



[**Drafting note:** This is ARENA’s standard funding agreement template and has been prepared for the Advancing Renewable Program (ARP). The terms of this Agreement must be consistent with the requirements of the Applicable Guidelines, including with respect to Eligible Expenditure and overseas expenditure All drafting notes are to be deleted in the execution version.]

Advancing Renewables Program Funding Agreement

ARENA agrees to provide the ARENA Funding, and the Recipient agrees to complete the Project and use reasonable endeavours to achieve the Outcomes, in accordance with the terms of this Agreement. [**Drafting note:** Note that some clauses are marked as optional and ARENA will advise whether they are required, to be used depending on the Project.]

PROJECT DETAILS

PART 1 – PROJECT OVERVIEW

- | | |
|-----------------------------------|---|
| 1. Project Title | <p>[Drafting note: ARENA to complete. Insert full long name in accordance with ARENA’s naming convention]</p> <p><i>i.e.</i> [GMS Number] [Powerworks, voltage control on the Pacific Islands Study]</p> <p>[GMS Number] [study/ project/ fellowship/ scholarship/ R&D Project]</p> |
| 2. Contract Number | [Drafting note: ARENA to complete – to be obtained from ARENA’s GMS] |
| 3. Recipient | [Drafting note: Recipient to insert full legal name and ABN] |
| 4. Guidelines and policies | <p>Advancing Renewables Program – Program Guidelines, 2020
 https://arena.gov.au/assets/2017/05/ARENA_ARP_Guidelines_FA_Single_Pages_LORES.pdf</p> <p>ARENA Variation Policy (https://arena.gov.au/assets/2018/05/arena-funding-agreement-variation-policy.pdf)</p> <p>ARENA Report Writing Guidelines
 https://arena.gov.au/assets/2020/03/arena-report-writing-guidelines.pdf</p> |

PART 2 - KEY PROJECT DETAILS

- | | |
|---|--|
| 5. Purpose, Outcomes and Project | See items 1.1, 1.3 and 1.2 of Schedule 1 (The Project) |
| 6. Location | [Insert the location (state, suburb and street address if available) where majority of the Project is expected to be delivered and include details for the head office if different. If the Project is being delivered at multiple locations, these should be listed.] |

7. Budget	<i>[insert total Budget for Project, including Recipient Contributions and Other Contributions.]</i>
8. ARENA Funding	<i>[insert dollar amount]</i> (excl. GST) representing <i>[insert]</i> % of Budget
9. Recipient Contributions	<i>[insert dollar amount]</i> (excl. GST) representing <i>[insert]</i> % of Budget [Drafting note: include both cash and in-kind contributions]
10. Other Contributions	<i>[insert dollar amount]</i> (excl. GST) representing <i>[insert]</i> % of Budget [Drafting note: include both cash and in-kind contributions]
11. CP Submission Date and CP Satisfaction Date (Clause 3) [Optional]	[Drafting note: Optional clause. ARENA to complete. If Conditions Precedent are not to be used, delete and mark 'Not used'] CP Submission Date: <i>[insert date by which the Conditions Precedent must be submitted by the Recipient to ARENA]</i> CP Satisfaction Date: <i>[insert date by which the Conditions Precedent must be satisfied (that is, approved by ARENA). This should be at least 20 Business Days after the CP Submission Date, to account for the initial 10 Business Days for ARENA's review, plus an additional 10 Business Days in the event the Condition Precedent is rejected and resubmitted by the Recipient.]</i>
12. Final Milestone Date	[Drafting note: ARENA to complete.]
13. Specified Personnel	[Drafting note: Recipient to complete. Insert nominated Personnel of the Recipient, nominated Personnel of the Project Participants or nominated Personnel of the subcontractors who will be carrying out the Project and involved in Knowledge Sharing.] Project Personnel: <i>[insert name, position and contact details]</i> Knowledge Sharing Personnel: <i>[insert name, position and contact details]</i>
14. Approved subcontractors for Major Subcontract Work (Clause 16.1(f))	Drafting note: <i>Recipient to complete. Insert name(s) and ABN of any subcontractors of Major Project Work that have been approved by ARENA or mark 'Not Used'. Note that subcontractors can be added after execution with ARENA's written approval, as set out in clause 16.1(f)]</i>
15. Project Participants (Clause 21)	[Drafting note: Recipient to complete. Insert full legal name and ABN of entities participating in the Project (such as academic or industry bodies). ARENA will confirm if such entities are required to be listed in this item. Note that under clause 21, Project Participants must give an acknowledgement of ARENA's support and their involvement can be publicly disclosed by ARENA. Note that Subcontractors are addressed separately in item 14.]
PART 3 - OTHER CONTRACT INFORMATION	
16. Insurance requirements (Clause 16.1(g))	<ol style="list-style-type: none"> 1. Workers compensation in accordance with relevant State or Territory legislation; 2. Public liability insurance for a minimum amount of <i>[insert amount]</i>; and 3. Professional indemnity insurance for a minimum amount of <i>[insert amount]</i>.

[Drafting note: Recipient to complete. Insert limits of liability and list any other insurances as may be required to cover the risk(s) caused by the Project (e.g. construction and property insurances, etc.). Note that while ARENA will specify minimum limits of liability with respect to the above insurances, it is the Recipient's responsibility to ensure that it has appropriate insurances in place (and limits of liability) to cover the risk of the Project. Third party advice on insurances should be procured by the Recipient if required.]

17. Acknowledgement of support (Clause 21.1)

Acknowledgement

The Recipient must acknowledge the support received from ARENA by including the following statement:

This Project received funding from the Australian Renewable Energy Agency (ARENA) as part of ARENA's Advancing Renewables Program.

[Drafting note: The following signage clause is an optional clause. ARENA to complete. Insert the following clause if ARENA requires signage outside the site or facility at which the Project is undertaken. Generally, this clause is only required to be included for demonstration and deployment Projects.]

Signage [Optional clause]

The Recipient must also acknowledge the support received from ARENA by placing signage outside the site or facility where the Project is undertaken which includes the following statement:

[insert Recipient's name] has received support from the Australian Renewable Energy Agency (ARENA) for [insert Project title] as part of ARENA's Advancing Renewables Program.

18. Disclaimer (Clause 21.4)

The Recipient must include the following statement on any published material in relation to the Project:

The views expressed herein are not necessarily the views of the Australian Government, and the Australian Government does not accept responsibility for any information or advice contained herein.

19. Recipient Confidential Information (Clause 22)

[Drafting note: Recipient to complete. Specify any Recipient Confidential Information (including the duration of confidentiality) of Recipient Confidential Information to be provided under the Agreement. This information can only be disclosed by ARENA in accordance with clause 22, which includes disclosure specified or contemplated in the Knowledge Sharing Plan.

If Recipient Confidential Information is addressed in the KSP, insert "As per Knowledge Sharing Plan".]

20. Address for Notices and other communications (including, in the case of ARENA, invoices) (Clause 34)

ARENA:

Director, Contract Management Services

Delivery and email address:

Level 8, 2 Phillip Law Street
Canberra ACT 2601
arenacontracted@arena.gov.au

The Recipient:

[Drafting note: Recipient to complete. Insert name and position of person to receive notices]

Delivery and email address:

[Drafting note: Recipient to complete. Insert relevant street address (not PO Box) for hand delivery and email. Note that service cannot be facsimile or pre-paid post]

Standard Projects Funding Agreement General Conditions

1 Duration of Agreement

This Agreement begins on the Commencement Date and continues until the End Date, unless terminated earlier in accordance with its terms (**Term**).

2 Recipient to undertake the Project

2.1 Subject to the terms of this Agreement, the Recipient must:

- (a) undertake the Project in accordance with this Agreement;
- (b) use reasonable endeavours to achieve the Outcomes;
- (c) satisfy the requirements of the Milestones Deliverables, including meeting the completion dates for the Milestones, as specified in item 1.6 of Schedule 1 (The Project) and in accordance with clause 7; and
- (d) complete the Project by the Final Milestone Date.

[Drafting note: Clauses 2.2 and 2.3 are optional clauses. ARENA to complete/settle clauses 2.2 and 2.3. ARENA will insert any conditions that must be complied with prior to commencing substantial work on the Project. Note that ARENA may, at its discretion, elect to include these items instead as the items listed below may be included as Conditions Precedent instead of preconditions, at ARENA's discretion. ARENA to delete any items listed below (at (a)(i)-(iii) which are not required.)]

2.2 [**Optional clause**] The Recipient must not commence any substantial work in respect of the Project until:

- (a) the Recipient has provided to ARENA, in a form and substance satisfactory to ARENA:
 - (i) a Risk Management Plan;
 - (ii) a Community Consultation Plan; and
 - (iii) an Intellectual Property Management Plan,
 - (iv) [**Drafting note: insert any additional plans**]

in accordance with item 3.2 of Schedule 1 (The Project); and

- (b) ARENA has accepted those plans in accordance with clause 2.3.

2.3 [**Optional clause**] Within 20 Business Days of receiving a plan submitted under clause 2.2, ARENA may:

- (a) accept the plan, if it considers, acting reasonably, that the plan satisfies all the requirements set out under item 3.2 of Schedule 1 (The Project); or
- (b) reject the plan, if it considers, acting reasonably, that the report or plan does not satisfy all the requirements set out under item 3.2 of Schedule 1 (The Project). Where a report or plan is rejected:
 - (i) ARENA must provide written reasons for the rejection;
 - (ii) the Recipient must, within 14 Business Days, reissue the report or plan in a form that addresses the reasons for the earlier rejection; and
 - (iii) ARENA may accept or reject the report or plan within 10 Business Days of receiving the reissued plan.

3 Conditions Precedent [**Optional clause**]

[Drafting note: Clauses 3.1 – 3.5 are optional clauses. ARENA to determine if this clause 3 is required. Conditions Precedent may include (but are not limited to) conditions contained in the Applicant's letter of offer. Note that Conditions Precedent are not mandatory and may instead be included as a precondition to commencing the Project under clause 2.2 above, or otherwise included as a Milestone deliverable.]

3.1 Notwithstanding any other provision of this Agreement, the Recipient acknowledges and agrees that it must not submit a request for payment of ARENA Funding, and ARENA is not obliged to pay to the Recipient any amount of ARENA Funding, until the Recipient satisfies the Conditions Precedent.

3.2 The Conditions Precedent:

- (a) must be satisfied in a form and substance satisfactory to ARENA; and
- (b) are for the benefit of ARENA and may only be waived in writing by ARENA.

3.3 The Recipient must:

- (a) use all reasonable endeavours to:
 - (i) submit the Conditions Precedent promptly and in any event, on or before the CP Submission Date;
 - (ii) satisfy the Conditions Precedent on or before the CP Satisfaction Date; and
- (b) notify ARENA in writing upon submitting the Conditions Precedent.

3.4 Within 10 Business Days of receipt of a notice under clause 3.3(b) (or such other period as may be agreed between the parties), ARENA must

provide written notice to the Recipient confirming that each of the Conditions Precedent:

- (a) have been satisfied by the Recipient in accordance with this Agreement;
- (b) waived by ARENA; or
- (c) rejected by ARENA, if it considers, acting reasonably, that the Condition Precedent(s) does not satisfy all the requirements set out under item 1.4 of Schedule 1 (The Project), in which case:
 - (i) ARENA must provide written reasons for the rejection;
 - (ii) the Recipient must, within 5 Business Days, reissue the Condition Precedent(s) in a form that addresses the reasons for the earlier rejection; and
 - (iii) ARENA may accept or reject the Condition Precedent within 5 Business Days of receiving the reissued Condition Precedent.

3.5 Subject to clause 3.4(b), if the Recipient fails to satisfy the Conditions Precedent by the CP Satisfaction Date, then:

- (a) ARENA may immediately terminate this Agreement by notice to the Recipient; and
- (b) neither party will have any liability to the other party arising out of, or in connection with, this Agreement or the termination of it.

4 Stages [*Optional clause*]

[Drafting note: Clause 4.1 – 4.4 are optional clauses. ARENA to determine if this clause 4 is required. To be included where ARENA, in consultation with the Recipient, determines that Stages are required for the Project. Any Stages are to be clearly identified within the Milestones table set out in item 1.6 of Schedule 1 (The Project). Where not required, delete the wording under this clause 4 and insert 'Not used.']

- 4.1 The Recipient must complete the Project in the Stages set out in item 1.6 of Schedule 1 (The Project).
- 4.2 ARENA will conduct a Stage Gate Review as set out in item 1.5 of Schedule 1 (The Project).
- 4.3 Upon completion of the Stage Gate Review, without limiting any other rights or remedies ARENA may have arising out of or in connection with this Agreement, ARENA may, at its discretion, terminate this Agreement by giving written notice to the Recipient.
- 4.4 On termination of this Agreement under this clause 4, ARENA is not obliged to pay to the Recipient any compensation or any further ARENA Funding and neither party will be liable to

the other party for Consequential Loss arising under or in connection with this Agreement.

5 Knowledge sharing

5.1 The Recipient must:

- (a) in consultation with ARENA, implement and comply with the Knowledge Sharing Plan; and
- (b) ensure the delivery of the Knowledge Sharing Deliverables,
 - as set out at item 4 of Schedule 1 (The Project).

5.2 It is the Recipient's responsibility to ensure that any Project documentation or information (including any Knowledge Sharing Deliverables) prepared for public release do not contain any Recipient Confidential Information.

5.3 The Recipient must categorise the documentation and information it provides to ARENA pursuant to the Knowledge Sharing Plan as follows:

- (a) **public:** information that may be shared freely within ARENA, with industry participants, and with the public in general; and
- (b) **Recipient Confidential Information:** information that may only be shared in accordance with clause 22.

6 ARENA Funding

- 6.1 Notwithstanding any other provision of this Agreement, ARENA's total liability under or in connection with this Agreement, including all ARENA Funding paid or payable, will not exceed an amount equal to the ARENA Funding.
- 6.2 ARENA may set-off any money due for payment by ARENA to the Recipient under this Agreement against any money owed by the Recipient to ARENA under this Agreement or any other agreement between the parties under which ARENA provides funding to the Recipient.

7 Claims for payment

- 7.1 Subject to this Agreement, ARENA will pay ARENA Funding to the Recipient in accordance with this clause 7.
- 7.2 Before the Recipient can make a claim for payment of ARENA Funding, the Recipient must submit to ARENA by email or by the GMS, all Milestone Deliverables due for the relevant Milestone by the completion date specified in item 1.6 of Schedule 1 (The Project).
- 7.3 Upon receipt of a Milestone Deliverable in accordance with clause 7.2, ARENA will:

- (a) within 5 Business Days, provide the Recipient with notification that the Milestone Deliverable has been received; and
- (b) within 20 Business Days, notify the Recipient, with respect to each Milestone Deliverable, whether it is:
 - (i) accepted; or
 - (ii) not accepted.

7.4 When one or more Milestone Deliverables are not accepted:

- (a) ARENA will provide the Recipient with reasons why the Milestone Deliverable was not accepted; and
- (b) the Recipient must re-submit the Milestone Deliverable within 10 Business Days (or such other period notified by ARENA) of notification of the reasons for non-acceptance, and ARENA will, within 5 Business Days notify the Recipient whether the Milestone Deliverable has been:
 - (i) accepted; or
 - (ii) not accepted, in which case ARENA may exercise any of its rights under this Agreement.

7.5 When all Milestone Deliverables due for the relevant Milestone are accepted by ARENA:

- (a) ARENA will notify the Recipient that the Milestone is achieved; and
- (b) the Recipient will make a claim for payment with respect to payment of the relevant Milestone in accordance with the requirements of clause 7.6.

7.6 The Recipient may submit a claim for payment of ARENA Funding by providing a correctly rendered invoice which:

- (a) is emailed to the address listed in item 20 of the Project Details or submitted by the GMS;
- (b) meets the requirements of a tax invoice as set out in the GST Law;
- (c) sets out:
 - (i) the agreement number and Project title; and
 - (ii) the amount of ARENA Funding to be paid together with the supporting documentation and other evidence specified in item 2 of Schedule 1 (The Project); and
- (d) is accompanied by a certificate signed and dated by a duly authorised representative of the Recipient stating that:

- (i) the representations set out in clause 15 of this Agreement are true and correct in all material respects as at the date the invoice is submitted;
- (ii) no Material Breach is continuing or would result from the payment of funding by ARENA; and
- (iii) the Recipient is able, and has sufficient funds, to complete the Project by the Final Milestone Date in accordance with this Agreement.

7.7 Upon satisfaction of the requirements of this clause 7, ARENA must make payment within 30 days after receiving a valid invoice into the account nominated by the Recipient.

8 Bank account

[Drafting note: ARENA to settle this clause. ARENA's standard requirement is for a separate ledger as set out within clauses 8.1-8.2 below. Alternatively, ARENA may elect to require that a separate bank account be set up, in which case the provisions of clauses 8.3-8.4 will be adopted in this case.]

[Drafting note: Option 1 – Separate Ledger – Select clauses 8.1 and 8.2. Delete clauses 8.3 and 8.4.]

8.1 The Recipient must:

- (a) ensure that the ARENA Funding is held in an account in the Recipient's name, and which the Recipient solely controls, with an authorised deposit-taking institution as defined by the *Banking Act 1959* (Cth);
- (b) notify ARENA, prior to the receipt of any ARENA Funding, of details sufficient to identify the account;
- (c) notify ARENA of any changes to the account within 14 days of the change occurring;
- (d) maintain a separate ledger in relation to the account for the sole purpose of accounting for, and administering, any ARENA Funding paid to the Recipient for this Project; and
- (e) identify the receipt and expenditure of the ARENA Funding separately within the Recipient's accounting records to ensure that, at all times, the ARENA Funding is identifiable and ascertainable.

8.2 On request, the Recipient must provide ARENA and the authorised deposit-taking institution with an authority for ARENA to obtain details relating to the use of the account referred to in this clause 8.

[Drafting note: Option 2 – Separate Bank Account
– Select clauses 8.3 and 8.4 where ARENA, in its discretion, determines that a separate bank account is required. Delete clauses 8.1 and 8.2.]

8.3 The Recipient must:

- (a) ensure that the ARENA Funding is held in an account in the Recipient's name, and which the Recipient solely controls, with an authorised deposit-taking institution as defined by the *Banking Act 1959* (Cth);
- (b) ensure that the account is:
 - (i) established solely for the purposes of accounting for, and administering, any funds paid to the Recipient;
 - (ii) an account that bears a rate of interest reasonably required by ARENA; and
 - (iii) separate from the Recipient's other operational accounts;
- (c) notify ARENA, prior to the receipt of any ARENA Funding, of details sufficient to identify the account;
- (d) notify ARENA of any changes to the account within 14 days of the change occurring; and
- (e) identify the receipt and expenditure of the ARENA Funding separately within the Recipient's accounting records to ensure that, at all times, the ARENA Funding is identifiable and ascertainable.

8.4 On request, the Recipient must provide ARENA and the authorised deposit-taking institution with an authority for ARENA to obtain details relating to the use of the account referred to in this clause 8.

9 Use of ARENA Funding

[Drafting note: Applicants should read the Eligible Expenditure section of the Applicable Guidelines.

9.1 The Recipient must use the ARENA Funding only:

- (a) for the Project;
- (b) for Eligible Expenditure, which must be in accordance with the requirements of the Applicable Guidelines;
- (c) subject to clause 12, as provided in the Budget; and
- (d) in accordance with the terms and conditions set out in this Agreement.

9.2 The Recipient must not spend more than 10% of the ARENA Funding on Overseas Expenditure, other than for equipment or materials.

10 Contributions

10.1 With the exception of the ARENA Funding, the Recipient is responsible for providing or securing all Contributions, funds and resources, and bearing all costs necessary, to complete the Project, including on account of cost overruns.

10.2 Unless otherwise agreed in writing:

- (a) the Recipient Contributions must be provided and used for the Project in accordance with the timeframe in item 2.3 of Schedule 1 (The Project); and
- (b) the Recipient must ensure that any Other Contributions are provided and used for the Project in accordance with item 2.3 of Schedule 1 (The Project).

10.3 The Recipient must provide written notice to ARENA as soon as practicable if the Recipient Contributions and/or Other Contributions provided and used for the Project are increased.

10.4 If the Recipient receives any additional contribution to the Project in the form of grant funding from the Commonwealth or a State, Territory or local government other than the ARENA Funding or Contributions specified in item 2.3 of Schedule 1 (The Project), ARENA may, at its discretion, reduce the amount of ARENA Funding payable under this Agreement by an amount equal to the additional grant funding received by the Recipient.

11 Variations, Delays and Extensions of Time

11.1 Without limiting anything else in this Agreement, any variations (including any requests for Extensions of Time) to this Agreement will be considered by ARENA in accordance with the ARENA Variation Policy.

11.2 Subject to clause 11.3, no agreement or understanding varying the terms of this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

11.3 Where a party requires a Minor Variation:

- (a) the party must provide notice to the other party, including details of the proposed variation; and
- (b) where agreed by the parties, ARENA will effect the Minor Variation in accordance with Appendix A.

11.4 Upon becoming aware that there is, or is likely to be, a delay with respect to:

- (a) satisfying the Conditions Precedent by the CP Satisfaction Date; **[Drafting note: Delete this subclause (a) if there are no Conditions Precedent are not being used.]**

- (b) meeting the completion dates for one or more Milestones specified in item 1.6 of Schedule 1 (The Project); or
- (c) completing the Project by the Final Milestone Date,

the Recipient must promptly notify ARENA of such delay or likely delay.

11.5 Where the Recipient is requesting an extension of time to the CP Satisfaction Date, the completion date of one or more Milestones, the Final Milestone Date or Knowledge Sharing Deliverables and / or the Final Milestone Date (**Extension of Time**), ARENA must, within a reasonable time of such request, assess the request in accordance with clause 11.1 and:

- (a) agree to the Extension of Time, in which case the parties will effect a variation to this Agreement; or
- (b) not accept the Extension of Time, providing written reasons for such non-acceptance, in which case ARENA is entitled to exercise its rights under this Agreement.

12 Changes to the Budget

12.1 Notwithstanding clause 11 and subject to clause 12.2, the Recipient may amend expenditure in the Budget without ARENA's approval where:

- (a) the increase or decrease (taken with all previous changes) in:
 - (i) any individual item of expenditure is less than 10% of the allocated amount for that item; and
 - (ii) the quantum of the Budget is less than 10%; and
- (b) the change, taken with all previous changes, would not result in the total Overseas Expenditure exceeding 10% of the ARENA Funding, other than for equipment or materials.

12.2 For the avoidance of doubt, the Recipient may not amend any individual item of income in the Budget, including the ARENA Funding or Contributions, and clause 12.1 does not apply to any such amendments.

13 Reports and Plans

13.1 The Recipient must provide the reports and plans in accordance with the requirements set out in items 3.1 and 3.2 of Schedule 1 (The Project) and in a form and substance satisfactory to ARENA.

13.2 Where the Recipient is required to provide a plan under item 3.2 of Schedule 1 (The Project), the Recipient must:

- (a) ensure that the plan is developed by an appropriately qualified person with an understanding of the Project and detailed knowledge of the risks; and
- (b) [**Drafting note: Plans provided must be externally or internally certified with each plan being marked as such in Schedule 1.**] as specified in item 3.2 of Schedule 1 (The Project):

- (i) (**external certification**): provide certification, for the benefit of ARENA, that the plan is appropriate and consistent with best practice for this type of Project and its risks, and is being appropriately implemented, from an independent and qualified person, who is not an employee, shareholder, director, other officeholder or related entity of the Recipient, a Project Participant, or any other person having, or having had, significant involvement in the Project or the Application; or
- (ii) (**internal certification**): provide certification, for the benefit of ARENA, that the plan is appropriate and consistent with best practice for this type of Project and its risks, and is being appropriately implemented, from an independent and qualified person, who does not have, or has not had, significant involvement in the Project or the Application.

13.3 If a study to be provided under this Agreement, ARENA may require, the Recipient to use the template provided at Schedule 2 (Study Template).

13.4 In the event this Agreement is terminated by ARENA due to the Recipient having Abandoned the Project or being unable to complete the Project due to technical or commercial feasibility reasons, within 20 Business Days after the termination or such longer period as notified by ARENA, the Recipient must provide a report for public release explaining:

- (a) the reasons for such termination; and
- (b) the information, knowledge and lessons learnt (both positive and negative) by the Recipient from the Project.

14 Governance Body

[Drafting note: ARENA will consider whether amendment to this clause is required to provide for the governance of the Project. As the clause only applies where a steering committee etc is

established, this is not an optional clause and is to be included in all funding agreements.]

14.1 Where a steering committee, group or body has been or will be established to oversee or coordinate the Project (**Governance Body**), the parties acknowledge and agree that, except as otherwise specified in item 1.2 of Schedule 1:

- (a) the Recipient must notify ARENA, as soon as is reasonably practicable, of the establishment of the Governance Body;
- (b) ARENA may, in its discretion, participate in the Governance Body as an observer;
- (c) all decisions or recommendations made, and actions taken, by the Governance Body are based on the Steering Committee's own information, enquiries, independent advice, and/or considerations;
- (d) any contribution made to the Governance Body by ARENA as an observer will not bind the Governance Body; and
- (e) the Governance Body's decisions, recommendations and actions will not bind ARENA.

15 Representations and warranties

15.1 The Recipient represents and warrants that:

- (a) (**transaction permitted**): it will not be breaching any Law, Authorisation, or agreement by signing or performing this Agreement;
- (b) (**no misleading information**): all information provided to ARENA (including in the Application) is true, correct, and complete in all material respects and is not misleading;
- (c) (**conflicts of interest**): except as otherwise disclosed in writing to ARENA, to the best of its knowledge after making diligent enquiry, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement;
- (d) (**employee entitlements**): it is not subject to any judicial decision against it, relating to employee entitlements (not including decisions under appeal) where it has not paid the claim;
- (e) (**Intellectual Property**):
 - (i) the use or development of the Licensed Materials by the Recipient to undertake the Project; and
 - (ii) ARENA's use of the Licensed Materials as contemplated in accordance with the requirements of this Agreement,

will not infringe the Intellectual Property Rights or Moral Rights of any person;

- (f) (**legal capacity**): it 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;
- (g) (**financial capacity**): it has, or will have, sufficient funds to complete the Project;
- (h) (**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;
- (i) (**Applicable Guidelines**): it has complied with the Applicable Guidelines in connection with the Project;
- (j) (**qualifications**): the Recipient, its Personnel and subcontractors have the necessary experience, skill, knowledge, expertise and competence to undertake the Project, will hold 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; and
- (k) (**trustee**): if the Recipient is a trustee, it enters into this Agreement personally, in its capacity as trustee and without any limitation of its liability as a trustee and has the power to perform its obligations under this Agreement.

15.2 The representations and warranties in clause 15.1 will, unless otherwise specified, be made on the signing of this Agreement by the Recipient, and be repeated on each date the Recipient:

- (a) submits an invoice to ARENA in accordance with clause 7; and
- (b) receives payment of ARENA Funding.

15.3 The Recipient acknowledges and agrees that ARENA has entered into this Agreement and performs this Agreement in reliance on the representations and warranties in clause 15.1.

16 Undertakings and Acknowledgements

16.1 The Recipient must:

- (a) (**Laws**): comply with all applicable Laws;
- (b) (**WHS Law**):
 - (i) comply with applicable WHS Law, and not do or allow to be done, or omit or allow to be omitted, anything which may result in ARENA being in breach of WHS Law;

- (ii) immediately notify ARENA of any notifiable incidents under WHS Law, accidents, injuries, or damage to property of a serious nature that occurs in connection with the Project (**WHS Notifiable Incident**);
 - (iii) in relation to any WHS Notifiable Incident, if requested, provide to ARENA an investigation report on the causes and effects of, and corrective and preventative actions arising from, the incident and, provide updates on the status of any such actions as reasonably required by ARENA;
 - (iv) cooperate with ARENA as required in relation to any WHS Notifiable Incident; and
 - (v) ensure that its contracts with any subcontractors, Project Participants, consultants or other persons participating in the Project contain those provisions necessary to enable the Recipient to comply with its obligations under this clause 16.1(b); and
- (c) [**Drafting note: The WHS Accreditation Scheme applies to Building Work that is: directly funded by ARENA and the value is greater than \$4 million; or indirectly funded by ARENA if it is carried out under a contract with a value of \$4 million or more (GST incl.) and the contribution made to the funding of the project by ARENA is at least: \$6 million (GST inclusive) and represents at least 50% of the total funding; or \$10 million.**] (**WHS Accreditation Scheme**): where the Recipient or its subcontractor undertakes Building Work in carrying out the Project, to the extent required by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), the Recipient must, in accordance with applicable requirements of the Work Health and Safety Accreditation Scheme:
- (i) procure and maintain any required accreditation (including as required with respect to its subcontractors); and
 - (ii) ensure ARENA is kept updated as to the status of any such accreditation, including with respect to its subcontractors for this Project;
- (d) (**privacy**):
- (i) comply with applicable privacy laws, including the *Privacy Act 1988* (Cth) (**the Privacy Act**);
 - (ii) promptly notify ARENA in writing if it (or its subcontractors) commits a notifiable data breach within the meaning of the Privacy Act relating to any data or personal information held in connection with the Project; and
- (iii) ensure that Personal Information collected or received in connection with the Project is used solely for the purposes of performing its obligations under this Agreement and otherwise in accordance with the requirements of the Privacy Act;
 - (e) (**FOI**): assist ARENA to comply with any request under the *Freedom of Information Act 1982* (Cth) for access to a document created by, or in the possession of, the Recipient or any subcontractor, that relates to the performance of this Agreement;
 - (f) (**subcontractors and Project Participants**) in connection with the Project:
 - (i) not enter into a contract with a subcontractor or Project Participant named as an organisation that has not complied with the *Workplace Gender Equality Act 2012* (Cth);
 - (ii) not enter into a contract if at any time the Recipient becomes aware of Modern Slavery practices in the operations and supply chains used by a subcontractor or Project Participant unless the Recipient takes reasonable action to address or remove these practices;
 - (iii) and in relation to Major Subcontract Work, only engage those subcontractors specified in item 14 of the Project Details or otherwise approved by ARENA in writing; and
 - (iv) ensure that its contracts with any subcontractors, Project Participants, consultants or other persons participating in the Project contain those provisions necessary to enable the Recipient to comply with its obligations under this Agreement;
 - (g) (**insurance**): in connection with the Project:
 - (i) have and maintain the insurances that would be maintained by a prudent business undertaking the Project, including but not limited to those insurances specified in item 16 of the Project Details;
 - (ii) with respect to such insurances:
 - A. where the Recipient takes out a 'claims-made' policy, which requires all claims and any fact,

- situation or circumstance that might result in a claim to be notified within the period of insurance, maintain the policy during the Term of this Agreement, and a policy in like terms for 7 years after the Term; and
- B. where the Recipient takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of an event can occur at any time subsequently, maintain the policy during the Term of this Agreement; and
- (iii) ensure that its subcontractors have and maintain appropriate insurance to cover the risk of the subcontractors' works, and, if requested by ARENA, provide certificates or other sufficient evidence to satisfy ARENA that such insurances have been procured and maintained;
- (h) **(books and records)**: at its own cost, during the Term of this Agreement and for a period of 7 years after the Term, keep, and require its subcontractors to keep, adequate books and records in sufficient detail to enable:
- (i) all receipts and payments related to the Project to be identified and reported to ARENA; and
- (ii) the amounts payable by ARENA under this Agreement to be determined or verified;
- (i) **(conflicts)**: if, during the Project, a conflict of interest arises, or appears likely to arise, notify ARENA as soon as practicable in writing, make full disclosure of all relevant information relating to the conflict and take such steps as ARENA requires to manage the conflict;
- (j) **(visitations)**: during the Term of this Agreement and for two years after the Term, subject to safety and operational requirements and, if required, appropriate confidentiality agreements being entered into:
- (i) allow and provide ARENA escorted visits by interested persons approved by ARENA or the Recipient (**Visitors**) to sites under the Recipient's control where the Project is conducted;
- (ii) use best endeavours to obtain permission for escorted visits by Visitors to sites not under the Recipient's control where the Project is conducted;
- (iii) demonstrate the Project to Visitors and relevant technology and provide detailed explanations where requested; and
- (iv) allow ARENA representatives to be present at visits;
- (k) **(bank account)**: comply with the bank account requirements specified in clause 8;
- (l) **(Personnel)**:
- (i) undertake the Project, with the active involvement of, and using the expertise of, the Specified Personnel, or as otherwise agreed between the parties in writing;
- (ii) ensure that each of the Specified Personnel is aware of and complies with the Recipient's obligations in undertaking the Project;
- (iii) where one or more of the Specified Personnel is, or will become, unable or unwilling to be involved in the Project:
- A. notify ARENA as soon as practicable;
- B. if requested by ARENA, provide a replacement person of suitable ability and qualifications at the earliest opportunity; and
- C. obtain ARENA's written consent, which must not be unreasonably withheld, prior to appointing any such replacement person; and
- (iv) if requested by ARENA, promptly remove any of the Recipient's or its subcontractors' Personnel from carrying out work on the Project, and arrange for their replacement in accordance with clause 16.1(l)(iii);
- (m) **(other transactions or contracts)**: with respect to any other transaction or contract connected with the Project to be entered into with a third party (including a subcontractor), comply with all contractual obligations, including with respect to prompt payment of subcontractors and other contracted parties;
- (n) **(cooperate)**: cooperate with ARENA and other parties, including by attending any meetings on ARENA's reasonable request;
- (o) **(standards)**: undertake the Project diligently, efficiently, safely and to a high professional standard, in accordance with this Agreement and all relevant Australian

- industry standards, codes, best practice and guidelines (including those specified in item 4 of the Project Details) or, where none apply, relevant international industry standards, best practice and guidelines;
- (p) **(monitoring)**: meet with ARENA at the times and in the manner reasonably required by ARENA to discuss any issues in relation to this Agreement or the Project;
- (q) **(reporting)**:
- (i) comply with the reporting requirements set out in item 3 of Schedule 1 (The Project) and keep ARENA regularly and fully informed regarding the progress of the Project;
 - (ii) during the Term of this Agreement, and for a period of 5 years following the Final Milestone Date, where requested by ARENA, provide:
 - a. data with respect to carbon abatement resulting from the Project; and
 - b. provide a report on the number of direct jobs (including any permanent roles, contractors, subcontractors and consultants) created during any construction and operation phases of the Project; and
 - (iii) provide such further information as reasonably requested by ARENA with respect to the Low Emissions Technology Statement;
- (r) **(notification)**: notwithstanding any other provision of this Agreement, notify ARENA:
- (i) promptly in writing of any delay or anticipated delay to the progress of the Project or achievement of a Milestone; providing:
 - A. the reason for the delay;
 - B. the anticipated impact on the Project; and
 - C. the steps the Recipient is taking or will take to overcome the delay, and keep ARENA updated as to the status of any such notified delay.
 - (ii) as soon as practicable, of any significant concerns of local community groups of which the Recipient becomes aware;
 - (iii) as soon as practicable, if it has received, or requested to receive, other funds from the Commonwealth or State or Territory or local government for the Project; and
- (iv) immediately, if it becomes aware:
- A. of any Crisis (and in accordance with any protocol reasonably required by ARENA);
 - B. it has not undertaken the Project as required under this Agreement or has not spent the ARENA Funding in accordance with this Agreement;
 - C. it has, or may have, committed a Material Breach; or
 - D. an Insolvency Event has occurred or is likely to occur with respect to the Recipient;
- (s) **(Intellectual Property)**:
- (i) grant to, or obtain for, ARENA 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 solely for the purpose of giving effect to the Knowledge Sharing Plan or to carry out its objectives under the ARENA Act, but not including the right to exploit the Licensed Materials for commercial purposes;
 - (ii) if someone claims, or ARENA 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 32 and to any other rights that ARENA may have, promptly, at the Recipient's expense:
 - A. use its best efforts to secure the rights for ARENA 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; and
 - (iii) where required for the Project, and as agreed between the parties, comply with an Intellectual Property Management Plan as set out in item 3.2 of Schedule 1

(The Project) when undertaking the Project;

- (t) **(Moral Rights)**: obtain all consents (including any Moral Rights consents or waivers) necessary to perform its obligations under this Agreement; and
- (u) **(Modern Slavery Act)**:
 - (i) comply with any applicable requirements under the *Modern Slavery Act 2018* (Cth);
 - (ii) take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Project;
 - (iii) if at any time the Recipient becomes aware of Modern Slavery practices in the operations and supply chains used in the provision of the Project, take all reasonable action to address or remove these practices, including, where relevant, by addressing any practices of other entities in its supply chains; and
 - (iv) provide information to ARENA as reasonably requested to enable ARENA to comply with its reporting obligations under that Act; and
- (v) **(Major Projects)**: if applicable, comply with the requirements set out in Schedule 3 (Major Projects).

16.2 The parties acknowledge and agree that:

- (a) this Agreement does not affect ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material; and
- (b) subject to clause 16.1(s), all Intellectual Property Rights in Agreement Material vest in the Recipient upon creation.

17 Change in Control

17.1 The Recipient must notify ARENA, as soon as practicable, of any Change in Control of the Recipient.

17.2 The Recipient, at its discretion, may obtain ARENA's prior written consent of any Change in Control of the Recipient, such consent to be provided at ARENA's discretion acting reasonably. If ARENA's consent to such Change in Control is given, ARENA is not entitled to exercise its rights under clause 27.1(d) and clause 30.1(f).

18 Assets [*Optional clause*]

[*Drafting note: Clause 18.1 – 18.3 are optional clauses. ARENA to determine which clauses under this section will apply.*]

1.1 [*Optional clause*] **(Ownership)**: Subject to the terms of any lease, the Recipient owns any items of tangible property which are purchased, leased, created or otherwise brought into existence by, for or on behalf of the Recipient either wholly or in part with use of the ARENA Funding, not including Agreement Material **(Assets)**.

18.1 [*Optional clause*] **(Use and dealings)**: During the Term of this Agreement, the Recipient must:

- (a) use any Asset only for the purposes of the Project, or other purposes consistent with the Outcomes;
- (b) obtain and maintain good title to all Assets (other than Assets which the Recipient leases);
- (c) subject to clause 18.2, not encumber or dispose of any Asset without ARENA's prior approval;
- (d) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- (e) use all reasonable endeavours to maintain all Assets in good working order;
- (f) maintain all appropriate insurances in respect of any Assets;
- (g) if required by Law, maintain registration and licensing of all Assets;
- (h) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets; and
- (i) if requested by ARENA, maintain an Assets register as specified by ARENA, and provide a copy of the register to ARENA on request.

18.2 [*Optional clause*] **(Sale or disposal)**:

- (a) The Recipient must obtain ARENA's written consent prior to disposing of an Asset during the Term of this Agreement.
- (b) Notwithstanding clause 18.2(a), the Recipient may, at any time, dispose of any Asset without ARENA's prior approval where it relates to the disposal of obsolete or redundant vehicles, plant and equipment, a disposal of an Asset for the purposes of replacing that Asset, or where that disposal is necessary for the maintenance of other Assets.

18.3 [*Optional clause*] (**Lost or damaged Assets**): If any Asset is lost, damaged or destroyed, the Recipient must reinstate or replace the Asset, including by using the proceeds of insurance, without using any ARENA Funding and this clause 18 continues to apply to the reinstated or replaced Asset.

19 Evaluation

19.1 ARENA may, at any time until the End Date, undertake an evaluation of the Project, either directly or through a third-party adviser, and the Recipient must:

- (a) at its own cost, provide all reasonable assistance to ARENA, and any adviser, for such review or evaluation; and
- (b) subject to clause 22, provide any information reasonably required by ARENA on the implementation and progress of the Project in the format requested by ARENA.

19.2 The Recipient acknowledges that ARENA may undertake an evaluation of the Project after the End Date at ARENA's own cost. The Recipient agrees to cooperate with ARENA with respect to any such evaluation.

20 Audit and access

20.1 During the Term of this Agreement, and for 5 years after the Term, ARENA or its nominee may:

- (a) conduct audits relevant to the performance of the Recipient's obligations under this Agreement and in respect of the Project; and
- (b) upon giving the Recipient reasonable notice, access the Recipient's premises, require the provision of records and information, and inspect and copy any documentation or records reasonably necessary for that purpose.

20.2 In addition to the obligation of the Recipient to provide Audited Financial Statements with the Final Report as specified in Schedule 1 (The Project), at any time until the End Date, if requested by ARENA, the Recipient must promptly provide, at its own cost, Audited Financial Statements for the Project.

20.3 The Recipient must provide all reasonable assistance to ARENA and its nominee (if any) for any audit or access under this clause 20

20.4 ARENA will, and will require that any nominee, use reasonable endeavours to minimise any disruption to the Activities caused by any audit or access and will comply with the Recipient's reasonable workplace policies.

20.5 The rights of ARENA under this clause 20:

- (a) apply equally to the Auditor-General or an Information Officer (or any nominee) for the purpose of performing the Auditor-General's or Information Officer's statutory functions or powers; and
- (b) are in addition to, and do not limit, any other function, power, right or entitlement of the Auditor-General or an Information Officer.

20.6 Where an audit under this clause 20 identifies, in ARENA's reasonable opinion, that the Recipient is in Material Breach of this Agreement, then ARENA 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 included in the Budget to meet any such costs.

21 Acknowledgement, disclaimer and publicity

21.1 The Recipient must, and must ensure that any Project Participants, acknowledge the financial and other support received from ARENA:

- (a) in all publications, promotional and advertising materials, public announcements, events and activities in connection with the Project;
- (b) in any products, processes or inventions developed as a result of the Project; and
- (c) if required by ARENA, at the place where the Project is undertaken,

ensuring the form of acknowledgement is as specified in item 17 of the Project Details or as otherwise approved by ARENA prior to its use.

21.2 ARENA reserves the right to publicise and report on the awarding of the ARENA Funding, and may include:

- (a) the name of the Recipient, Recipient's shareholders and Project Participants;
- (b) the amount of the ARENA Funding; and
- (c) a brief description of the Project.

21.3 On ARENA's request, the Recipient must procure, and provide to ARENA as soon as practicable, artists' impressions, renders or professional imagery which demonstrates the appearance of any works constructed or goods developed in connection with the Project.

21.4 The Recipient must, and must ensure that any Project Participants:

- (a) include a disclaimer as specified in item 18 of the Project Details, or otherwise approved by ARENA, in all published material relating to the Project; and
- (b) before making a public announcement in connection with this Agreement or any

transaction contemplated by it, obtain ARENA's written consent to the announcement, except if required by Law or a regulatory body, including a relevant stock exchange, in which case ARENA should be notified of any such requirement as soon as practicable.

22 Confidentiality

22.1 Without limiting clause 5 and subject to clause 22.2, ARENA must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to another person.

22.2 Despite anything else in this Agreement, ARENA may disclose Recipient Confidential Information:

- (a) as specified or as contemplated in the Knowledge Sharing Plan;
- (b) to ARENA's Personnel or advisers, including its Knowledge Sharing Agent;
- (c) where applicable, to other lenders or financial institutions involved in the Project;
- (d) to a Commonwealth agency, where this serves ARENA's or the Commonwealth's legitimate interests;
- (e) to a House or a Committee of the Parliament of the Commonwealth of Australia, the Auditor-General, the Information Officer or any of the Commonwealth or State or Territory Ombudsmen;
- (f) to ARENA's responsible Minister or Portfolio Department;
- (g) to AEMO, AER and AEMC; or
- (h) where required by Law, including under a Senate Order.

22.3 The Recipient must not, without the prior written consent of ARENA, disclose any ARENA Confidential Information to another person, except:

- (a) where required by Law, in which case ARENA must be notified as soon as practicable before the ARENA Confidential Information is disclosed; and
- (b) to its Personnel, professional advisers, subcontractors or Project Participants solely for the purposes of carrying out its obligations under this Agreement or meeting its legal obligations under Law, including with respect to taxation.

22.4 Without limiting any other provision of this Agreement, where the Recipient discloses ARENA Confidential Information to a third party pursuant to clause 22.3, the Recipient must:

- (a) give notice to the receiving party in writing that the information is Confidential Information; and
- (b) subject to its obligations under Law, 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.

22.5 The Recipient acknowledges that Recipient Confidential Information provided to ARENA 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 and meet any conditions in the Knowledge Sharing Plan.

23 Force Majeure

23.1 A party (**Affected Party**) is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances which:

- (a) are beyond its reasonable control including natural disasters, acts of war, riots and strikes outside the Affected Party's organisation (other than, in respect of the Recipient only, lack of funds or any strike, lockout or labour dispute); and
- (b) could not have been prevented or overcome by the Affected Party (or, where the Affected Party is the Recipient, the Recipient and its subcontractors) exercising a standard of care and diligence consistent with that of a prudent and competent person operating within the relevant industry.

23.2 When the circumstances described in clause 23.1 arise, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance and must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement.

23.3 ARENA is not obliged to pay to the Recipient any funding for so long as circumstances described in clause 23.1 prevent the Recipient from performing its obligations under this Agreement. For clarity, this does not affect the Recipient's entitlement to payment due to be paid under this Agreement prior to a notice being issued under clause 23.2.

23.4 If non-performance or diminished performance by the Recipient due to the circumstances under clause 23.1 continues for a period of more than

90 consecutive days, ARENA may terminate this Agreement by giving the Recipient written notice.

23.5 If this Agreement is terminated by ARENA under clause 23.4:

- (a) ARENA is liable only for:
 - (i) payments due in accordance with this Agreement before the effective date of termination, but only to the extent that those monies have been spent or Legally Committed by the Recipient in accordance with this Agreement at the time the Recipient receives the notice of termination (written evidence of which must be provided by the Recipient to ARENA); and
 - (ii) where the Recipient has undertaken work on the Project at the time the Recipient receives the notice of termination, payment of ARENA Funding in accordance with this Agreement to the extent that those monies have been spent or Legally Committed by the Recipient in accordance with this Agreement on the Project at the time the Recipient receives the notice of termination (written evidence of which must be provided by the Recipient to ARENA); and
- (b) each party will otherwise bear its own costs and neither party will incur further liability to the other.

24 Suspension of Funding

24.1 Without limiting its other rights, ARENA may, upon giving the Recipient at least 10 Business Days' prior notice, suspend payment of the ARENA Funding in whole or in part if:

- (a) there is a Material Breach that has continued for a period of 10 Business Days, and is continuing; or
- (b) the Recipient has received, or requested to receive, grant funding from the Commonwealth or a State, Territory or local government other than the ARENA Funding or Contributions specified in item 2.3 of Schedule 1 (The Project).

24.2 The Recipient must not spend any ARENA Funding after it receives notice from ARENA under clause 24.1 unless and until ARENA notifies the Recipient otherwise.

24.3 ARENA's right to suspend payment under clause 24.1 will cease upon ARENA determining, acting reasonably, that the cause of the suspension has been remedied.

24.4 Regardless of whether ARENA exercises its right to suspend payment under this clause 24, the Recipient will not be entitled to payment of ARENA Funding unless the conditions to payment in clause 7 have been satisfied.

24.5 Despite any suspension to payment or direction not to spend ARENA Funding in accordance with clause 24.1, the Recipient must:

- (a) continue to comply with its obligations under this Agreement; and
- (b) continue carrying out the Project, unless otherwise agreed by ARENA acting reasonably.

25 Reduction

25.1 Without limiting its other rights, ARENA may, at its discretion, reduce the amount of any Milestone payment or the overall ARENA Funding payable under this Agreement if, on the date for payment of a Milestone:

- (a) the Recipient has not spent or Legally Committed the ARENA Funding which has been paid to the Recipient in accordance with the Agreement; or
- (b) the Recipient Contributions or Other Contributions due to be used or spent by the Recipient in accordance with this Agreement have not been used, spent or Legally Committed,

by the amount(s) that has not been used, spent or Legally Committed.

26 Change in Commonwealth government policy

26.1 Without limiting any other rights or remedies ARENA may have arising out of or in connection with this Agreement, if there has been a change in Commonwealth government policy with respect to ARENA, or funding provided by ARENA, that relates to ARENA's obligations under this Agreement:

- (a) ARENA may by notice terminate this Agreement or reduce the scope of the Project, effective from the time specified in the notice;
- (b) the parties will work cooperatively to facilitate the orderly cessation of the Project or reduction in its scope; and
- (c) the Recipient will be entitled to payment in accordance with clause 26.2(b) but will not be entitled to claim any other amount from ARENA.

26.2 If this Agreement is terminated under clause 26.1, ARENA is liable to the Recipient only for:

- (a) payments due under clause 7.1 in accordance with this Agreement before the

effective date of termination, but only to the extent that those monies have been spent or Legally Committed; and

- (b) where the Recipient has undertaken work on, but not completed, a Milestone at the time the Recipient receives the notice of termination, payment of ARENA Funding in accordance with this Agreement to the extent that those monies have been spent or Legally Committed by the Recipient on that Milestone at the time the Recipient receives the notice of termination, written evidence of which must be provided by the Recipient to ARENA.

26.3 If the scope of the Project is reduced under clause 26.1:

- (a) ARENA's liability to pay the Funding under this Agreement abates in accordance with the reduction in the Project; and
- (b) the Recipient must continue to undertake any part of the Project not affected by the notice (unless the Recipient, acting reasonably, notifies ARENA that it is not commercially viable to do so).

26.4 Termination of this Agreement under this clause 26 does not affect any accrued rights or remedies of a party.

27 Termination or reduction in scope with cause

27.1 Without limiting any other rights or remedies ARENA may have arising out of or in connection with this Agreement, ARENA may, by notice, immediately terminate this Agreement or reduce the scope of the Project if:

- (a) the Recipient commits a Material Breach (other than an Insolvency Event) and the Material Breach has not been remedied within 10 Business Days (or such other time as agreed by ARENA) of the earlier of:
 - (i) the date on which the Recipient receives notice of the Material Breach from ARENA; and
 - (ii) the date on which the Recipient becomes aware of the Material Breach;
- (b) if applicable, the Recipient fails to satisfy the Conditions Precedent by the CP Satisfaction Date;
- (c) the Recipient fails to achieve one or more of the Milestones by the time required in item 1.6 of Schedule 1 (The Project); or
- (d) subject to clause 17.2, there is a Change in Control of the Recipient and ARENA considers that:

- (i) the identity of the person who directly or indirectly controls the Recipient could affect ARENA's or the Commonwealth's reputation; or
- (ii) there is a resulting risk to the successful completion of the Project.

27.2 Without limiting any of ARENA's other rights or remedies, on termination of this Agreement under this clause 27:

- (a) ARENA is not obliged to pay to the Recipient any outstanding amount of funding under this Agreement; and
- (b) ARENA is entitled to exercise any right to recover from the Recipient, including repayment rights under clause 30.

27.3 If the scope of the Project is reduced under clause 27.1:

- (a) ARENA's liability to pay the funding under this Agreement abates in accordance with the reduction in the Project; and
- (b) the Recipient must continue to undertake any part of the Project not affected by the notice (unless the Recipient, acting reasonably, notifies ARENA that it is not commercially viable to do so).

28 Termination for an Insolvency Event

28.1 Subject to clause 28.2, and without limiting any other rights or remedies ARENA may have arising out of or in connection with this Agreement, ARENA may, to the extent permitted by Law, terminate this Agreement by notice if an Insolvency Event occurs with respect to the Recipient.

28.2 Where an Insolvency Event occurs with respect to the Recipient, ARENA may, at its discretion, request the Recipient to nominate in writing to ARENA (within 10 Business Days of ARENA's request) a suitably qualified and experienced party to perform the remaining obligations of the Recipient under this Agreement.

28.3 Where the Recipient provides a nomination in accordance with clause 28.2, ARENA must, within 10 Business Days, approve or reject the party nominated by the Recipient under clause 28.2.

28.4 Where ARENA approves the party nominated by the Recipient under clause 28.3, the parties will work cooperatively to facilitate the transfer of this Agreement and the Project to the nominated party.

28.5 Where the Recipient does not provide a nomination to ARENA, or ARENA rejects the party nominated by the Recipient, ARENA may,

to the extent permitted by Law, terminate this Agreement by notice.

29 Recoupment [*Optional clause*]

[Drafting note: This is an optional clause. ARENA to determine if this clause is required. If ARENA does not require this clause, delete the content under this clause 29 and insert 'Not used.']

29.1 *[Insert recoupment mechanism here]*

29.2 Where ARENA gives the Recipient a recoupment notice requiring the Recipient to pay to ARENA an amount which ARENA is entitled to recoup under clause 29.1, the Recipient must, within 20 Business Days of the date of the recoupment notice, pay the amount specified in the repayment notice.

29.3 ARENA can elect to require recoupment of a lesser amount of ARENA Funding than otherwise required under clause 29.1. ARENA is not required to exercise this discretion for the Recipient's benefit.

29.4 This clause 29 does not limit any other right or remedy of ARENA under this Agreement.

30 Repayment of ARENA Funding

30.1 Notwithstanding anything else in this Agreement, ARENA may recover some or all of the ARENA Funding from the Recipient (as a debt due and payable on demand in accordance with clause 30.3) in the circumstances and to the extent specified below:

- (a) **(misspent funds)**: the amount of any ARENA Funding which, in ARENA's opinion, acting reasonably, and at any time, has been spent or used other than in accordance with this Agreement;
- (b) **(unspent funds)**:
 - (i) the full amount of any ARENA Funding which has not been spent or Legally Committed by the Recipient as at the End Date; or
 - (ii) any amount of ARENA Funding which has been paid to the Recipient and not been spent or Legally Committed by the Recipient as at a due date for payment of further ARENA Funding in accordance with this Agreement;
- (c) **(Abandoned Project)**: an amount equal to all ARENA Funding paid to the Recipient if the Recipient has Abandoned the Project (whether or not ARENA has terminated this Agreement in accordance with clause 27.1(a)) and does not resume performance within 10 Business Days after receiving notice requiring it to do so or, otherwise within that timeframe, demonstrate to

ARENA's satisfaction (acting reasonably) that there are reasonable technical grounds for having Abandoned the Project;

- (d) **(Recipient Contributions and Other Contributions not used)**: if, as at the End Date, Recipient Contributions or Other Contributions have not been used for the Project, an amount that represents the same proportion of the ARENA Funding as the Recipient Contributions and Other Contributions which have not been used are of the total Recipient Contributions and Other Contributions;
- (e) **(Material Breach)**: subject to clause 30.2, an amount equal to all ARENA Funding paid to the Recipient if the Recipient commits a Material Breach (other than an Insolvency Event) and ARENA terminates this Agreement under clause 27;
- (f) **(Change in Control)**: an amount equal to all ARENA Funding paid to the Recipient if ARENA terminates this Agreement under clause 27.1(d); or
- (g) **(Insolvency Event)**: an amount equal to all ARENA Funding paid to the Recipient if an Insolvency Event occurs in respect of the Recipient and ARENA has terminated this Agreement in accordance with clause 28; or

30.2 ARENA may only exercise its rights under clause 30.1(e) where the Recipient:

- (a) commits any breach of clauses 15.1(a) (transaction permitted), 15.1(b) (no misleading information), 15.1(d) (employee entitlements), 15.1(f) (legal capacity), 15.1(g) (financial capacity), 15.1(h) (insolvency) or 15.1(j) (qualifications);
- (b) commits a breach of a material nature of clause 9 (Use of ARENA Funding), clause 10 (Contributions), clauses 15.1(e) (Intellectual Property), 15.1(i) (Applicable Guidelines) or 15.1(k) (trustee), clauses 16.1(a) (Laws), 16.1(b) (WHS Law), 16.1(c) (Privacy), 16.1(e) (FOI), 16.1(s) (Intellectual Property) or 16.1(t) (Moral Rights), clause 18.2(a) (Disposal of Assets) or clause 22 (Confidentiality); or
- (c) commits a breach of a material nature of clause 2 (Undertaking the Project), clause 5.1 (Knowledge Sharing), clause 13 (Reports and Plans), clauses 15.1(c) (conflicts of interest), clause 16.1(i) (Conflicts), or clause 16.1(q) (Reporting), and ARENA determines, acting reasonably, that such breach materially impacts the ability of the Recipient to achieve the Outcomes.

- 30.3 Where ARENA gives the Recipient a repayment notice requiring the Recipient to repay to ARENA an amount which ARENA is entitled to recover under clause 30.1, 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 30.5, if applicable) specified in the repayment notice.
- 30.4 ARENA can elect to require repayment of a lesser amount of ARENA Funding than otherwise required under clause 30.1. ARENA is not required to exercise this discretion for the Recipient's benefit.
- 30.5 With the exception of clause 30.1(f), the Recipient must pay interest to ARENA in connection with any amount notified as owing to ARENA under clause 30.1, with the rate of interest to be calculated:
- (a) on the amount to be repaid to ARENA as set out in ARENA's repayment notice;
 - (b) at the Interest Rate;
 - (c) on a semi-annually compounding basis upon the principal amount specified in the notice as repayable to ARENA; and
 - (d) from and including the date the amount is payable under clause 30.3 up to but excluding the day on which the Recipient repays the total amount specified in the notice as owing to ARENA, without any set off, counter-claim, condition, abatement, deduction or withholding.
- 30.6 The Recipient acknowledges that the amounts to be paid to ARENA under this clause 30 are a genuine pre-estimate of the losses incurred by ARENA for the defaults described in this clause 30.
- 30.7 ARENA and the Recipient agree that the amount of any repayments payable to ARENA by the Recipient under this clause 30, together with any amounts recouped by ARENA under clause 29, shall not exceed the amount of ARENA Funding paid to the Recipient.
- 30.8 This clause 30 does not limit any other right or remedy of ARENA.

31 Dispute resolution

- 31.1 A party must comply with this clause 31 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 31.

- 31.2 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**).
- 31.3 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 Management (or their nominees) to resolve the Dispute.
- 31.4 If the Dispute is not resolved within 10 Business Days under clause 31.3, the Dispute shall be referred to a mediator upon either party's request. If the parties cannot agree on a mediator within 7 days after the request, the chair of Resolution Institute or the chair's nominee will appoint a mediator.
- 31.5 Unless agreed by the mediator and parties, the mediation must be held within 21 days after the request for mediation in clause 31.4. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.
- 31.6 Any information or documents disclosed by a party under this clause 31 must be kept confidential and may only be used to attempt to resolve the Dispute.
- 31.7 Each party must pay its own costs of complying with this clause 31. The parties must equally pay the costs of any mediator.
- 31.8 A party may terminate the dispute resolution process by giving notice to the other party after it has complied with clauses 31.1 through 31.5. Clauses 31.6 and 31.7 survive termination of the dispute resolution process.
- 31.9 If a party breaches any clauses from clause 31.1 through 31.8, the other party does not have to comply with those clauses in relation to the Dispute.
- 31.10 For the purpose of this clause 31, a Dispute does not include a dispute arising in relation to ARENA suspending payment of funding under clause 24 (Suspension of Funding), reducing the amount of an instalment of funding under clause 25 (Reduction), terminating this Agreement or reducing the scope of the Project under clause 27 (Termination or Reduction in Scope with Cause), or requiring payment under clause 30 (Repayment of ARENA Funding).

32 Liability and Indemnity

- 32.1 The Recipient will at all times indemnify ARENA and its Personnel (referred to in this clause 32 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:

- (a) the carrying out of works or services by the Recipient (including its subcontractors), or the supply of goods, in connection with the Project;
- (b) the Licensed Materials (including the use of the Licensed Materials by ARENA or its Personnel) infringing or allegedly infringing the Intellectual Property Rights or Moral Rights of any person;
- (c) any breach of this Agreement by the Recipient; or
- (d) any negligent or wrongful or unlawful act or omission on the part of the Recipient, its Personnel or subcontractors.

32.2 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 negligent act or omission of those indemnified, contributed to the loss.

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

33 GST

33.1 In this clause 33:

- (a) 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
- (b) 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.

33.2 Unless otherwise expressly stated, all prices or other sums payable, or consideration to be provided to a party under this Agreement, are exclusive of GST.

33.3 Subject to this clause 33, 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. The Supplier must provide a tax invoice to the GST Recipient in accordance with the GST Law.

33.4 If an adjustment event arises in respect of a taxable supply made by a 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.

33.5 If the GST payable in relation to a supply is less than the amount the GST Recipient has paid the Supplier under clause 33.3, 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.

33.6 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.

33.7 This clause 33 will survive the termination of this Agreement by any party.

34 Notices and other communications

34.1 Any notice, approval, consent or other communication must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by email to the recipient's address specified in item 20 of the Project Details (or as updated by written notice from time to time), or in the case of notices or other communications to ARENA, via the GMS.

34.2 Any notice, approval, consent or other communication takes effect when it is taken to be received and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) 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
- (c) if sent via the GMS, on the day and at the time it is recorded on the GMS as being received,

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.

35 Miscellaneous

35.1 Clauses 5 (Knowledge Sharing); 6.1 and 6.2 (ARENA Funding); 16.1(b) (WHS Law); 16.1(e) (FOI); 16.1(s) (Intellectual Property); 16.1(r)(iv) (Crisis Notification); 16.1(g) (Insurance); 16.1(h)

- (Books and Records); 16.1(j) (Visitations); 19.2 (Evaluation); 20 (Audits and Access); 21 (Acknowledgement, Disclaimer and Publicity); 22 (Confidentiality); 26.2(b), 27.1(d)(ii) and 27.3(b) (Termination); 29 (Recoupment); 30 (Repayment of ARENA Funding); 31 (Dispute Resolution); 32 (Liability and Indemnity); 33 (GST); 35.16 (Governing Law); and 37 (Interpretation) 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.
- 35.2 The Recipient must not, without the prior written consent of ARENA, use the ARENA Funding, this Agreement or any assets created or acquired in the course of the Project as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation.
- 35.3 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.
- 35.4 The Recipient may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of ARENA.
- 35.5 ARENA 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.
- 35.6 Where the Recipient subcontracts any aspect of the Project, it is fully responsible for:
- (a) undertaking the Project and for the performance of all of its obligations under this Agreement; and
 - (b) its subcontractors' acts and omissions.
- 35.7 Each party must pay its own costs of negotiating, preparing, executing and varying this Agreement.
- 35.8 The Recipient must pay any taxes and duties payable in respect of this Agreement and the Project.
- 35.9 This Agreement may be executed in counterparts. All executed counterparts constitute one document.
- 35.10 This Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and will have the same force and effect as an original signature.
- 35.11 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.
- 35.12 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.
- 35.13 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.
- 35.14 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.
- 35.15 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.
- 35.16 This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Australian Capital Territory.

36 Definitions

- 36.1 Except where the contrary intention is expressed, capitalised:
- (a) **Abandoned** means no substantive work or activities have been carried out on the Project for 30 consecutive days, except where the Recipient has been relieved of the obligation to do so under this Agreement;
 - (b) **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;
 - (c) **AEMC** means the Australian Energy Market Commission (ABN 49 236 270 144);
 - (d) **AEMO** means the Australian Energy Market Operator Limited (ABN 94 072 010 327);

- (e) **AER** means the Australian Energy Regulator;
- (f) **Agreement** means this agreement between ARENA and the Recipient (including the Schedules and any attachments), as varied from time to time in accordance with its terms;
- (g) **Agreement Material** means any Material created by, for, or on behalf of the Recipient on or following the date of this Agreement, that is provided, or is required to be provided, by the Recipient to ARENA for the purpose of performing its obligations under this Agreement, including modifications required under clause 16.1(s);
- (h) **Applicable Guidelines** means the Guidelines listed at item 4 of the Project Details issued by ARENA pursuant to section 24 of the ARENA Act;
- (i) **Application** means the expression of interest and application submitted by, for, or on behalf of the Recipient for funding under the Advancing Renewables Program in relation to the Project;
- (j) **Approved Auditor** means a person who is:
- (i) registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Chartered Accountants Australia and New Zealand, CPA Australia or the Institute of Public Accountants;
 - (ii) 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
 - (iii) not the Recipient's accountant;
- (k) **ARENA** means the Australian Renewable Energy Agency (ABN 35 931 927 899) of 2 Phillip Law St, Canberra ACT 2601;
- (l) **ARENA Act** means the *Australian Renewable Energy Agency Act 2011* (Cth);
- (m) **ARENA Confidential Information** means Confidential Information of ARENA;
- (n) **ARENA Funding** means the amount specified in item 2.1 of Schedule 1 (The Project) and any interest earned by the Recipient on that amount as reduced in accordance with this Agreement;
- (o) **Audited Financial Statements** means financial statements in respect of the ARENA Funding prepared by an Approved Auditor in accordance with item 3.1 of Schedule 1 (The Project);
- (p) **Authorisation** means any authorisation, approval, licence, permit, consent, determination, certificate, notice, requirement or permission from any Authority which must be obtained or satisfied (as the case may be) to undertake the Project;
- (q) **Authority** means any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any other person having jurisdiction in connection with work required for the Project;
- (r) **Budget** means the total budget (if any) for the Project set out in item 2.3 of Schedule 1 (The Project), including as varied under the terms of this Agreement or updated in accordance with item 3.1 of Schedule 1 (The Project);
- (s) **Building Work** has the meaning given to it in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
- (t) **Business Day** means a day that is not a Saturday, Sunday or public holiday in the place:
- (i) for the purposes of giving or receiving notices, where a party receiving the notice is located; or
 - (ii) for any other purpose under this Agreement, where the party required to perform an obligation is located;
- (u) **Change in Control** means, in relation to an entity, a change in the direct or indirect power or capacity of a person to:
- (i) determine the outcome of decisions about the financial and operating policies of the entity; or
 - (ii) control the membership of the board of directors of the entity,
- whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the entity or otherwise, but not including a change in control resulting from ordinary course

- trading on a stock exchange in the shares of the entity;
- (v) **Claim** means 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;
 - (w) **Commencement Date** means the date on which this Agreement is signed by ARENA;
 - (x) **Commonwealth** means the Commonwealth of Australia;
 - (y) **Community Consultation Plan**, where required, means the plan to be provided by the Recipient in accordance with item 3.2 of Schedule 1 (The Project);
 - (z) **Conditions Precedent** means the conditions outlined at item 1.4 of Schedule 1 (The Project);
 - (aa) **Confidential Information** means information 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;
 - (bb) **Consequential Loss** means loss of profits, anticipated loss of profit or revenue, loss of production, loss of business opportunity, loss of or damage to goodwill or reputation, loss of use or any other similar loss, but excludes:
 - (i) loss recoverable under a policy of insurance to the extent of the amount recovered or that should have been recovered but for a breach of the policy or failure to insure in accordance with this Agreement;
 - (ii) loss arising from death or personal injury;
 - (iii) loss arising from criminal acts, fraudulent conduct or wilful misconduct committed by the Recipient or its Personnel;
 - (iv) loss arising from an infringement of any Intellectual Property Right or Moral Rights by the Recipient or its Personnel;
 - (v) loss arising from breach of clauses 16.1(b) or 22 by the Recipient or its Personnel;
 - (vi) loss arising from liability which by Law the parties cannot contract out of; and
 - (vii) any amounts expressly payable by the Recipient to ARENA under this Agreement;
 - (cc) **Contributions** means both the Recipient Contributions and the Other Contributions;
 - (dd) **Controller** has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth);
 - (ee) **Corresponding WHS Law** has the same meaning as in section 4 of the *Work Health and Safety Act 2011* (Cth);
 - (ff) **CP Satisfaction Date** means the date by which the Conditions Precedent must be satisfied by the Recipient, as specified in item 11 of the Project Details;
 - (gg) **CP Submission Date** means the date by which the Conditions Precedent must be submitted by the Recipient, as specified in item 11 of the Project Details;
 - (hh) **Crisis** means any time of intense difficulty or danger in relation to the Project. It includes the inappropriate release of information in relation to the Project that could affect ARENA's or the Commonwealth's reputation (for example, in breach of confidentiality or security requirements);
 - (ii) **Dispute** has the meaning given in clause 31.1;
 - (jj) **Eligible Expenditure** has the meaning set out in the Applicable Guidelines and means expenditure (inclusive of GST but less related input tax credits the Recipient is entitled to claim) incurred by the Recipient on the Project:
 - (i) after the date of this Agreement that qualifies as eligible expenditure under the Applicable Guidelines; and/or
 - (ii) that ARENA otherwise approves as eligible expenditure for the purposes of this Agreement;
 - (kk) **End Date** means the date on which the Recipient has performed all of its obligations under this Agreement (including provision of all reports to ARENA's satisfaction) or the date of its earlier termination;
 - (ll) **External Controller** means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity;

- (mm) **Final Milestone Date** means the date by which the final Milestone is to be completed, as set out in item 1.6 of Schedule 1 (The Project);
- (nn) **Final Report** has the meaning given in item 3.1 of Schedule 1 (The Project);
- (oo) **General Conditions** means clauses 1 to 37 of this Agreement;
- (pp) **GMS** means ARENA's grant management system;
- (qq) **GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (rr) **Information Officer** means the Information Commissioner, the Freedom of Information Commissioner and the Privacy Commissioner appointed in accordance with section 14 of the *Australian Information Commissioner Act 2010* (Cth), or a delegate of that person;
- (ss) **Insolvency Event** means the occurrence of any of the following events:
- (i) in relation to a corporation, its Liquidation, the appointment of an External Controller to the corporation or any of its property, it ceasing or threatening to cease carrying on its business; it being deemed to be, or stating that it is, unable to pay its debts as and when they fall due; or it entering into a Scheme;
 - (ii) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth); or
 - (iii) in relation to any person, the person is served with a Claim or anything analogous to or having a similar effect to anything described above in this definition under the law of the relevant jurisdiction;
- (tt) **Intellectual Property Rights** means all intellectual property rights, including:
- (i) 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;
 - (ii) any application or right to apply for registration of any of the rights referred to in paragraph 36.1(tt)(i); and
 - (iii) all rights of a similar nature to any of the rights in paragraphs 36.1(tt)(i) and 36.1(tt)(ii) which may subsist in Australia or elsewhere,
- whether or not such rights are registered or capable of being registered;
- (uu) **Interest Rate** means the ten-year Treasury Bond Rate as published in the Australian Financial Review on the date of this Agreement;
- (vv) **Knowledge Sharing Agent** means the third party engaged by ARENA to perform knowledge sharing activities including (but not limited to):
- (i) collecting, storing, analysing, presenting and reporting on the data generated from the Project;
 - (ii) providing detailed disaggregated information to ARENA; and
 - (iii) providing identified aggregated analysis suitable for public release.
- (ww) **Knowledge Sharing Deliverables** means the activities and deliverables to be provided by the Recipient in accordance with item 4.4 of Schedule 1 (The Project);
- (xx) **Knowledge Sharing Plan** means the knowledge sharing plan in item 4 of Schedule 1 (The Project) (including the Knowledge Sharing Deliverables), as varied by agreement in writing between the parties from time to time;
- (yy) **Law** means any applicable statute, regulation, by-law, ordinance, subordinate legislation or rule in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, regulatory body, recognised stock exchange, or a local government, and includes the common law and rules of equity as applicable from time to time;
- (zz) **Legally Committed** means, at any time, a present or accrued obligation on the Recipient under contract or at Law to pay money to a third party. It does not include any future obligation to make payment to a third party which is subject to any outstanding condition to payment or other contingency that has not been satisfied at that time or which the Recipient has a right to cancel, suspend or terminate under the contract or under Law;
- (aaa) **Licensed Materials** means:
- (i) Agreement Material;
 - (ii) Pre-existing Material of the Recipient included, embodied in or attached to the Agreement Material; and

- (iii) Third Party Material included, embodied in or attached to the Agreement Material;
- (bbb) **Liquidation** means a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, deregistration, or steps are taken (including the calling of meetings or the filing of applications), orders are made or resolutions are passed to give effect to any of the above;
- (ccc) **Low Emissions Technology Statement** or **LETS** means the document titled 'Technology Investment Roadmap: First Low Emissions Technology Statement' published in September 2020 by the Department of Industry, Science, Energy and Resources;
- (ddd) **Major Subcontract Work** means any work undertaken for the purpose of the Project and performed by a subcontractor:
- (i) which has a total contract sum in excess of 20% of the Budget; or
 - (ii) which has, or may potentially have, a material impact on the progress or performance of work on the Project or achievement of Outcomes;
- (eee) **Material** includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, plans 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;
- (fff) **Material Breach** means any breach of the following clauses of this Agreement:
- (i) clause 2 (Undertaking the Project);
 - (ii) clause 9 (Use of ARENA Funding);
 - (iii) clause 15 (Representations and Warranties);
 - (iv) clause 16.1(s) (Intellectual Property);
 - (v) clause 16.1(t) (Moral Rights);
 - (vi) clause 22 (Confidentiality), or a breach of a material nature of any of the following clauses:
 - (vii) clause 5.1 (Knowledge Sharing);
 - (viii) clause 10 (Contributions);
 - (ix) clause 13 (Reports and Plans);
 - (x) clause 16.1(a) (Laws);
 - (xi) clause 16.1(b) (WHS Law);
 - (xii) clause 16.1(c) (Privacy);
 - (xiii) clause 16.1(e) (FOI);
 - (xiv) clause 16.1(i) (Conflicts);
 - (xv) clause 16.1(q) (Reporting); or
 - (xvi) clause 18.2(a) (Disposal of Assets);
- (ggg) **Milestone Report** has the meaning given in item 3.1 of Schedule 1 (The Project);
- (hhh) **Milestone Deliverables** means those deliverables specified in item 1.6 of Schedule 1 (The Project);
- (iii) **Milestones** means the milestones set out in item 1.6 of Schedule 1 (The Project);
- (jjj) **Minor Variation** means a variation:
- (i) by way of extension to the dates specified in the Project Details or Schedule 1 (The Project);
 - (ii) to the Specified Personnel or the Project Participants specified in the Project Details;
 - (iii) to elements of the Project as described in item 1.2 of Schedule 1 (The Project); or
 - (iv) to the Knowledge Sharing Plan, that does not or is not likely to materially affect the Project or Outcomes (including the Budget, Milestones and reports) or the extent of the Recipient's obligations or costs in undertaking the Project;
- (kkk) **Modern Slavery** has the same meaning as in the *Modern Slavery Act 2018* (Cth);
- (lll) **Moral Rights** has the meaning given to that term in the *Copyright Act 1968* (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;
- (mmm) **Other Contributions** means the financial and in-kind contributions specified in item 2.3 of Schedule 1 (The Project);
- (nnn) **Outcomes** means the outcomes for the Project, as set out in item 1.3 of Schedule 1 (The Project);
- (ooo) **Overseas Expenditure** means the incurred or paid expenditure of cash (or equivalent) on goods and services procured from a non-Australian entity and overseas travel;
- (ppp) **Personal Information** has the meaning given to it under the *Privacy Act 1988* (Cth);

- (qqq)**Personnel** means, in relation to a party, any employee, officer, agent or professional adviser of that party and:
- (i) in the case of the Recipient, also of any subcontractor; and
 - (ii) in the case of ARENA, including staff made available under section 62 of the ARENA Act;
- (rrr)**Portfolio Department** means the Department of Industry, Science, Energy and Resources or such other Department as determined by an Administrative Arrangements Order;
- (sss)**Pre-existing Material** means Material owned by a party before execution of this Agreement;
- (ttt) **Project** means the Project described in item 1.2 of Schedule 1 (The Project);
- (uuu)**Project Details** means the Project Details at the beginning of this Agreement;
- (vvv)**Project Participants** means the entities specified in item 15 of the Project Details;
- (www)**Recipient** means the party specified in item 3 of the Project Details;
- (xxx)**Recipient Confidential Information** means Confidential Information of the Recipient which is identified in item 19 of the Project Details for the period of time specified in item 19 of the Project Details, or such other information as identified by the Recipient in writing to ARENA;
- (yyy)**Recipient Contributions** means the financial and in-kind contributions specified in item 2.3 of Schedule 1 (The Project);
- (zzz)**Related Body Corporate** has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth);
- (aaaa)**Resolution Institute** means the dispute resolution association with that name and ABN 69 008 651 232 (or any dispute resolution association which replaces it or which substantially succeeds to its powers or functions) and the following contact details:
- Level 1, 13-15 Bridge Street
Sydney NSW 2000;
Email: info@resolution.institute;
Phone: +61 2 9251 3366;
- (bbbb)**Risk Management Plan** means the plan to be provided by the Recipient in accordance with item 3.2 of Schedule 1 (The Project);
- (cccc)**Schedules** means the schedules to this Agreement;
- (dddd)**Scheme** means an arrangement, assignment, composition 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 2001* (Cth)), other than for the purposes of a solvent reconstruction or amalgamation as approved by ARENA;
- (eeee)**Senior Management** means the Chief Executive Officer in the case of the Recipient and the Chief Executive Officer or the Chief Financial Officer (as nominated by ARENA) in the case of ARENA;
- (ffff) **Specified Personnel** means the nominated Personnel of the Recipient, a Project Participant or subcontractor who will be carrying out the Project and involved in knowledge sharing, as identified at item 13 of the Project Details;
- (gggg)**Stages** means the stages in which the Recipient must complete the Project as set out in clause 4 (Stages);
- (hhhh)**Stage Gate Review** means a review to be conducted at the end of a Stage in accordance with clause 4, following the process described in item 1.5 of Schedule 1 (The Project);
- (iiii) **Term** has the meaning given to it in clause 1;
- (jjjj) **Third Party Material** means Material owned by another person that is:
- (i) included, embodied in or attached to the Agreement Material; or
 - (ii) used in undertaking the Project;
- (kkkk)**Visitors** has the meaning given in clause 16.1(j)(i);
- (llll) **WHS Law** means all applicable Laws relating to work health and safety, including the *Work Health and Safety Act 2011* (Cth), the *Work Health and Safety Regulations 2011* (Cth) and any applicable Corresponding WHS Law; and
- (mmmm)**Work Health and Safety Accreditation Scheme** means the Work Health and Safety Accreditation Scheme referred to in section 43 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

37 Interpretation

37.1 In this Agreement, except where the contrary intention is expressed:

- (a) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (b) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (c) the singular includes the plural and vice versa, and a gender includes other genders;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (i) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (k) a reference to an obligation includes a warranty or representation and a reference to a failure to comply with, or breach of, an obligation includes a breach of warranty or representation;
- (l) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and

(m) headings are for ease of reference only and do not affect interpretation.

37.2 If there is any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of the inconsistency:

- (a) General Conditions;
- (b) Project Details;
- (c) Schedule 1 (The Project);
- (d) other Schedules;
- (e) Appendix A;
- (f) any attachments to the Schedules; and
- (g) documents incorporated by reference in this Agreement.

Schedule 1 – The Project

1. Project

1.1 Summary of the Project

[**Drafting note:** Provide a plain English, high-level summary of the Project in two to three sentences.]

1.2 Project (clause 2.1)

Background

[**Drafting note:** Provide brief detail/context of any background to the Project including any reference documents, studies or other projects that will form part of the foundation of this Project.]

Description

[**Drafting note:** Insert a concise description of the Project which explains what is being undertaken by the Recipient.]

Stages [*Optional*]

[**Drafting note:** We use stages when the Stages clause has been included. These stages will be mirrored in the progress of the Milestones. If Stages are being used for the purpose of Stage Gates, please ensure that the deliverables are clear and quantifiable as much as possible.]

Project Participants and approved subcontractors for Major Subcontract Work

[**Drafting note:** Clearly outline the role of each on the Project Participant and approved subcontractors for Major Subcontract Work.]

[**Example:** The Project involves several Project Participants, including:

Organisation	Role	Description of role in the Project
Consultant	[Project Participant/ approved subcontractor for Major Subcontract Work]	[Recipient] has engaged Consultant ANC to deliver the Stage 1A report.
Solar farm developers		Company A and B have solar farms in the region which will form the primary case study under consideration in this Project.
Manufacturers		Up to 5 suppliers will be engaged to test their technology in the Project's test environment Stage 2A. One of these inverters may be used for further modelling in Stage 2B.
AEMO		[Recipient] will consult regularly with AEMO's to ensure AEMO's modelling procedure is followed and uses appropriate inputs.

Governance

[Drafting note: Clearly outline any governance relevant to the Project. Also outline steering committee, working group or governance body that will be created as part of the Project, including any Governance Body for which ARENA will exercise rights under clause 14.]

Outputs

[Drafting note: A list of the key Project deliverables, in summary not detail. These are tangible deliverables to be delivered to achieve the Outcomes. These deliverables must also be captured in the milestone table (item 1.6 of Schedule 1) and/or the Knowledge Sharing Plan (item 4.4 of Schedule 1), in sufficient detail.]

1.3 Outcomes (clause 2.1)

The objectives for the Project will be achieved through the following Outcomes:

(a) *[Insert]*

[Drafting note: Insert Outcomes – Under the Agreement, the Recipient is required to use reasonable endeavours to achieve the Outcomes. To the extent that elements of the Project may not be successful and this is acceptable / contemplated (e.g. where there is a trial), then the Outcomes should describe what must actually be achieved.

This section should articulate a set of specific objectives or methods in which the Project will increase supply or enhance competitiveness (or both), and should link to the ARP's outcomes, being: (i) reduction in the cost of renewable energy; (ii) increase in the value delivered by renewable energy; (iii) improvement in technology readiness and commercial readiness of renewable energy technologies; (iv) reduction in or removal of barriers to renewable energy uptake; and (v) increased skills, capacity and knowledge relevant to renewable energy technologies.]

1.4 Conditions Precedent (clause 3)

[Drafting note: Insert any conditions that must be complied with prior to commencing the Project. Often you will find these listed as conditions of funding in the offer to negotiate letter provided by ARENA. These conditions could include obtaining relevant licences, or provision of documents such as a Risk Management Plan as set out in item 3.2 of Schedule 1 to ARENA's satisfaction. If no conditions are required, mark, 'Not Used' and delete Drafting note.]

1.5 Stage Gate Review (clause 4) [Optional]

[Drafting note: insert detail of Stage Gate Review if the Stages clause is being used. If not applicable, mark as 'Not Used' and delete this Drafting note.]

1.6 Milestones (clause 2.1)

[Drafting note: Where Stages are used under clause 3, they must be clearly identified within this Milestones table. The Date for Completion should be a Business Date and not a date that falls close to the end of a financial or calendar year. The acquittal milestone should include a retention amount.]

The Recipient must achieve the following Milestones, and provide the Milestone Deliverables and Milestone Report, in a form and substance satisfactory to ARENA, by the date for completion of the relevant Milestone.

[Drafting note: Where Stages are used, please insert a row marking out each of the Stages and as a row in the table.]

No.	Description of Milestone and Milestone Deliverables	Completion date	Amount of Milestone payment (GST excl.)
1.	<p>[insert Milestone title]</p> <p>D1.1 Provision of a Milestone Report, in accordance with item 3.1 of Schedule 1 (The Project).</p> <p>D1.2 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4.4 of Schedule 1 (Knowledge Sharing Plan).</p> <p>D1.3 Provision of [insert Project specific milestone]</p> <p>(a) [insert]</p>	<p>[Drafting note:</p> <p><i>Avoid Dates for Completion of Milestones that are at the end of December/June.</i></p> <p><i>Ensure due date is a Business Day.</i></p> <p><i>Allow for additional time to complete the Milestone as Milestones can be achieved and submitted before the completion date.]</i></p> <p>[insert completion date]</p>	<p>[Drafting note:</p> <p><i>If the proposed Milestone payment is greater than 50% of the Eligible Expenditure, this must be discussed with ARENA.]</i></p> <p>[insert amount]</p>
2.	<p>[insert Milestone title]</p> <p>D2.1 Provision of a Milestone report, in accordance with item 3.1 of Schedule 1 (The Project).</p> <p>D2.2 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4.4 of Schedule 1 (Knowledge Sharing Plan).</p> <p>D2.3 Provision of [insert Project specific milestone]</p> <p>(a) [insert]</p>	<p>[insert completion date]</p>	<p>[insert amount]</p>
3.	<p>[insert Milestone title]</p> <p>D3.1 Provision of a Final report, in accordance with item 3.1 of Schedule 1 (The Project).</p> <p>D3.2 Provision of an Audited Financial Statement, covering all financial years of the Project, in accordance with item 3.1 of Schedule 1 (The Project),</p> <p>D3.3 Provision of a final acquittal, in accordance with item 3.1 of Schedule 1 (The Project).</p>	<p>[insert completion date]</p>	<p>[insert amount]</p>

No.	Description of Milestone and Milestone Deliverables	Completion date	Amount of Milestone payment (GST excl.)
	D3.4 Completion of Knowledge Sharing Deliverables due in the reporting period, , in accordance with item 4.4 of Schedule 1 (Knowledge Sharing Plan).		
	D3.5 Provision of [<i>insert Project specific milestone</i>] (a) [<i>insert</i>]		

2. Funding and Payment

2.1 ARENA Funding

The total amount of funding provided by ARENA under this Agreement will not exceed \$[*insert*] (excluding GST).

2.2 Payment of ARENA Funding

The ARENA Funding will be provided as Milestone payments as specified in item 1.6 of Schedule 1 (The Project), in accordance with clause 7.7.

2.3 Budget

[**Drafting note:** The below budget is provided to the Recipient as a guide with respect to the form of the Budget required by ARENA. Details to be updated as required for the Project, for example insert additional columns where there are additional Milestones or insert a new row under 'Income' where there is more than one Project Participant.]

[**Drafting note:** Recipient and Other Contributions to be checked by ARENA against the original approval documents]

All amounts in the table below are in AUD and GST exclusive.

Budget	Milestone 1	Milestone 2	Milestone 3	Total
Income				
ARENA				
Recipient Contributions				
Recipient (cash)				
Recipient (in-kind)				
<i>Sub-Total Recipient Contributions</i>				
Other Contributions				
[<i>Entity 1</i>] (cash)				
[<i>Entity 1</i>] (in-kind)				
<i>Sub-Total Other Contributions</i>				
Total income				
Expenditure				
Salaries				

Budget	Milestone 1	Milestone 2	Milestone 3	Total
Income				
Contractors				
Consultants				
Due Diligence				
Equipment				
Consumables				
Travel				
Other				
Total expenses				

3. Reports and Plans

3.1 Reports

[Drafting note: ARENA to complete. Progress Reports are optional and may be used to ensure regular reporting between the Milestone Reports.]

The Recipient must:

- (a) provide reports to ARENA as set out in this item 3.1 and, if applicable with respect to a study, in the form set out in Schedule 2 (Study Template); and
- (b) include within any Milestone Report, Progress Report or Final Report:
 - (i) the name of the Recipient and all subcontractors;
 - (ii) a contact name, telephone number and email address;
 - (iii) the Project title and number;
 - (iv) a statement of the ARENA Funding, Recipient Contributions and Other Contributions provided and spent certified by an authorised officer of the Recipient;
 - (v) the amount remaining in the account referred to in clause 16.1(k); and
 - (vi) details of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Project.

Report Type	Requirements
Milestone Report	<p>Each Milestone Report must include:</p> <ol style="list-style-type: none"> (a) the Milestone and period to which the report relates; (b) a Budget update (including cost to completion) (in a format similar to that set out in item 2.3 of Schedule 1 (The Project)); and (c) an update on: <ol style="list-style-type: none"> (i) the progress of the Project relevant to the Outcomes; (ii) the Knowledge Sharing Deliverables completed during the period to which the report relates, including a list of

Report Type	Requirements
	<p>any public reports or knowledge sharing reports, data or documentation;</p> <p>(iii) the outcomes of those Knowledge Sharing Deliverables; and</p> <p>(iv) the number of direct jobs (including any permanent roles, contractors, subcontractors and consultants) created during any construction and operation phases of the Project.</p>
<p>Progress Reports</p> <p><i>[Optional at ARENA's discretion]</i></p>	<p>Each progress report must include an update on:</p> <p>(a) 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;</p> <p>(b) the progress on achieving the Outcomes;</p> <p>(c) any major issues or developments which have arisen and the effect they will have on the Project; and</p> <p>(d) any proposed changes to the Project.</p> <p><i>[Drafting note: This is an optional clause. ARENA to complete. Progress Reports are optional and may be used to ensure regular reporting between the Milestone Reports.]</i></p>
<p>Final Report</p>	<p>The Final Report must include:</p> <p>(a) a description and analysis of the progress of the Project, including:</p> <ul style="list-style-type: none"> (i) evidence that the Project has been completed, and the Milestones have been achieved; (ii) details of the extent to which the Project achieved the Outcomes; (iii) any highlights, breakthroughs or difficulties encountered; and (iv) conclusions or recommendations (if any) arising from the Project; <p>(b) a description of the Knowledge Sharing Deliverables in accordance with item 4 of Schedule 1 (The Project), along with all of the Knowledge Sharing Deliverables completed as at the date of the Final Report;</p> <p>(c) statistics for the number of direct jobs (including any permanent roles, contractors, subcontractors and consultants) created during any construction and operation phases of the Project;</p> <p>(d) analysis of the effectiveness of each of the Knowledge Sharing Deliverables completed;</p> <p>(e) for any on-going Knowledge Sharing Deliverables, an update of progress in undertaking each Knowledge Sharing Deliverable; and</p>

Report Type	Requirements
	(f) if bound by the <i>Modern Slavery Act 2018</i> (Cth), a copy of the most recent Modern Slavery Statement that has been prepared. If not bound by the <i>Modern Slavery Act 2018</i> (Cth), a statement setting out what checks and actions have been undertaken by the recipient to address risks of modern slavery with respect to the Recipient's suppliers.
Acquittals statement To be certified by the Recipient's Chief Financial Officer (or such other person approved by ARENA)	The acquittals statement must certify: <ul style="list-style-type: none"> (a) that all ARENA Funding, Recipient Contributions and Other Contributions were spent for the purpose of the Project in accordance with this Agreement and that the Recipient has complied with this Agreement; and (b) that salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations.
Audited Financial Statements To be prepared by an Approved Auditor in accordance with Accounting Standards in respect of the ARENA Funding, Recipient Contributions and Other Contributions	The Audited Financial Statements must include: <ul style="list-style-type: none"> (a) 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; (b) if the Recipient is a company, 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 (c) detail of any ARENA Funding returned to ARENA by the Recipient and the reasons for such refund.

3.2 Plans

[Drafting note: Each of the plans under this item is optional. ARENA to complete. Where a particular plan is not required for the Project, delete that row in the table below. Where no plans are required for the Project, ARENA will delete the table and insert 'Not used'. ARENA will specify in each case whether certification as set out in clause 13.2(b)(i) is required for each plan.]

Plan	Certification requirement (clause 13.2)	Requirements
Risk Management Plan	<p><i>[ARENA to confirm whether certification is required, and if so, whether external or internal certification is required.]</i></p> <p><i>[No certification / External certification / Internal Certification]</i></p>	For the Term of this Agreement, the Recipient must develop, implement and update a Risk Management Plan for the Project which includes the following features: <ul style="list-style-type: none"> (a) clear identification and documentation of all key Project risks and categorisation of those risks covering both likelihood of occurrence and potential consequence; (b) 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 (c) a process for regularly monitoring and updating the Risk Management Plan and

Plan	Certification requirement (clause 13.2)	Requirements
		<p>reporting to the Recipient's internal management, board, Project Participants and joint venture partners (if applicable),</p> <p>and is consistent with relevant industry standards and best practice for this type of Project and the types of risks it has.</p>
<p>Community Consultation Plan</p>	<p><i>[No certification / External certification / Internal Certification]</i></p>	<p>(a) For the duration of the Agreement, the Recipient must develop, implement and update a Community Consultation Plan for the Project which includes the following features:</p> <ul style="list-style-type: none"> (i) identification of all key stakeholder groups, including local communities that are potentially affected by the Project; (ii) an outline of the proposed community consultation processes and an outline for stakeholders on how to access the latest information in respect of community consultation matters; (iii) a process for maintaining an up-to-date record of complaints arising from community consultations and the responses provided to these complaints; and (iv) a process for regularly monitoring and updating the Community Consultation Plan and the community consultations undertaken and reporting to the Recipient's internal management, board, Project Participants, and other key groups (whether government or non-government) as required by ARENA to ensure the on-going improvement of community engagement, <p>and is consistent with relevant industry standards and best practice for this type of Project and the types of community consultation to be undertaken.</p> <p>(b) The Recipient may make the Community Consultation Plan available by publishing it on its website.</p> <p>(c) The Recipient must provide to ARENA notification of responses by the Recipient to adverse community reaction to the Project.</p>

Plan	Certification requirement (clause 13.2)	Requirements
Intellectual Property Management Plan	[No certification / External certification / Internal Certification]	<p>[Drafting Note: Recipient to develop an IP Management Plan where relevant for the purposes of the Project.]</p> <p>(a) For the Term of this Agreement, the Recipient must implement an Intellectual Property Management Plan for the Project which includes the following features:</p> <ul style="list-style-type: none"> (i) detailed descriptions of relevant Intellectual Property; (ii) detailed descriptions of relevant licences, property technology or potential licences necessary for achieving the outcomes as described in item 3.2 of this Schedule 1 (The Project); and (iii) clear identification of mitigation strategies the Recipient determines necessary to appropriately manage the identified Intellectual Property.
Cybersecurity and Data Management Plan	[No certification / External certification / Internal Certification]	[Drafting note: Outline any requirements of the plan as required and following the format of reports above]
[Drafting note: Insert any other plans as required at ARENA's discretion]	[No certification / External certification / Internal Certification]	[Drafting note: Outline any requirements of any other report as required and following the format of reports above. Otherwise delete if not necessary.]

4. Knowledge Sharing Plan

[Drafting note: The Recipient should refer to the Knowledge Sharing Plan Guidance document provided on the application page of the ARENA website for further information on how to populate the Knowledge Sharing Plan.]

4.1 Knowledge sharing context

Under the ARENA Act, ARENA's mandate is to promote the sharing of information and knowledge about renewable energy technologies, with the objective of accelerating the development and growth of Australia's renewable energy sector.

4.2 Knowledge sharing objectives

[Drafting Note: Briefly describe the main concepts, questions or issues that the project is aiming to answer or resolve in the context of technology commercialisation]

4.3 Knowledge sharing stakeholders/target audiences

[Drafting Note: Briefly describe the main groups of stakeholders or target audiences that are potentially interested in the KS Objectives listed above, and the outcome of the project in general]

4.4 Knowledge Sharing Deliverables

[Drafting note: The table under item (a) applies where the Project relates to a study, and the table under item (b) applies where the Project relates to demonstration and deployment. ARENA will assist the Recipient in identifying which table applies to the Project.]

ARENA may make requests from Projects (and portfolios of Projects) for particular topics to be covered either through lessons learnt reports (where applicable) or ad hoc reports, as required. Where ARENA has not made a specific request, topics are to be relevant and/or topical and have an appreciation for the key audiences. For the avoidance of doubt, business development and marketing material is not considered to be Knowledge Sharing Deliverables.

All deliverables are to be prepared to a standard acceptable to ARENA and where relevant, reflect ARENA's Report Writing Tips & Guidelines which will be provided by ARENA to the Recipient or can be found on ARENA's website.

(a) Studies module

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 22)	Content and delivery
1.	ARENA 15-minute Project survey <i>[Drafting note: Delete this row where the Project is for a period of less than 6 months, as a survey is not required in this situation.]</i>	Efficient qualitative and quantitative data gathering. Anonymised data is used internally for ARENA's quarterly portfolio updates	Quarterly	From Commencement Date to 3 months following the Final Milestone Date	Recipient Confidential Information	ARENA to provide link to survey each quarter.
2.	Seminar/webinar/workshop participation	Share Project information with other ARENA funded Projects and key stakeholders	Minimum one per year, as agreed with ARENA.	From Commencement Date to the Final Milestone Date	Public	Recipient to provide documentation (i.e. slides, word document, pdf etc) to ARENA following attendance, to contain sufficient information to be read as a standalone document.
3.	Final public study report	Share findings with the market	Once only	Final Milestone Date	Public	Report must comply with the ARENA Report Writing Tips and Guidelines, including the minimum content. Public report to be published on a public platform determined by ARENA. Any sensitive information (information not for public release) can be included as a confidential addendum for ARENA (as

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 22)	Content and delivery
						Recipient Confidential Information).
4.	Ad hoc reports, products and activities	Capture information not yet known	No more than three per year	As required	Agreed at time of request	Format and topic to be agreed at the time of request.

(b) Demonstration and deployment module

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information)	Content and delivery
1.	ARENA 15-minute Project survey	Efficient qualitative and quantitative data gathering. ARENA may use this information in anonymised portfolio analysis and reporting.	Quarterly	From Commencement Date to 12 months following the Final Milestone Date	Recipient Confidential Information	ARENA to provide a link to the survey each quarter.
2.	Lessons learnt report	To share key lessons from the Project and implications for industry.	Frequency to be confirmed based on Milestones, but no less than every 6 months.	From Commencement Date <i>[or the later of the Commencement Date or Financial Close]</i> to the Final Milestone Date	Public	Report must comply with the ARENA Report Writing Tips and Guidelines, including the minimum content. Public report to be published on ARENA Knowledge Bank, and/or on a public platform determined by ARENA.

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information)	Content and delivery
						Any sensitive information (information not for public release) can be included as a confidential addendum for ARENA (as Recipient Confidential Information).
3.	Final Project knowledge sharing report	Final project knowledge sharing report to document and disseminate the Project outcomes from a knowledge sharing perspective.	Once	At the time of Final Report	Public	<p>Report must comply with the ARENA Report Writing Tips and Guidelines, including the minimum content.</p> <p>Public report to be published on ARENA Knowledge Bank, and/or on a public platform determined by ARENA.</p> <p>Any sensitive information (information not for public release) to be included as a confidential addendum for ARENA only (rather than separate report).</p>
4.	Attendance and participation in ARENA-led event (e.g., webinar, workshop or roundtable)	Share Project information with other ARENA funded Projects and key stakeholders.	Up to three each year, as agreed with ARENA	From Commencement Date to 6 months following the Final Milestone Date	Agreed at time of event	Recipient to provide documentation (i.e. slides, word document, pdf etc) to ARENA following attendance, to contain sufficient information to be read

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information)	Content and delivery
						as a standalone document.
5.	Attendance and participation in industry event	Project exposure, knowledge dissemination.	Minimum one per year, as agreed with ARENA	From Commencement Date [<i>or the later of the Commencement Date or Financial Close</i>] to 6 months following the Final Milestone Date	Agreed at time of event	As agreed with ARENA, at industry conferences or events with high attendance from target audience. Evidence of active involvement to be provided (e.g. presentation slides, recordings, one-page summary of event), as agreed with ARENA.
6.	Site visit <i>[Drafting note: For flagship Projects (grants over \$10mil and/or where the Project is first of a kind) as required by ARENA – delete row if not applicable]</i>	On ground experience with key stakeholders and demonstration of facilities.	Once	As agreed with ARENA	Agreed at time of visit	Site visit to Project location or a virtual tour delivered online as agreed by ARENA.
7.	Ad hoc reports, products and activities	Capture unknown unknowns.	No more than three per year	As required	Identified at time of request	Format and topic to be agreed at the time of request.

(c) Data collection

[Drafting note: ARENA will remove this section where it is not applicable to the Project]

This Project will use the ARENA data specification as set out in *[insert]*.

4.5 Knowledge sharing third parties

(a) Knowledge Sharing Agent

[Drafting note: ARENA will remove this section where it is not applicable to the Project]

ARENA may engage [*insert organisation name*] to act as an ARENA Knowledge Sharing Agent. ARENA reserves the right to engage a Knowledge Sharing Agent at any time.

Schedule 2 – Study Template [*Optional*]

[Drafting note: If you require further detail than possible for a study/report/document that cannot be adequately described in the Milestones (item 1.5 of Schedule 1) or the Knowledge Sharing Plan (item 4 of Schedule 1), this schedule can be used to describe detailed/additional requirements. ARENA will remove this Schedule when it determines that it is not applicable to the Project.]

Schedule 3 – Major Projects

[Drafting note: This Schedule 3 is optional. This Schedule is only to be included where the Project includes Building Work as set out in subsection 3(4) of the Building Code. You should consult ARENA Legal in the first instance as to the content of this Schedule and any further changes, where construction work is proposed to be funded. If it is not applicable, delete the content of this Schedule and insert ‘Not used’.]

5. Approved Australian Industry Participation Plan

[Drafting note: Australian industry participation requirements may apply to grants over \$20 million or to major public or private project that has an estimated capital expenditure of AUD \$500 million or more. An Australian industry participation clause will be included where ARENA is advised by the Department of Industry Innovation and Science that an AIP Plan is required. An example clause is below.]

Australian Industry Participation Plan or AIP Plan	the Australian Industry Participation Authority
Australian Industry Participation Plan or AIP Plan	the plan referenced in item 5 of this Schedule 3 (Major Projects).
Australian Industry Participation Plans: User Guide or, AIP Plans: User Guide	the Australian Industry Participation Plans: User Guide for developing an AIP Plan and Implementation Report published by the Department of Industry which can be obtained from the internet site. https://www.industry.gov.au/regulation-and-standards/australian-industry-participation
Implementation Report	a report provided to ARENA in accordance with item (d) to (f) (inclusive).
Implementation Report Requirements	the requirements for an Implementation Report set out in the AIP Plans: User Guide for developing an AIP Plan and Implementation Report.

- (a) Once the AIP Authority has approved the Recipient’s AIP plan, the Recipient’s must provide ARENA with a copy of:
 - (i) the Approved AIP plan; and
 - (ii) the Certificate of Approval.
- (b) The Recipient must comply with the Approved AIP Plan.
- (c) If any conflict arises between any part of the Approved AIP Plan and any other part of this Agreement, the other part of this Agreement prevails to the extent of the conflict.
- (d) The Approved AIP Plan must not be construed as limiting the Recipient’s obligations to comply with the requirements of this Agreement.
- (e) The Recipient must provide ARENA with an Implementation Report that meets the Implementation Report Requirements within *[insert time frame]*.

[Drafting note: Recipients should be required to provide a single Implementation Report on their implementation of the Approved AIP Plan under the Agreement. The appropriate time for providing the Implementation Report will depend on the term of the Agreement and the nature of the activity being performed under the Agreement, taking into account

the areas that are to be addressed in the Implementation Report. As a general statement, for a longer term Agreement, within 60 days of the first anniversary of the Commencement Date would be appropriate. For shorter term contracts (e.g. less than 12 months), 30 days prior to the completion of the Agreement would be appropriate.]

- (f) Where ARENA considers that the Implementation Report does not meet the Implementation Report Requirements, ARENA may by written notice to the Recipient reject the Implementation Report. Where ARENA rejects the Implementation Report, ARENA will provide the Recipient with reasons for the rejection.
- (g) Where ARENA rejects the Implementation Report, the Recipient must provide ARENA with the Implementation Report, amended to address the reasons for the rejections advised by ARENA and that otherwise meets the Implementation Report Requirements within 10 Business Days of the date of the notice issues by ARENA.
- (h) The Recipient consents to ARENA or any other Commonwealth agency:
 - (i) publishing the executive summary of its Approved AIP Plan;
 - (ii) publicising or reporting on the Recipient's performance in relation to the Approved AIP Plan and level of compliance with the AIP Plan; and
 - (iii) publicising or reporting on any information contained in the Approved AIP Plan or AIP Implementation Report under this Agreement.
- (i) This item 1 of Schedule 3 (Major Projects) survives the termination or expiry of this Agreement.

[Drafting note: Drafters should confirm that the Approved AIP Plan and Implementation Report are not included as confidential information of the Recipient under this Agreement]

Signing page – ARENA

EXECUTED as an agreement.

SIGNED for and behalf of the **Australian Renewable Energy Agency** by its duly authorised delegate in the presence of:

.....
Signature of Authorised Delegate

.....
Signature of Witness

.....
Name of Authorised Delegate
(Please print)

.....
Name of Witness
(Please print)

.....
Position of Authorised Delegate
(Please print)

.....
Date

Signing page – Recipient

EXECUTED as an agreement.

[Drafting note: Choose if Recipient is a corporation]

EXECUTED by *[insert]* (**ABN** *[insert]*) in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) by:

.....
Signature of Director

.....
Signature of Director/Company Secretary
(Please delete as applicable)

.....
Name of Director
(Please print)

.....
Name of Director/Company Secretary
(Please print)

.....
Date

.....
Date

[Drafting note: Choose if Recipient is not a corporation]

EXECUTED by *[insert]* (**ABN** *[insert]*) by its by its duly authorised delegate in the presence of:

.....
Signature of Authorised Delegate

.....
Signature of Witness

.....
Name of Authorised Delegate
(Please print)

.....
Name of Witness
(Please print)

.....
Position of Authorised Delegate
(Please print)

.....
Date

Appendix A – Minor Variations to this Agreement (Clause 11.1)

This Appendix is intended to set out the process for effecting Minor Variations, to record details of Minor Variations for administrative purposes and to be updated as Minor Variations are effected.

Where the parties agree to a Minor Variation in accordance with clause 11.1, ARENA will send the Recipient an updated version of the table **below** containing details of the Minor Variations currently in effect. This Appendix will be deemed to have been amended accordingly. If there is any inconsistency between a Minor Variation and this Appendix, then the Minor Variation will prevail to the extent of the inconsistency.

[Drafting note: ARENA to update the table below and send to the Recipient once a Minor Variation is agreed - the table is intended to be an up-to-date record of all Minor Variations]

Minor Variation No.	Date of Minor Variation	Nature of Minor Variation	Details of Minor Variation
	<i>[insert]</i>	<i>[Insert as directed by ARENA / agreed by the parties]</i>	<i>[Insert brief details]</i>