damage due to product failure								
9	Future product recall								
10	EV customer complaints								
11	Breakdown/ damage/ failure not covered by warranty								
12	Long lead times for supply of goods/materials								
14	Difficulty in obtaining connection approval from distribution network provider.								
15	Covid delays (see CI 2.1)								

Signed:



Name



Position:



Date:



DRAFT

## Risk Management Plan – WHS Risks

For the duration of the agreement, the Recipient must develop, implement, and update a Work Health and Safety Plan for the Project which includes the following features:

- identify and implement all management and supervisory structures necessary to comply with WHS Law, including safety issue identification, resolution and response procedures, safe working systems, safety training requirements, access requirements and appropriate recording, reporting, inspection and auditing control measures relating to any works carried out or procured by the Recipient in relation to the Project; and
- identify and implement procedures to ensure that all plant and equipment used by the Recipient or its personnel is adequate and safe for the task for which it is used, adequately guarded, adequately protected, approved, regularly serviced and maintained, and free from defect.

	WHS hazard description (including any adverse impacts to project or people)	Current risk rating associated with hazard			Mitigation treatment, strategies, Actions	Timeframe to complete	Has the WHS risk been eliminated or further treatment required?
		Consequence	Likelihood	Risk Rating			
1					•		Yes <input type="checkbox"/> No <input type="checkbox"/> Provide details:
2					•		Yes <input type="checkbox"/> No <input type="checkbox"/> Provide details:
3					•		Yes <input type="checkbox"/> No <input type="checkbox"/> Provide details:
5					•		Yes <input type="checkbox"/>

	<b>WHS hazard description</b> (including any adverse impacts to project or people)	<b>Current risk rating associated with hazard</b>			<b>Mitigation treatment, strategies, Actions</b>	<b>Timeframe to complete</b>	<b>Has the WHS risk been eliminated or further treatment required?</b>
		Consequence	Likelihood	Risk Rating			
							No <input type="checkbox"/> Provide details:

Signed: Name: Position: Date:

## 1 Operating Obligations

### 1.1 Operational requirements

Requirement Type	Criteria
Renewable energy	The project must source 100% renewable energy to cover the electricity consumption of all funded charging stations in perpetuity, from sources including on-site generation, GreenPower, or Large-scale Generation Certificates (LGCs).
Uptime	All charging stations must maintain a minimum uptime of 98% annually per plug for at least 50% of all plugs on-site. Uptime is the total number of hours a plug is available to the public, excluding time for planned or unplanned network outages.
Charging station performance	Energy management systems may be used to balance loads across the charging station. The overall capacity of the charging station cannot be curtailed through energy management systems of charger de-rating to fall below the approved connection capacity. Dynamic connection agreements are permitted where the reduction in capacity imposed by the DNSP is less than a 20% reduction.
Reporting	Successful applicants will be required to report charger usage and uptime through the Charge at Large app.
Customer service	A 24/7 customer support service must be maintained to assist users in real-time. The customer service must be accessible to those users with a disability (e.g. hearing impairment).

### 1.2 Availability

- (a) The Recipient must, by no later than 5 Business Days after the last day of a Quarter Surrender a quantity of LGCs equivalent (on the basis that 1 LGC is equivalent to one MWh of electricity load) to the total electricity load of all Stations operating during that Quarter.
- (b) During the Reporting Period, the Recipient must, by no later than 15 Business Days after the end of a Quarter, provide the Department with an Operating Report containing the Operational Data relating to the operation of each Station during the previous Quarter.
- (c) During the Reporting Period, the Recipient must provide the Department with Operational Data or any other information relating to the Project on an ad hoc basis within 15 Business Days of receipt of a written request from the Department.
- (d) During the term of this agreement, the Recipient must ensure that each Station continues to comply with the criteria set out in the Outcomes.

- (e) During the Reporting Period, the Recipient must ensure that each Station achieves a minimum availability / uptime of 98% per month in respect of no less than 50% of the plugs at that Station.

- (f) Availability is calculated as follows:

$$\text{Availability \%} = \left( \frac{\text{Number of hours available}}{\text{Number of hours advertised to be available}} \right) \times 100$$

- (g) In calculating the monthly availability of a plug pursuant to clause 1.2(f) above, the sum of the time during that month (rounded to the nearest hour) during which the plug was unavailable for charging due to Vandalism or a Force Majeure Event may be added to the numerator of the formula (i.e. 'Number of hours available').

### 1.3 Renewable Energy

The Recipient must source Renewable Energy for 100% of electricity used at all Stations 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.

### 1.4 Location

- (a) The Recipient must publish location details for each charger at a Station on at least the following online public platforms:
- (1) Google Maps;
  - (2) PlugShare; and
  - (3) EV Council's Charge at Large app.
- (b) The Recipient must publish charger uptime, availability and usage data for each charger at a Station to EV Council's Charge at Large app in the manner required by the EV Council, including via an Open Charge Point Interface connection.
- (c) The Recipient must do anything required or incidental to the publication of charger details on the platforms in clause 1.4(a) and 1.4(b) above, including applying for and maintaining listings on such platforms.

### 1.5 Branding

**[Note: Link for Branding template: <https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgment-guidelines>]**

The Recipient must clearly display a 'Supported by NSW Government' branded decal sticker on all co-funded chargers in accordance with branding guidelines as provided by the Department from time to time. Any third-party branding or advertising must not conceal the NSW Government branding.

### Adjustment of Total Grant Funds

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#### 1 Adjustment procedure

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##### 1.1 Acknowledgement

The parties acknowledge and agree that:

- (a) the Total Grant Funds do not include or apply to the Additional Funding, and therefore all references to “Budget”, “Eligible Expenditure” and “Funds” in this [Schedule 3](#) do not include the Additional Funding for the purposes of the provisions in this [Schedule 3](#);
- (b) the Department determined the Total Grant Funds that could be provided under this agreement on the basis that the Recipient would be required to expend the Estimated Costs as set out in the Initial Budget to deliver the Project;
- (c) if the Final Costs are less than the Estimated Costs, the Total Grant Funds may be adjusted such that the Department receives a refund of a portion of the Funds provided to the Recipient in accordance with this [Schedule 3](#); and
- (d) if the Final Costs are greater than the Estimated Costs, the Total Grant Funds will not be increased.

##### 1.2 Recipient calculation of adjustment to Total Grant Funds

- (a) Following the date that Milestone 2 is achieved (**Milestone 2 Completion Date**), but before submission of the relevant Funds Payment Request, the Recipient 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 Grant Funds**); and
  - (4) the aggregate amount of all Funds distributed to the Recipient under this agreement as at the Milestone 2 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) The Recipient must notify the Department in writing of all amounts described in clause 1.2(a) of this [Schedule 3](#) (**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 2 Funds Payment Request.
- (d) No later than 30 Business Days after the Recipient notifies the Department of the Draft Calculations, the Department must provide notice to the Recipient confirming whether the Department accepts or rejects the Draft Calculations.



- (e) If within the required period for notification under clause 1.2(d) of this [Schedule 3](#):
  - (1) the Department notifies the Recipient that it accepts the Draft Calculations, or the Department fails to give a notification under clause 1.2(d) of this [Schedule 3](#), 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 2 Completion Date; or
  - (2) if the Department notifies the Recipient that it rejects the Draft Calculations then either party may trigger the Dispute Resolution procedures set out in clause 26.

### 1.3 Review of Draft Calculations

- (a) If the Department provides notice to the Recipient under clause 1.2(e)(2) of this [Schedule 3](#) (**Adjustment Dispute Notice**) then, within 10 Business Days after an Adjustment Dispute Notice is received (or longer period if the parties agree in writing), the Department and the Recipient must use all reasonable endeavours through a meeting of senior officers of each of the Recipient and the Department having the authority to bind their respective parties to resolve the Dispute.
- (b) If the parties have not resolved the dispute within 20 Business Days of after an Adjustment Dispute Notice has been issued, the parties must appoint an Expert under clause 26(f) of this agreement as soon as practicable. If the parties have not appointed an Expert within 20 Business Days after the date of the Adjustment Dispute Notice, either party may submit the matter to Dispute resolution under clause 6 of this agreement.
- (c) The Recipient must provide to the Expert (with a copy to the Department):
  - (1) a copy of the Initial Budget which clearly identifies the Estimated Costs as at the Commencement Date;
  - (2) all evidence reasonably required by the Expert of all Final Costs incurred by the Recipient; and
  - (3) details of the Recipient's process and calculations in determining the Draft Calculations.
- (d) Within 20 Business Days of receipt of the information under clause 1.3(c) of this [Schedule 3](#), the Expert must:
  - (1) undertake a process review of the Draft Calculations;
  - (2) provide confirmation by way of notice to the Department and the Recipient that based on its review it either:
    - (A) agrees that the Recipient's process and the Draft Calculations comply with clause 1.2(a) of this [Schedule 3](#); or
    - (B) does not agree that the Recipient's process and the Draft Calculations comply with clause 1.2(a) of this [Schedule 3](#).
- (e) If the Expert gives a notice under clause 1.3(d)(2)(A) of this [Schedule 3](#) then the Total Grant Funds will be deemed to be the Adjusted Total Grant Funds with effect on and from the Milestone 2 Completion Date.
- (f) If the Expert gives a notice under clause 1.3(d)(2)(B) of this [Schedule 3](#) then the Recipient must re-perform its obligations under clauses 1.2(a) and 1.3(a) of this [Schedule 3](#) within 10 Business Days and the Expert must repeat the steps

under clause 1.3(d) of this [Schedule 3](#) until the Expert gives a notice under clause 1.3(d)(2)(A) of this [Schedule 3](#).

- (g) The parties agree that the calculations and determinations made by the Expert under clause 1.2 of this [Schedule 3](#) will not be subject to the Dispute resolution procedures under this agreement and that the determination of the Expert will be final and binding on the parties.

## 1.4 Reduction or refund

- (a) If the Total Grant Funds are adjusted under clause 1.3(e) of this [Schedule 3](#) and the amount of the Adjusted Total Grant Funds is greater than the amount of Distributed Funds, the Department 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 Department may determine in its absolute discretion).
- (b) If the Total Grant Funds are adjusted under clause 1.3(e) of this [Schedule 3](#) and the amount of the Distributed Funds is greater than the Adjusted Total Grant Funds, the Department may, in its absolute discretion, require the Recipient to refund the difference between the Distributed Fund and the Adjusted Total Grant Funds to the Department pursuant to clause 25.1(e) of this agreement (up to the total amount of Funds actually distributed to the Recipient by the Department) (**Refund Amount**).

## 2 Definitions

The meanings of the terms used in this [Schedule 3](#) are set out below.

Term	Meaning
<b>Estimated Costs</b>	the total amount of Eligible Expenditure as set out in the Initial Budget.
<b>Final Costs</b>	the total amount of Eligible Expenditure as set out in the Milestone 2 Budget
<b>Initial Budget</b>	the Budget for the Project as at the Commencement Date.
<b>Milestone 2 Budget</b>	the updated Budget for the Project as at achievement of Milestone 2.
<b>Milestone 2 Completion Date</b>	the date that Milestone 2 is achieved.

## Schedule 4

### Form of Funds Payment Request

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To: NSW Department of Climate Change, Energy, the Environment and Water, NSW Government (ABN 55 437 667 728) (the **Department**)

Attention: [insert]

Date: [insert]

Funds Payment Request – NSW Department of Climate Change, Energy, the Environment and Water, EV Fast Charging Grants – Round 4 dated [insert] between [insert name of You] (You) and the Department (**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

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- (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

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You warrant to the Department 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 Stations listed in [insert] by the Milestone 2 Long Stop Date and ensure all Stations listed in [insert] are Operational for 24 months after the date that the relevant Station is Commissioned in accordance with the Funding Agreement.

Signed:

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

## Signing page

### Executed as an agreement

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***[Note: Electronic execution declaration to be included if agreement is signed electronically.]***

Signed for The Crown in Right of  
the State of New South Wales,  
acting through the Department  
by its authorised representative

in the presence of

sign here ►

Representative

sign here ►

Witness

print name

print name

Date

Signed by

**[insert Recipient full name]**

by

sign here ►

Company Secretary/Director

sign here ►

Director

print name

print name

Date

***[Note: to be included where the Recipient has a Guarantor]***

Signed by  
**[insert Recipient's Guarantor  
full name]**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

*print name* \_\_\_\_\_

Date \_\_\_\_\_

DRAFT