



[Drafting note: This is ARENA’s standard funding agreement template for the Transformative Research Accelerating Commercialisation Program Guidelines (TRAC Guidelines). The terms of this Agreement must be consistent with the requirements of the Applicable Guidelines and Funding Announcement, including with respect to Eligible Expenditure and overseas expenditure All drafting notes are to be deleted in the execution version.] **[Drafting note:** When editing this template, please use the existing formatting Styles in the ‘Style pane’ – do not copy and paste new styles into the document.]

TRAC 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

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|----------------------------|--|
| 1. Project Title | [Drafting note: ARENA to complete. Insert full long name in accordance with ARENA’s naming convention]
<i>[i.e. Powerworks, voltage control on the Pacific Islands Study]</i>
<i>[study/ project/ fellowship/ scholarship/ R&D Project]</i> |
| 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. Round | [Drafting note: Recipient to confirm whether the funding round is for Hydrogen or Iron and Steel] |
| 5. Guidelines and policies | TRAC Guidelines (transformative-research-accelerating-commercialisation-program-trac.pdf (arena.gov.au))
ARENA Variation Policy (https://arena.gov.au/assets/2018/05/arena-funding-agreement-variation-policy.pdf)
ARENA Report Writing Tips and Guidelines (https://arena.gov.au/assets/2020/03/arena-report-writing-guidelines.pdf) |

PART 2 - KEY PROJECT DETAILS

- | | |
|----------------------------------|--|
| 6. Purpose, Outcomes and Project | See items 1.1 (<i>Summary of the Project</i>), 1.2 (<i>Project</i>) and 1.7 (<i>Outcomes</i>) of Schedule 1 (<i>The Project</i>) |
| 7. Location | [Drafting note: The Recipient is to insert the location (state, suburb and street address if available) where the 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.] |
| 8. Budget | <i>[insert total Budget for Project, including Recipient Contributions and Other Contributions.]</i> |
| 9. ARENA Funding | <i>[insert dollar amount]</i> (excl. GST) representing <i>[insert]</i> % of Budget |
| 10. Recipient Contributions | <i>[insert dollar amount]</i> (excl. GST) representing <i>[insert]</i> % of Budget
[Drafting note: include both cash and in-kind contributions] |

11. Other Contributions	[insert dollar amount] (excl. GST) representing [insert]% of Budget [Drafting note: include both cash and in-kind contributions]
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: [insert name, position and contact details] Knowledge Sharing Personnel: [insert name, position and contact details]
14. Approved subcontractors for Major Subcontract Work (clause 20.1(g) (Subcontractors and Project Participants))	[Drafting note: Recipient to 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 20.1(g) (Subcontractors and Project Participants)]
15. Project Participants (clause 6 (Acknowledgement, disclaimer and publicity))	[Drafting note: Recipient to 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. Note that under clause 6 (Acknowledgement, disclaimer and publicity), Project Participants must give an acknowledgement of ARENA's support and their involvement can be publicly disclosed by ARENA. Subcontractors are addressed separately in item 14.]
PART 3 - OTHER CONTRACT INFORMATION	
16. Insurance requirements (clause 20.1(h) (Insurance))	<ol style="list-style-type: none"> Workers' compensation in accordance with relevant State or Territory legislation; Public liability insurance for a minimum amount of \$10,000,000 per occurrence; and Professional indemnity insurance for a minimum amount of \$5,000,000 per occurrence. <p>[Drafting note: Note that while ARENA will specify minimum limits of liability for the above insurances, it is the Recipient's responsibility to ensure 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.]</p>
17. Acknowledgement of support (clause 6.1 (Acknowledgement, disclaimer and publicity))	<p>Acknowledgement</p> <p>The Recipient must acknowledge the support received from ARENA by including the following statement:</p> <p style="padding-left: 40px;"><i>This Project received funding from the Australian Renewable Energy Agency (ARENA) as part of ARENA's Advancing Renewables Program.</i></p> <p>Signage</p> <p>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:</p> <p style="padding-left: 40px;"><i>[insert Recipient's name] has received support from the Australian Renewable Energy Agency (ARENA) for [insert Project title] as part of ARENA's Transformative Research Accelerating Commercialisation Program.</i></p> <p>The Recipient is requested to consider including an indigenous place acknowledgement in such signage.</p>
18. Disclaimer (clause 6.3 (Acknowledgement, disclaimer and publicity))	<p>The Recipient must include the following statement on any published material in relation to the Project:</p> <p style="padding-left: 40px;"><i>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.</i></p>
19. Recipient Confidential Information (clause 23 (Confidentiality))	As per Knowledge Sharing Plan

20. Address for Notices and other communications (clause 34 (Notices and other communications))

ARENA:

Director, Contract Management Services
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 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

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 1.8 (*Milestones*) of Schedule 1 (*The Project*) and in accordance with clause 14 (*Claims for payment*); and
- (d) complete the Project by the Final Milestone Date.

3 Stages

- 3.1 The Recipient must complete the Project in the Stages set out in item 1.8 (*Milestones*) of Schedule 1 (*The Project*).
- 3.2 ARENA will conduct a Stage Gate Review as set out in item 1.3 (*Stages*) of Schedule 1 (*The Project*).
- 3.3 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:
 - (a) terminate this Agreement by giving written notice to the Recipient; or
 - (b) give written notice to the Recipient that the Project will continue.
- 3.4 Where ARENA gives notice under clause 3.3 (*Stages*) that the Project will continue, ARENA may determine (acting reasonably) that:
 - (a) the scope of work for Stage 2 will be amended;
 - (b) the amount of ARENA Funding available for Stage 2 will be reduced; and
 - (c) include such other conditions as ARENA considers are required to enable the project to achieve its Outcomes.
- 3.5 Any changes as set out in clause 3.4 (*Stages*) are to be agreed by the Parties as a variation in accordance with clause 18 (*Variations, Delays and Extensions of Time*).
- 3.6 On termination of this Agreement under this clause 3.3(a) (*Stages*), 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.

4 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 Governance Body is established, this is not an optional clause and is to be retained in all funding agreements.]

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 (*Project*) of Schedule 1 (*The Project*):

- (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.

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 (*Knowledge Sharing Plan*) 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 23 (*Confidentiality*).

6 Acknowledgement, disclaimer and publicity

6.1 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.

6.2 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.

6.3 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.

7 Communication Materials

7.1 The Recipient acknowledges that ARENA may request the Recipient provide to ARENA photography and/or video and audio in connection with the Project (**Communication Materials**).

7.2 A request made in accordance with clause 7.1 (*Communication Materials*) will be in a form similar to Appendix B (*Communication Materials*) and will include:

- (a) any appropriate guidance materials;
- (b) any necessary technical specifications; and
- (c) the required timing for the provision of the Communication Materials.

7.3 The parties will meet within 10 Business Days to discuss the Communications Materials request, unless otherwise agreed between the parties.

8 Reporting

8.1 The Recipient must:

- (a) comply with the reporting requirements set out in item 3 (*Reports and Plans*) of Schedule 1 (*The Project*) and keep ARENA regularly and fully informed regarding the progress of the Project;
- (b) during the Term of this Agreement, and for a period of five years following the Final Milestone Date, where requested by ARENA, provide:
 - (i) data with respect to carbon abatement resulting from the Project; and
 - (ii) 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 Project throughout the Term.

8.2 In the event this Agreement is terminated before the End Date, within 20 Business Days after the date of 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.

9 Plans

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

9.2 Where the Recipient is required to provide a plan under item 3.2 (*Plans*) 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

[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 (*Plans*) 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.

10 Privacy

The Recipient must:

- (a) comply with applicable privacy laws, including the *Privacy Act 1988* (Cth) (**the Privacy Act**);
- (b) promptly notify ARENA in writing if it (or its subcontractors) commits an eligible data breach within the meaning of the Privacy Act relating to any data or personal information held in connection with the Project; and
- (c) 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.

11 Data security

- 11.1 The Recipient must, in connection with the Project, have in place adequate security measures to protect any Data acquired by the Recipient in connection with the Project from Data Security Breaches.
- 11.2 If the Recipient becomes aware of a Data Security Breach, it must:
 - (a) notify ARENA immediately upon becoming aware of the Data Security Breach and specify all known details of the breach or circumvention;
 - (b) immediately take all reasonable steps to remedy such breach or circumvention and to prevent the Data Security Breach from recurring; and
 - (c) as soon as reasonably practicable, provide to ARENA full details of the Data Security Breach and the remedial steps undertaken.

12 Intellectual Property Rights

- 12.1 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) all Intellectual Property Rights in Agreement Material vest in the Recipient upon creation.
- 12.2 The Recipient grants to, or obtains 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:
 - (a) the purpose of giving effect to the Knowledge Sharing Plan; or

- (b) to carry out its objectives under the ARENA Act,

but not including the right to exploit the Licensed Materials for commercial purposes.

- 12.3 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 (*Liability and Indemnity*) 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.

- 12.4 Where required for the Project as determined by ARENA, and as agreed between the parties, the Recipient must comply with an Intellectual Property Management Plan as set out in item 3.2 (*Plans*) of Schedule 1 (*The Project*) when undertaking the Project.

- 12.5 The Recipient must obtain all consents (including any Moral Rights consents or waivers) necessary to perform its obligations under this Agreement.

13 ARENA Funding

- 13.1 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.
- 13.2 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.

14 Claims for payment

- 14.1 Subject to this Agreement, ARENA will pay ARENA Funding to the Recipient in accordance with this clause 14 (*Claims for payment*).
- 14.2 Before the Recipient can make a claim for payment of ARENA Funding, the Recipient must submit to ARENA by the GMS (unless otherwise advised by ARENA), all Milestone Deliverables due for the relevant Milestone by the completion date specified in item 1.8 (*Milestones*) of Schedule 1 (*The Project*).
- 14.3 Upon receipt of a Milestone Deliverable in accordance with clause 14.2 (*Claims for payment*), ARENA will:
 - (a) within 5 Business Days (or such other period notified by ARENA), 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.
- 14.4 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.
- 14.5 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 14.6 (*Claims for payment*).
- 14.6 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 1.2 (*Project*) 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 19 (*Representations and warranties*) 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.
- 14.7 Upon satisfaction of the requirements of this clause 14 (*Claims for payment*), ARENA must make payment within 30 days after receiving a valid invoice into the account nominated by the Recipient.
- 15 Bank account**
- (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.
- 15.2 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 15 (*Bank account*).
- 16 Use of ARENA Funding**
- [Drafting note: Applicants should read the Eligible Expenditure section of the Applicable Guidelines.]*
- 16.1 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) as provided in the Budget; and
- (d) in accordance with the terms and conditions set out in this Agreement.
- 16.2 In accordance with the Applicable Guidelines, the Recipient must not spend more than 10% of the ARENA Funding on Overseas Expenditure, other than for equipment or materials.
- 17 Contributions**
- 17.1 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.

17.2 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 (*Budget*) 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 (*Budget*) of Schedule 1 (*The Project*).

17.3 The Recipient must provide written notice to ARENA as soon as practicable if:

- (a) the Recipient Contributions and/or Other Contributions provided and used for the Project are increased; or
- (b) it has received, or requested to receive, other funds from the Commonwealth or State or Territory or local government for the Project.

18 Variations, Delays and Extensions of Time

18.1 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.

18.2 Subject to clause 18.3 (*Variations, Delays and Extensions of Time*), 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.

18.3 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.

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

- (a) meeting the completion dates for one or more Milestones specified in item 1.8 (*Milestones*) of Schedule 1 (*The Project*); or
- (b) completing the Project by the Final Milestone Date,

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

18.5 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 18.1 (*Variations, Delays and Extensions of Time*) 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.

19 Representations and warranties

19.1 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) (**sanctions**) the Recipients, its Related Bodies Corporate and their Personnel, has not contravened any Australian Sanctions Laws;
- (c) (**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;
- (d) (**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;
- (e) (**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;
- (f) (**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;

- (g) (**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;
- (h) (**financial capacity**): it has, or will have, sufficient funds to complete the Project;
- (i) (**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;
- (j) (**Applicable Guidelines**): it has complied with the Applicable Guidelines in connection with the Project;
- (k) (**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

- (l) **(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.

19.2 The representations and warranties in clause 19.1 (*Representations and warranties*) 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 14 (*Claims for payment*); and
- (b) receives payment of ARENA Funding.

19.3 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 19.1 (*Representations and warranties*).

20 Undertakings and Acknowledgements

20.1 The Recipient must:

- (a) **(Laws)**: comply with all applicable Laws;
- (b) **(sanctions)**: in connection with the Project, comply, and ensure that any Related Bodies Corporate comply, with Australian Sanctions Laws and use reasonable endeavours to ensure compliance by any of its subcontractors;
- (c) **(fraud)**: immediately notify ARENA in writing of any fraud or suspected fraud in connection with the Project and take such action as ARENA reasonably requires to manage the fraud;
- (d) **(Change in Control)**: promptly notify ARENA of any Change in Control or likely Change in Control of the Recipient;
- (e) **(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 20.1(d) (*Change in Control*); and
- (f) **(FOI)**: assist ARENA to comply with any request under the *Freedom of Information Act 1982* (Cth) that relates to the performance of this Agreement;
- (g) **(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;
- (h) **(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 seven 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;
- (i) **(books and records)**: at its own cost, during the Term of this Agreement and for a period of seven 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;
- (j) **(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;
- (k) **(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;
- (l) **(bank account)**: comply with the bank account requirements specified in clause 15 (*Bank account*);
- (m) **(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 reasonably 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 20.1(m)(iii) (*Personnel*);
- (n) **(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;
- (o) **(cooperate)**: cooperate with ARENA and other parties, including by attending any meetings on ARENA's reasonable request to discuss any issues related to the delivery of the Project or the performance of obligations under this Agreement;
- (p) **(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 5 of the Project Details) or, where none apply, relevant international industry standards, best practice and guidelines;
- (q) **(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,

- (ii) keep ARENA updated as to the status of any such notified delay; and
- (iii) as soon as practicable, of any significant concerns of local community groups of which the Recipient becomes aware;
- (iv) immediately, if it becomes aware:
 - (A) of any significant matter that may impact on the delivery of the project, including its Outputs or Outcomes;
 - (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;
- (r) **(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, promptly notify ARENA and 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, if requested by ARENA, provide a remediation plan, in a form and substance reasonably required by ARENA, to ARENA that describes how this will be achieved; and
 - (iv) provide information to ARENA as reasonably requested to enable ARENA to comply with its reporting obligations under that Act.

21 Evaluation

- 21.1 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 23 (*Confidentiality*), provide any information reasonably required by ARENA on the implementation and progress of the Project in the format requested by ARENA.
- 21.2 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.

22 Audit and access

- 22.1 During the Term of this Agreement, and for five 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.
- 22.2 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.
- 22.3 The Recipient must provide all reasonable assistance to ARENA and its nominee (if any) for any audit or access under this clause 22 (*Audit and access*).
- 22.4 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.
- 22.5 The rights of ARENA under this clause 22 (*Audit and access*):
- (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.
- 22.6 Where an audit under this clause 22 (*Audit and access*) 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.

23 Confidentiality

- 23.1 Without limiting clause 5 (*Knowledge sharing*) and subject to clause 23.2 (*Confidentiality*), ARENA must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to another person.
- 23.2 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.
- 23.3 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 Related Bodies Corporate, 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.
- 23.4 Without limiting any other provision of this Agreement, where the Recipient discloses ARENA Confidential Information to a third party pursuant to clause 23.3 (*Confidentiality*), 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.
- 23.5 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.
- 24 Force Majeure**
- 24.1 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.
- 24.2 When the circumstances described in clause 24.1 (*Force Majeure*) 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.
- 24.3 ARENA is not obliged to pay to the Recipient any funding for so long as circumstances described in clause 24.1 (*Force Majeure*) 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 24.2 (*Force Majeure*).
- 24.4 If non-performance or diminished performance by the Recipient due to the circumstances under clause 24.1 (*Force Majeure*) continues for a period of more than 90 consecutive days, ARENA may terminate this Agreement by giving the Recipient written notice.
- 24.5 If this Agreement is terminated by ARENA under clause 24.4 (*Force Majeure*):
- (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.

25 Suspension of Funding

- 25.1 Without limiting its other rights, ARENA may at its discretion, 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 (*Budget*) of Schedule 1 (*The Project*).
- 25.2 Where ARENA suspends payment in accordance with clause 25.1 (*Suspension of Funding*), ARENA must notify the Recipient as soon as reasonably practicable.
- 25.3 The Recipient must not spend any ARENA Funding after it receives notice from ARENA under clause 25.2 (*Suspension of Funding*) unless and until ARENA notifies the Recipient otherwise.
- 25.4 ARENA's right to suspend payment under clause 25.1 (*Suspension of Funding*) will cease upon ARENA determining, acting reasonably, that the cause of the suspension has been remedied.
- 25.5 Regardless of whether ARENA exercises its right to suspend payment under this clause 25 (*Suspension of Funding*), the Recipient will not be entitled to payment of ARENA Funding unless the conditions to payment in clause 14 (*Claims for payment*) have been satisfied.
- 25.6 Despite any suspension to payment in accordance with clause 25.1 (*Suspension of Funding*), 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.

26 Reduction

- 26.1 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, on the date for payment of a Milestone:
- (a) by the amount that has not been used, spent or Legally Committed if 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) by 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 due to be used or spent if 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.

- 26.2 If the Recipient receives any additional contribution to the Project in the form of grant funding from the Commonwealth (including any type of Commonwealth Entity) or a State, Territory or local government other than the ARENA Funding or Contributions specified in item 2.3 (*Budget*) 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.

27 Change in Commonwealth government policy

- 27.1 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 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 27.2(b) (*Change in Commonwealth government policy*) but will not be entitled to claim any other amount from ARENA.
- 27.2 If this Agreement is terminated under clause 27.1 (*Change in Commonwealth government policy*), ARENA is liable to the Recipient only for:
- (a) payments due under clause 14.1 (*Claims for payment*) 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.
- 27.3 If the scope of the Project is reduced under clause 27.1 (*Change in Commonwealth government policy*):
- (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).

- 27.4 Termination of this Agreement under this clause 27 (*Change in Commonwealth government policy*) does not affect any accrued rights or remedies of a party.

28 Termination or reduction in scope with cause

- 28.1 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 1.8 (*Milestones*) of Schedule 1 (*The Project*);
- (d) there is a Change in Control of the Recipient without ARENA's prior written consent (such consent not to be withheld unreasonably) 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; or
- (e) the Recipient fails to take all reasonable action to address or remove Modern Slavery practices notified to ARENA in accordance with clause 20.1(r)(iii) (*Modern Slavery Act*) and no further action has been taken within 20 Business Days (or such other time as agreed by ARENA) of the date on which the Recipient receives notice from ARENA requesting such further action be taken.

- 28.2 Without limiting any of ARENA's other rights or remedies, on termination of this Agreement under this clause 28 (*Termination or reduction in scope with cause*):

- (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 (*Repayment of ARENA Funding*).

- 28.3 If the scope of the Project is reduced under clause 28.1 (*Termination or reduction in scope with cause*):

- (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).

29 Termination for an Insolvency Event

- 29.1 Subject to clause 29.2 (*Termination for an Insolvency Event*), 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.
- 29.2 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.
- 29.3 Where the Recipient provides a nomination in accordance with clause 29.2 (*Termination for an Insolvency Event*), ARENA must, within 10 Business Days, approve or reject the party nominated by the Recipient under clause 29.2 (*Termination for an Insolvency Event*).
- 29.4 Where ARENA approves the party nominated by the Recipient under clause 29.3 (*Termination for an Insolvency Event*), the parties will work cooperatively to facilitate the transfer of this Agreement and the Project to the nominated party.
- 29.5 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.

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 (*Repayment of ARENA Funding*)) 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) at the Final Milestone Date, the full amount of any ARENA Funding which has not been spent or Legally Committed by the Recipient; 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 28.1(a) (*Termination or reduction in scope with cause*)) 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 Final Milestone 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 (*Repayment of ARENA Funding*), 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 28 (*Termination or reduction in scope with cause*);
 - (f) **(Change in Control)**: an amount equal to all ARENA Funding paid to the Recipient if there is a Change in Control of the Recipient without ARENA's prior written consent (such consent to be provided acting reasonably); 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 29 (*Termination for an Insolvency Event*).
- 30.2 ARENA may only exercise its rights under clause 30.1(e) (*Material Breach*) where the Recipient:
- (a) commits any breach of clauses 19.1(a) (*transaction permitted*), 19.1(c) (*no misleading information*), 19.1(e) (*employee entitlements*), 19.1(g) (*legal capacity*), 19.1(h) (*financial capacity*), 19.1(i) (*insolvency*) or 19.1(k) (*qualifications*);
 - (b) commits a breach of a material nature of clause 10 (*Privacy*), 12 (*Intellectual Property Rights*), clause 16 (*Use of ARENA Funding*), clause 17 (*Contributions*), clauses 19.1(f) (*Intellectual Property*), 19.1(j) (*Applicable Guidelines*) or 19.1(l) (*trustee*), clauses 20.1(a) (*Laws*), 20.1(e) (*WHS Law*), 20.1(f) (*FOI*), 20.1(r) (*Modern Slavery Act*), or clause 23 (*Confidentiality*); or
 - (c) commits a breach of a material nature of clause 2 (*Recipient to Undertake the Project*), clause 5.1 (*Knowledge Sharing*), clause 8.1 (*Reporting*), clause 9 (*Plans*), clauses 19.1(d) (*conflicts of interest*), or clause 20.1(j) (*conflicts*), 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 (*Repayment of ARENA Funding*), 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 (*Repayment of ARENA Funding*), 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 (*Repayment of ARENA Funding*). ARENA is not required to exercise this discretion for the Recipient's benefit.
- 30.5 With the exception of clause 30.1(f) (*Change in Control*), the Recipient must pay interest to ARENA in connection with any amount notified as owing to ARENA under clause 30.1 (*Repayment of ARENA Funding*), 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 (*Repayment of ARENA Funding*) 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 (*Repayment of ARENA Funding*) are a genuine pre-estimate of the losses incurred by ARENA for the defaults described in this clause 30 (*Repayment of ARENA Funding*).
- 30.7 ARENA and the Recipient agree that the amount of any repayments payable to ARENA by the Recipient under this clause 30 (*Repayment of ARENA Funding*), will not exceed the amount of ARENA Funding paid to the Recipient.
- 30.8 This clause 30 (*Repayment of ARENA Funding*) does not limit any other right or remedy of ARENA.

31 Dispute resolution

- 31.1 A party must comply with this clause 31 (*Dispute resolution*) 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 (*Dispute resolution*).

- 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 (*Dispute resolution*), the Dispute will 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 (*Dispute resolution*). 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 (*Dispute resolution*) 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 (*Dispute resolution*). 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 (*Dispute resolution*). Clauses 31.6 and 31.7 (*Dispute resolution*) survive termination of the dispute resolution process.
- 31.9 If a party breaches any clauses from clause 31.1 through 31.8 (*Dispute resolution*), the other party does not have to comply with those clauses in relation to the Dispute.

32 Liability and Indemnity

- 32.1 The Recipient will at all times indemnify ARENA and its Personnel (referred to in this clause 32 (*Liability and Indemnity*) 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 (*GST*):
- (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 (*GST*), 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 (*GST*), 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 (GST) 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, by 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 by 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.
- 34.3 Any notice, approval, consent or other communication sent by email is taken to be signed by the named sender unless the context otherwise requires.

35 Miscellaneous

- 35.1 Clauses 5 (*Knowledge Sharing*); 6 (*Acknowledgement, Disclaimer and Publicity*); 12 (*Intellectual Property Rights*); 13.1 and 13.2 (*ARENA Funding*); 20.1(e) (*WHS Law*); 20.1(f) (*FOI*); 20.1(h) (*Insurance*); 20.1(i) (*Books and Records*); 20.1(k) (*Visitations*); 21.2 (*Evaluation*); 22 (*Audits and Access*); 23 (*Confidentiality*); 27.2(b) (*Change in Commonwealth government policy*), 28.1(d)(ii) and 28.3(b) (*Termination or reduction in scope with cause*); 30 (*Repayment of ARENA Funding*); 31 (*Dispute Resolution*); 32 (*Liability and Indemnity*); 33 (GST); 35.16 (*Miscellaneous*); 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:
- 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.
- 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.
- AEMC** means the Australian Energy Market Commission (ABN 49 236 270 144);
- AEMO** means the Australian Energy Market Operator Limited (ABN 94 072 010 327).
- AER** means the Australian Energy Regulator.
- 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.
- 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 20.1 (*Undertakings and Acknowledgements*).
- Applicable Guidelines** means the Guidelines listed at item 4 of the Project Details.
- Application** means the expression of interest and application submitted by, for, or on behalf of the Recipient for funding under the TRAC Program in relation to the Project.
- Approved Auditor** means a person who is:
- 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;
 - 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
 - not the Recipient's accountant;
- ARENA** means the Australian Renewable Energy Agency (ABN 35 931 927 899) of 2 Phillip Law St, Canberra ACT 2601.

ARENA Act means the *Australian Renewable Energy Agency Act 2011* (Cth).

ARENA Confidential Information means Confidential Information of ARENA.

ARENA Funding means the amount specified in item 2.1 (*ARENA Funding*) of Schedule 1 (*The Project*) and any interest earned by the Recipient on that amount as reduced in accordance with this Agreement.

Audited Financial Statements means financial statements in respect of the ARENA Funding prepared by an Approved Auditor in accordance with item 3.1 (*Reports*) of Schedule 1 (*The Project*).

Australian Sanctions Laws means the *Charter of the United Nations Act 1945* (Cth) and the *Autonomous Sanctions Act 2011* (Cth) including the *Autonomous Sanctions Regulations 2011* (Cth) (as amended from time to time).

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.

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.

Best Practice Charter for Renewable Energy Projects means the voluntary set of commitments for Clean Energy Council members available at <https://www.cleanenergycouncil.org.au/advocacy-initiatives/community-engagement/best-practice-charter>.

Budget means the total budget (if any) for the Project set out in item 2.3 (*Budget*) of Schedule 1 (*The Project*), including as varied under the terms of this Agreement or updated in accordance with item 3.1 (*Reports*) of Schedule 1 (*The Project*).

Building Work has the meaning given to it in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Business Day means a day that is not a Saturday, Sunday or public holiday in the place:

- for the purposes of giving or receiving notices, where a party receiving the notice is located; or
- for any other purpose under this Agreement, where the party required to perform an obligation is located.

Change in Control means, in relation to an entity, a change in the direct or indirect power or capacity of a person to:

- determine the outcome of decisions about the financial and operating policies of the entity; or

- (b) 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.

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.

Commencement Date means the date on which this Agreement is signed by ARENA.

Commonwealth means the Commonwealth of Australia.

Commonwealth Entity has the meaning given to it in section 10 of the *Public Governance, Performance and Accountability Act 2013* (Cth).

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.

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:

- (a) 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;
- (b) loss arising from death or personal injury;
- (c) loss arising from criminal acts, fraudulent conduct or wilful misconduct committed by the Recipient or its Personnel;
- (d) loss arising from an infringement of any Intellectual Property Right or Moral Rights by the Recipient or its Personnel;
- (e) loss arising from breach of clauses 20.1(d) (*Change in Control*) or 23 (*Confidentiality*) by the Recipient or its Personnel;
- (f) loss arising from liability which by Law the parties cannot contract out of; and
- (g) any amounts expressly payable by the Recipient to ARENA under this Agreement.

Contributions means both the Recipient Contributions and the Other Contributions.

Controller has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).

Corresponding WHS Law has the same meaning as in section 4 of the *Work Health and Safety Act 2011* (Cth).

Data means all material acquired by the Recipient in connection with the Project, including ARENA Confidential Information.

Data Security Breach means any unauthorised access, modification, use, disclosure, destruction or loss of data related to the Project, and includes an actual or attempted circumvention of any of its security measures.

Dispute has the meaning given in clause 31.1 (*Dispute resolution*).

Eligible Expenditure has the meaning set out in the Applicable Guidelines.

End Date means:

- (a) 12 months following the Final Milestone Date; or
- (b) the date on which ARENA accepts the final Knowledge Sharing Deliverable submitted by the Recipient,

whichever is later;

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.

Final Milestone Date means the date by which the final Milestone is to be completed, as set out in item 1.8 (*Milestones*) of Schedule 1 (*The Project*).

Final Report has the meaning given in item 3.1 (*Reports*) of Schedule 1 (*The Project*).

General Conditions means clauses 1 (*Duration of Agreement*) to 37 (*Interpretation*) of this Agreement.

GMS means ARENA's grant management system.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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.

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

- (a) 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;

- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth); or
- (c) 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.

Intellectual Property Rights means all intellectual property rights, including:

- (a) 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;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Interest Rate means the ten-year Treasury Bond Rate as published in the Australian Financial Review on the date of this Agreement.

Knowledge Sharing Agent means the third party engaged by ARENA to perform knowledge sharing activities including (but not limited to):

- (a) collecting, storing, analysing, presenting and reporting on the data generated from the Project;
- (b) providing detailed disaggregated information to ARENA; and
- (c) providing identified aggregated analysis suitable for public release.

Knowledge Sharing Deliverables means the activities and deliverables to be provided by the Recipient in accordance with item 4 (*Knowledge Sharing Plan*) of Schedule 1 (*The Project*).

Knowledge Sharing Plan means the knowledge sharing plan in item 4 (*Knowledge Sharing Plan*) of Schedule 1 (*The Project*) (including the Knowledge Sharing Deliverables), as varied by agreement in writing between the parties from time to time.

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.

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.

Licensed Materials means:

- (a) Agreement Material;
- (b) Pre-existing Material of the Recipient included, embodied in or attached to the Agreement Material; and
- (c) Third Party Material included, embodied in or attached to the Agreement Material.

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.

Major Subcontract Work means any work undertaken for the purpose of the Project and performed by a subcontractor:

- (a) which has a total contract sum in excess of 20% of the Budget; or
- (b) which has, or may potentially have, a material impact on the progress or performance of work on the Project or achievement of Outcomes.

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.

Material Breach means any breach of the following clauses of this Agreement:

- (a) clause 2 (*Recipient to Undertake the Project*);
- (b) clause 12 (*Intellectual Property Rights*);
- (c) clause 16 (*Use of ARENA Funding*);
- (d) clause 19 (*Representations and Warranties*);
- (e) clause 23 (*Confidentiality*), or

a breach of a material nature of any of the following clauses:

- (f) clause 5.1 (*Knowledge Sharing*);
- (g) clause 8.1 (*Reporting*);
- (h) clause 9 (*Plans*);
- (i) clause 10 (*Privacy*);
- (j) clause 17 (*Contributions*);
- (k) clause 20.1(a) (*Laws*);
- (l) clause 20.1(e) (*WHS Law*);
- (m) clause 20.1(f) (*FOI*); or
- (n) clause 20.1(j) (*Conflicts*).

Milestone Report has the meaning given in item 3.1 (*Reports*) of Schedule 1 (*The Project*).

Milestone Deliverables means those deliverables specified in item 1.8 (*Milestones*) of Schedule 1 (*The Project*).

Milestones means the milestones set out in item 1.8 (*Milestones*) of Schedule 1 (*The Project*).

Minor Variation means a variation:

- (a) by way of extension to the dates specified in the Project Details or Schedule 1 (*The Project*);
- (b) to the approved subcontractors for Major Subcontract Work in item 14 of the Project Details;
- (c) to the list of Project Participants in item 15 of the Project Details;
- (d) to the Address for Notices specified in item 20 of the Project Details;
- (e) to the Specified Personnel or the Project Participants specified in the Project Details;
- (f) to elements of the Project as described in item 1.2 (*Project*) of Schedule 1 (*The Project*);
- (g) to the Budget, provided the variation does not amend the Contributions, increase ARENA Funding or would not result in the total Overseas Expenditure exceeding 10% of the ARENA Funding, other than for equipment or materials; or
- (h) 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.

Modern Slavery has the same meaning as in the *Modern Slavery Act 2018* (Cth).

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.

Other Contributions means the financial and in-kind contributions specified in item 2.3 (*Budget*) of Schedule 1 (*The Project*).

Outcomes means the outcomes for the Project, as set out in item 1.7 (*Outcomes*) of Schedule 1 (*The Project*).

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.

Personal Information has the meaning given to it under the *Privacy Act 1988* (Cth).

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

- (a) in the case of the Recipient, also of any subcontractor. and

- (b) in the case of ARENA, including staff made available under section 62 of the ARENA Act.

Portfolio Department means the Department of Climate Change, Energy, the Environment and Water or such other Department as determined by an Administrative Arrangements Order.

Pre-existing Material means Material owned by a party before execution of this Agreement.

Project means the Project described in item 1.2 (*Project*) of Schedule 1 (*The Project*).

Project Details means the Project Details at the beginning of this Agreement.

Project Participants means the entities specified in item 15 of the Project Details.

Recipient means the party specified in item 3 of the Project Details.

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.

Recipient Contributions means the financial and in-kind contributions specified in item 2.3 (*Budget*) of Schedule 1 (*The Project*).

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

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.

Risk Management Plan means the plan to be provided by the Recipient in accordance with item 3.2 (*Plans*) of Schedule 1 (*The Project*).

Schedules means the schedules to this Agreement.

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.

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.

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.

Stages means the stages in which the Recipient must complete the Project as set out in clause 3 (Stages), which includes Stage 1 and Stage 2.

Stage 1 means the core research stage of the Project when core research activities will be undertaken.

Stage 2 means the research commercialisation stage of the Project when commercialisation activities will be undertaken.

Stage Gate Review means a review to be conducted at the end of a Stage in accordance with clause 3 (Stages), following the process described in item 1.3 (Stages) of Schedule 1 (*The Project*).

Term has the meaning given to it in clause 1.

Third Party Material means Material owned by another person that is:

- (a) included, embodied in or attached to the Agreement Material. or
- (b) used in undertaking the Project.

Visitors has the meaning given in clause 20.1(k)(i) (*Visitations*).

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.

WHS Notifiable Incident means any notifiable incidents under WHS Law, accidents, injuries, or damage to property of a serious nature that occurs in connection with the Project.

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 (*Minor Variations to this Agreement*);
- (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 (Recipient to Undertake the Project))

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.]

Definitions (optional)

[Drafting note: Insert plain English definitions for technical terms.]

1.3 Stages (clause 3 (Stages))

[Drafting note: Insert description of stages. Ensure that the key activities are clear and quantifiable as much as possible. These stages will be mirrored in the Milestones.]

The Project will be delivered in two stages, a [3]-year Core Research Stage, followed by a [2]-year Research Commercialisation Stage. The scope of each stage is as follows:

Key Activities in Stage 1 (Core Research Stage)

[Drafting note: Recipient to insert key activities of Stage 1]

Key Activities in Stage 2 (Research Commercialisation Stage)

[Drafting note: Recipient to insert key activities of Stage 2]

Stage Gate Review

Following ARENA's approval of Milestone 3, within 30 Business Days ARENA will conduct a Stage Gate Review in accordance with clause 3 (Stages), which will at a minimum, consider the following:

- (a) the progress of the Project in achieving the Outcomes;
- (b) the merits of the proposed Commercialisation Plan provided at Milestone 3;
- (c) the revised Budget provided at Milestone 3; and
- (d) any other additional information reasonably requested by ARENA for conducting the Stage Gate Review.

ARENA reserves the right at its discretion to engage a third party to conduct a technical review as part of the Stage Gate Review.

1.4 Project partners

[Drafting note: Clearly outline the role of each entity involved in the Project, including, where applicable, Project Participants, industry participants and approved subcontractors for Major Subcontract Work.]

The Project involves several Project partners, including:

Organisation	Role	Description of role in the Project
<i>[Research institution]</i> (the Recipient)	<i>[Project lead in research stage]</i>	<i>[The Recipient will conduct the primary research activities to deliver the Project.]</i>
<i>[Industrial entity]</i>	<i>[Commercialisation Partner / Project Participant]</i>	<i>[[Company A] may provide feedback towards research activities during Stage 1 and will work with the Recipient to progress testing during Stage 2.]</i>

1.5 Governance (clause 4 (Governance Body))

[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 (Claims for payment).]

1.6 Outputs

[Drafting note: ARENA to include a list of the key Project deliverables, in summary form. These are tangible deliverables to be delivered to achieve the Outcomes. These deliverables must also be captured in the milestone table (item 1.8 (Milestones) of Schedule 1 (The Project)) and/or the Knowledge Sharing Plan (item 4 (Knowledge Sharing Plan) of Schedule 1 (The Project)), in sufficient detail.]

The Project will involve delivery of the following:

- (a) [Output 1]
- (b) [Output 2]
- (c) [Output 3, etc.]; and
- (d) Knowledge Sharing Deliverables as outlined in the Knowledge Sharing Plan at item 4 (Knowledge Sharing Plan) of Schedule 1 (The Project).

1.7 Outcomes (clause 2 (Recipient to Undertake the Project))

[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 progress the objectives of the R&D Funding Round, and should link to the TRAC Program outcomes, being: (i) R&D of a range of high quality and innovative Priority Technologies that enhance Australia’s World-Class research position and/or address conditions specific to Australia; (ii) progression of core research into early stage commercialisation activities to support a disruptive, transformative approach to investment in R&D; (iii) increased skills, capacity and knowledge relevant to the Round Objectives and Priority Technologies within Australia; (iv) improvement in the technology readiness and commercial readiness of the Funding Round’s Priority Technologies.]

[Drafting note: The below text is to be considered for the Hydrogen Round. Add, amend, or delete text as required to include Project-level specificity.]

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

- (a) Accelerated commercialisation of renewable hydrogen through innovative R&D in hydrogen [production OR storage and distribution] technologies;
- (b) Increased academic research capacity in the Australian hydrogen sector, and the facilitation of collaboration between research groups and industry;
- (c) Improvement in the technology readiness and commercial readiness of hydrogen [production OR storage and distribution] technologies; and
- (d) [Insert].

[Drafting note: The below text is to be considered for the Iron and Steel Round. Add, amend or delete text as required to include Project-level specificity.]

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

- (a) Reduction in or removal of barriers associated with using lower-grade Australian iron ores in low emissions iron and steel production;
- (b) Development of innovative and / or step change emissions abatement pathways for iron and steel production using Australian iron ores;
- (c) Increased research capacity in the Australian iron and steel sector, and the facilitation of collaboration between research groups and industry;
- (d) Improvement in the technology readiness and commercial readiness of iron and steel production technologies; and
- (e) [Insert].

1.8 Milestones (clause 2 (Recipient to Undertake the Project))

- (a) 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.

No.	Description of Milestone and Milestone Deliverables	Completion date	Amount of Milestone payment (GST excl.)
Stage 1: Core Research Stage			
1.	<p>Project Commencement</p> <p>D1.1 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4 (Knowledge Sharing Plan) of Schedule 1 (The Project).</p> <p>D1.2 Provision of a Risk Management Plan in accordance with item 3.2 (Plans) of Schedule 1 (The Project).</p> <p>D1.3 Provision of a draft Intellectual Property Management Plan in accordance with item 3.2 (Plans) of Schedule 1 (The Project).</p> <p>D1.4 Provision of [insert Project specific milestone] [insert]</p> <p>Note: No Milestone Report required for Milestone 1.</p>	<p>[Drafting note: Avoid Dates for Completion of Milestones that are in December/June. Ensure due date is a Business Day. Allow for additional time to complete the Milestone as Milestones can be achieved and submitted before the completion date.]</p> <p>[insert completion date]</p>	[30% of ARENA funding for Stage 1]
2.	<p>Core Research Midpoint Update</p> <p>D2.1 Provision of a Milestone Report, in accordance with item 3.1 (Reports) of Schedule 1 (The Project).</p> <p>D2.2 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4 (Knowledge Sharing Plan) of Schedule 1 (The Project).</p> <p>D2.3 Provision of [insert Project specific milestone] [insert]</p>	[insert completion date]	[40% of ARENA funding for Stage 1]
3.	<p>Conclusion of Stage 1</p> <p>D3.1 Provision of a Final Report, in accordance with item 3.1 (Reports) of Schedule 1 (The Project).</p> <p>D3.2 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4 (Knowledge Sharing Plan) of Schedule 1 (The Project).</p> <p>D3.3 Provision of an updated detailed Commercialisation Plan, in accordance with item 3.2 (Plans) of Schedule 1 (The Project), including agreed key performance indicators between Project Participants to proceed to the Commercialisation Stage.</p> <p>D3.4 Provision of [insert Project specific milestone] (a) [insert] (b) D3.5 Provision of a revised Budget for the Research Commercialisation Stage (Stage 2), in a format similar to item 2.3 (Budget) of Schedule 1 (The Project).</p>	[insert completion date]	[30% of ARENA funding for Stage 1]
	Stage Gate Review	Within 30 Business Days of Milestone 3 Approval	N/A

No.	Description of Milestone and Milestone Deliverables	Completion date	Amount of Milestone payment (GST excl.)
Stage 2: Research Commercialisation Stage			
1.	<p>Stage 2 Commencement</p> <p>D4.1 Provision of updated Risk Management Plan in accordance with item 3.2 (<i>Plans</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D4.2 Provision of an updated Intellectual Property Management Plan in accordance with item 3.2 (<i>Plans</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D4.3 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4 (<i>Knowledge Sharing Plan</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D4.5 Provision of [<i>insert Project specific milestone</i>] (a) [<i>insert</i>]</p> <p><i>Note: No Milestone Report is required for Milestone 4.</i></p>		[40% of ARENA funding for Stage 2]
2.	<p>Research Commercialisation Midpoint Update</p> <p>D5.1 Provision of a Milestone Report, in accordance with item 3.1 (<i>Reports</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D5.2 Provision of an updated detailed Commercialisation Plan in accordance with item 3.2 (<i>Plans</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D5.3 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4 (<i>Knowledge Sharing Plan</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D5.4 Provision of an update on progress and/or achievement, against agreed key performance indicators and activities listed in the Commercialisation Plan (submitted with Milestone 3), with supporting evidence (if applicable).</p> <p>D5.5 Provision of [<i>insert Project specific milestone</i>] (a) [<i>insert</i>]</p>		[30% of ARENA funding for Stage 2]
3.	<p>Final Milestone and Financial Reports</p> <p>D6.1 Provision of a Final Report, in accordance with item 3.1 (<i>Reports</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D6.2 Provision of an Audited Financial Statement, covering all financial years of the Project, in accordance with item 3.1 (<i>Reports</i>) of Schedule 1 (<i>The Project</i>),</p> <p>D6.3 Provision of an acquittals statement, in accordance with item 3.1 (<i>Reports</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D6.4 Completion of Knowledge Sharing Deliverables due in the reporting period, in accordance with item 4 (<i>Knowledge Sharing Plan</i>) of Schedule 1 (<i>The Project</i>).</p> <p>D6.5 Provision of [<i>insert Project specific milestone</i>] (a) [<i>insert</i>]</p>		[30% of ARENA funding for Stage 2]

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 1.8 (*Milestones*) of Schedule 1 (*The Project*), in accordance with clause 14.7 (*Claims for payment*).

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	Stage 1 Milestone 1	Stage 1 Milestone 2	Stage 1 Milestone 3	Stage 2 Milestone 4	Stage 2 Milestone 5	Stage 2 Milestone 6	Total Income
ARENA							
Recipient Contributions							
Recipient (cash)							
Recipient (in-kind)							
<i>Sub-Total Recipient Contributions</i>							
Other Contributions							
<i>[Entity 1] (cash)</i>							
<i>[Entity 1] (in-kind)</i>							
<i>Sub-Total Other Contributions</i>							
Total income							
Expenditure							
Salaries							
Equipment							
Consumables							
Travel							
Communications Materials							
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) In addition to the requirements set out in the table below, include within each 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 20.1(l) (*bank account*); 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> <ul 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 (<i>Budget</i>) of Schedule 1 (<i>The Project</i>)); and (c) an update on: <ul 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 any public reports or knowledge sharing reports, data or documentation; (iii) the outcomes of those Knowledge Sharing Deliverables; and (iv) the number of direct jobs (including any permanent roles, contractors, subcontractors and consultants) created during any construction and operation phases of the Project.
Progress Reports <i>[Optional at ARENA's discretion ARENA to complete. Progress Reports are optional and may be used to ensure regular reporting between the Milestone Reports.]</i>	<p>Each progress report must include an update on:</p> <ul style="list-style-type: none"> (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; (b) the progress on achieving the Outcomes; (c) any major issues or developments which have arisen and the effect they will have on the Project; and (d) any proposed changes to the Project.
Final Report	<p>The Final Report must include:</p> <ul style="list-style-type: none"> (a) a description and analysis of the progress of the Project, including: <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; (b) a description of the Knowledge Sharing Deliverables in accordance with item 4 (<i>Knowledge Sharing Plan</i>) of Schedule 1 (<i>The Project</i>), along with all of the Knowledge Sharing Deliverables completed as at the date of the Final Report; (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;

Report Type	Requirements
	<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> <p>(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.</p>
<p>Acquittals statement To be certified by the Recipient's Chief Financial Officer (or such other person approved by ARENA)</p>	<p>The acquittals statement must certify:</p> <p>(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</p> <p>(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.</p>
<p>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</p>	<p>The Audited Financial Statements must include:</p> <p>(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;</p> <p>(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</p> <p>(c) detail of any ARENA Funding returned to ARENA by the Recipient and the reasons for such refund.</p>

3.2 Plans

[Drafting note: Each of the plans under this item is optional. ARENA to complete. Where a 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 9.2(a)(i) (external certification) is required.]

Plan	Certification requirement (clause 9.2 (Plans))	Requirements
<p>Risk Management Plan</p>	<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>	<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:</p> <p>(a) clear identification and documentation of all key Project risks (including, but not limited to, financial, operational, Schedule, technical, WHS and external risks) and categorisation of those risks covering both likelihood of occurrence and potential consequence;</p> <p>(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</p> <p>(c) a process for regularly monitoring and updating the Risk Management Plan and reporting to the Recipient's internal management, board, Project Participants and joint venture partners (if applicable),</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>

Plan	Certification requirement (clause 9.2 (<i>Plans</i>))	Requirements
Intellectual Property Management Plan	No certification (Milestone 1) Internal certification (Milestone 4)	<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> <p>(b) detailed descriptions of relevant Intellectual Property;</p> <p>(c) detailed descriptions of relevant licences, property technology or potential licences necessary for achieving the outcomes as described in item 3.2 (<i>Plans</i>) of this Schedule 1 (<i>The Project</i>); and</p> <p>(d) clear identification of mitigation strategies the Recipient determines necessary to appropriately manage the identified Intellectual Property.</p>
Commercialisation Plan	No certification (Milestone 2) Internal certification (Milestone 3)	<p>For the Term of this Agreement, the Recipient must develop, implement, and update a Commercialisation Plan for the Project which includes the following features:</p> <p>(a) a brief overview of the emerging and ongoing commercialisation strategy, including:</p> <ul style="list-style-type: none"> (i) minimum targets, key performance indicators between Project Participants and stretch goals for technology development; (ii) potential and preferred commercialisation pathways for the proposed technology(ies); and (iii) consideration of possible domestic opportunities for technology development versus reliance on international alternatives. <p>(b) A relevant market and supply chain overview including:</p> <ul style="list-style-type: none"> (i) consideration of associated risks; and (ii) analysis of the competitive landscape for the technology. <p>An update on any additional developments, changes or progress relevant to the commercialisation of the technology(ies) not already covered above.</p>

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 Agent

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

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

4.5 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:

- (a) prepared to a standard acceptable to ARENA;
- (b) readily accessible and searchable; and
- (c) submitted in final form for revision.

Public reports must reflect ARENA's Report Writing Tips & Guidelines which will be provided by ARENA to the Recipient or can be found on ARENA's website at <https://arena.gov.au/assets/2020/03/arena-report-writing-guidelines.pdf>. Public deliverables may be published on a public platform determined by ARENA. Any sensitive information (information not for public release) is to be provided as a confidential addendum for ARENA (as Recipient Confidential Information) or as agreed with ARENA. Public deliverables must be approved by ARENA prior to publishing.

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 23 (Confidentiality))	Content and delivery
KS1	ARENA 15-minute Project survey	Efficient qualitative and quantitative data gathering. Anonymised data is used internally for ARENA's quarterly portfolio updates.	Biannually	From Commencement Date to the Final Milestone Date	Confidential, unless the information is used in an anonymised and aggregated way	ARENA to provide link to survey each quarter.
KS2	Digital Research Poster	To clearly convey the key concept, plan and results of the project in a brief and engaging format that's convenient and easily understandable for target stakeholders. To be used on ARENA's virtual platforms and for use in the production of relevant knowledge sharing materials.	Created once, updated twice	Milestone 1: Poster v1. Milestone 3: Poster v2. Milestone 6: Poster v3.	Public	Research poster (pdf format, 914mm x 1219mm / 36" x 48") with content targeted at commercial industry stakeholders and fellow academics. The poster should maximise the use of engaging visual elements like icons, graphs and charts to convey information, rather than large blocks of text. Poster v1 should include: <ul style="list-style-type: none"> • Project aim and overview. • Technology / research process infographic. • Methods and expected results. • Timeline. • Next steps. Poster v2 is an updated version of Poster v1 and should include: <ul style="list-style-type: none"> • Project aim and overview. • Technology / research process infographic. • Methods and interim results. • Timeline. • Next steps.

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 23 (Confidentiality))	Content and delivery
						<p>Poster v3 is an updated version of Poster v2 and should include:</p> <ul style="list-style-type: none"> • Project aim and overview. • Technology / research process infographic. • Methods and final results. • Business case for industry application(s). • Conclusions and next steps.
KS3	Core Research Interim Report	Share a summary of the research activities with stakeholders.	Once	Milestone 2	Public	<p>Public report of 10-15 pages that contains, at a minimum:</p> <ul style="list-style-type: none"> • Executive Summary. • Project overview. • Identify key metrics for analysis / review. • Project update, including progress towards outcomes. • Breakthroughs, challenges and lessons learnt. • List of papers published and conference presentations. • Summary of commercialisation plan and engagement activities (e.g.: IP registrations and patent applications, pitches and meetings with potential investors and commercialisation partners). • Conclusions and next steps.
KS4	Core Research Final Report	Share a detailed summary of the research	Once	Milestone 3	Public	<p>Public report of 15 - 20 pages that outlines, at a minimum:</p>

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 23 (Confidentiality))	Content and delivery
		activities with stakeholders.				<ul style="list-style-type: none"> • Executive Summary. • Project overview. • Achievement of Project Outcomes. • Preliminary performance against metrics, including: <ul style="list-style-type: none"> <i>[Drafting note: ARENA will remove this section where it is not applicable to the Project.]</i> <p>for Iron and Steel projects:</p> <ul style="list-style-type: none"> ○ Emissions abatement and emissions intensity potential; ○ Production cost relative to the incumbent or alternate technology or process the Project is researching; and ○ TRL advancement. <p><i>[Drafting note: ARENA will remove this section where it is not applicable to the Project.]</i></p> <p>for hydrogen projects:</p> <ul style="list-style-type: none"> ○ Cost (\$ / kg of hydrogen produced, stored or transported) relative to the equivalent or alternate technology or process the Project is researching; ○ Production efficiency or electrolyser efficiency (% based on kWh of energy input and energy output); and ○ TRL advancement. <ul style="list-style-type: none"> • Key highlights, challenges and lessons learnt.

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 23 (Confidentiality))	Content and delivery
						<ul style="list-style-type: none"> • Description of how the research will inform the commercialisation phase including where relevant: <ul style="list-style-type: none"> ○ size of addressable market at commercial scale; and ○ pathway to commercial scale. • Description of how the project can contribute to the transition to a net zero Australian iron and steel value chain, or to the feasibility of future hydrogen projects in Australia, as appropriate. • Summary of knowledge sharing activities and the outcome. • Conclusions and next steps.
KS5	Research Commercialisation Interim Report	Share summary of the research and commercialisation activities with stakeholders.	Once	Milestone 5	Public	<p>Public report of 10-15 pages that outlines, at a minimum:</p> <ul style="list-style-type: none"> • Executive Summary. • Project overview. • Identify key metrics for analysis / review. • Project update, including progress towards outcomes. • Breakthroughs, challenges and lessons learnt. • List of papers published and conference presentations. • Summary of commercialisation plan and engagement activities (e.g.: IP registrations and patent applications, pitches and meetings with potential

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 23 (Confidentiality))	Content and delivery
						<p>investors and commercialisation partners).</p> <ul style="list-style-type: none"> • Conclusions and next steps.
KS6	Research Commercialisation Final Report	Share a detailed summary of the research and commercialisation activities with stakeholders.	Once	Milestone 6	Public	<p>Public report of 15-20 pages that outlines, at a minimum:</p> <ul style="list-style-type: none"> • Executive Summary. • Project overview. • Achievement of Project Outcomes. • Final performance against metrics, including: <p><i>[Drafting note: ARENA will remove this section where it is not applicable to the Project.]</i></p> <p>for Iron and Steel projects:</p> <ul style="list-style-type: none"> ○ Emissions abatement and emissions intensity potential; ○ Production cost relative to the incumbent or alternate technology or process the Project is researching; and ○ TRL advancement. <p><i>[Drafting note: ARENA will remove this section where it is not applicable to the Project.]</i></p> <p>for hydrogen projects:</p> <ul style="list-style-type: none"> ○ Cost (\$ / kg of hydrogen produced, stored or transported) relative to the equivalent or alternate technology or process the Project is researching;

No.	Deliverable title	Purpose	Frequency	When?	Accessibility (Public or Recipient Confidential Information) (clause 23 (Confidentiality))	Content and delivery
						<ul style="list-style-type: none"> ○ Production efficiency or electrolyser efficiency (% based on kWh of energy input and energy output); and ○ TRL advancement. ● Highlights, challenges and lessons learnt. ● Stakeholder engagement and collaboration plans. ● Refined pathway to commercialisation. ● Summary of knowledge sharing activities and the outcome. ● Conclusions and next steps.
KS7	Participation in ARENA and/or industry event (e.g. workshop, seminar, roundtable, conference)	Share findings with fellow researchers and industry, identify opportunities for collaboration, and discuss the impact of their research on the broader industry.	Twice for Stage 1 and twice for Stage 2.	In consultation with ARENA	Public (expected to be Researchers, Industry, Government bodies, ARENA)	<p>Format and topic to be agreed at the time of request.</p> <p>This may be a closed event strictly to facilitate peer to peer learning or a public event, this will be determined according to merit at the time.</p> <p>Provision of any slides presented, including speaking notes, and a summary of any event outcomes and follow up actions.</p>
KS8	ARENA website project page questions	Answer reasonable market requests for information via ARENA's website project page	As required	As required	Public (expected from industry)	ARENA and Recipient to agree reasonable response.
KS9	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.

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

[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 18.1 (*Variations, Delays and Extensions of Time*))

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 18.1 (*Variations, Delays and Extensions of Time*), 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>

Appendix B – Communications Material

[Drafting note: This Appendix is to set up the requirements for any Communications Material to be set up by ARENA under clause 7 (Communication Materials).]