

**2023**

**THE STATE OF WESTERN AUSTRALIA**

**and**

**[ORGANISATION]**

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**E-WASTE INFRASTRUCTURE GRANTS**

**EXAMPLE FUNDING AGREEMENT**

**[PROJECT TITLE]**

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**CONTRACT NO:**

**[xxxx]**

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

**BETWEEN**

**The State of Western Australia** acting through the Department of Water and Environmental Regulation (**Department**), located at Prime House, 8 Davidson Terrace, Joondalup 6027 in the State of Western Australia (**State**).

**AND**

(**Recipient**).

**BACKGROUND**

- A. The E-waste Infrastructure Grants (**Program**) is funded by the State to support the e-waste to landfill ban by 2024.
- B. The Recipient has applied for grant funding through the Program to carry out the Project.
- C. The State has agreed to provide the Funding to the Recipient on the terms and conditions of this agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

In this agreement, unless the context otherwise requires:

**Asset** means a capital item with a purchase price of, or currently valued at, \$500 or more and that has an expected useful life of 12 months or more.

**Associates** mean any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the State, including any other Government Party.

**Auditor General** means the Auditor General for the State.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a Government Agency required under any Laws, and includes any renewal of, or variation to, any of them.

**Background IP** means any and all material other than Project IP, which is developed outside of the Project by a Party and brought to the Project by that Party.

**Best Industry Practice** means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person in providing works and services similar to any construction activity involved in

the Project and under conditions comparable with those applicable to the Project;

- (b) compliance with applicable standards and codes, being the standards and codes specified in this agreement or, if this agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and
- (c) compliance with all applicable Laws.

**Business Day** means any day except a Saturday, Sunday or public holiday in Western Australia.

**Claim** means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

**Deliverables** means the expected activities and outputs from the Project specified in item 2 of Schedule 2.

**Financial Report** means financial report as described in clause 5.6(a).

**Funding** means the amount or amounts specified in item 6 of Schedule 1, being a contribution towards the Project.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**Government Party** means any governmental, semi-governmental or local government authority, minister, department, statutory corporation, instrumentality or government owned corporation.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes all associated legislation and regulations.

**Insolvency Event** means the happening of any of these events:

- (a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- (b) except to reconstruct or amalgamate while solvent, a body corporate:
  - (i) is wound up or dissolved; or
  - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- (c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer

is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or

- (e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or
- (f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property; or
- (g) a body corporate:
  - (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
  - (ii) stops or suspends payment of all, or a class of, its debts; or
  - (iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
    - (A) insolvent or unable to pay its debts when they fall due; or
    - (B) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001 (Cth)*; or
  - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the *Corporations Act 2001 (Cth)*; or
  - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or
- (h) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001 (Cth)* or action is taken that could result in that event; or
- (i) anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means all intellectual and industrial property rights existing in Australia or throughout the world, including registered and unregistered trade marks, copyright, inventions, patents, designs, circuits and other eligible layouts and database rights, and any application or right to apply for registration of any of these rights.

**Law** means all applicable present and future laws including:

- (a) all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth of Australia;
- (b) Authorisations;
- (c) principles, requirements and rules of the common law or equity;
- (d) standards, codes, policies and guidelines; and
- (e) the ASX listing rules.

**Liability** means any debt, obligation, Loss, compensation or charge of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

**Loss** means any loss, cost (including legal costs), expense, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

**Milestone** means the milestones set out in item 3 of Schedule 2, with each milestone in relation to a Deliverable being the date by which that Deliverable must be completed, and includes the Project end date specified in item 2 of Schedule 1.

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

**Objectives** means the objectives to assess the delivery of the Project as set out in item 1 of Schedule 2.

**Outcomes** means the expected outputs from the Project specified in item 2 of Schedule 2.

**Party** means each of the State or the Recipient as the context requires, and **Parties** means both of them.

**Project** means the initiative or activities described in item 1 of Schedule 1.

**Project Evaluation Report** means the report described in clause 5.6(d).

**Project IP** means any or all Project Material created, developed or produced by or on behalf of the Recipient in the course of carrying out or otherwise in connection with the Project, including all data collected, analysis performed, and reports produced by the Recipient in the course of the Project.

**Project Material** means all documents and any other material, in any form, created or a copy thereof or in any other way brought into existence as part of, or in the performance of, the Project, and includes new, enhanced, or derived data, documents, equipment, software, goods, information and publications produced because of the Funding and stored by any means.

**Project Schedule** means the project schedule set out in Schedule 2.

**Related Body Corporate** has the meaning given to it in the *Corporations Act 2001 (Cth)*.

## **1.2. Interpretation**

In this agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated association or parties in a joint venture, a public body, a public authority, a partnership or a trust and the legal personal representatives, successors and permitted assigns of that person;

- (d) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (e) references to this agreement or any other instrument include this agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (f) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (g) an obligation in this agreement incurred in favour of two or more persons is enforceable by them jointly and severally;
- (h) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) references to this agreement include its recitals, schedules and annexures;
- (j) headings are inserted for ease of reference only and are to be ignored in construing this agreement;
- (k) references to time are local time in Perth, Western Australia;
- (l) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (m) references to currency are to Australian currency unless otherwise stated;
- (n) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this agreement or any part thereof;
- (o) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually, but is not to be taken as implying that performance of part of an obligation is the performance of the whole;
- (p) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;
- (q) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (r) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them;
- (s) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier; and



- (t) a reference to information includes data, projections, advice, undertakings and documentation.

## **2. DEPARTMENT**

- (a) The Department acts for and on behalf of the State and may at any time perform any of the State's obligations and exercise the State's rights and powers in and under this agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this agreement or at Law.
- (b) The Recipient agrees to treat any notices or other communications (including any requests) from the Department as being from and on behalf of the State.
- (c) Where the Recipient has any obligation under this agreement to remit or pay monies to the State, the Recipient must make payment to the State in the manner requested by the State, including making payment into a bank account nominated by the State if so requested, which may be a bank account held in the name of the Department.

## **3. PRE-CONDITION TO PAYMENT OF FUNDING**

The State has no obligation to provide any Funding to the Recipient unless and until:

- (a) the Recipient provides to the State certificates of currency for insurances required under this agreement;
- (b) if the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, the Recipient has obtained the written consent of the person owning or leasing that land to such entry or occupation by the Recipient, a copy of which is provided to the State.

## **4. PAYMENT OF FUNDING**

### **4.1. Payment**

- (a) Subject to the terms and conditions of this agreement, the State will pay to the Recipient the Funding in accordance with the payment schedule in item 4 of Schedule 2.
- (b) Without limiting clauses 6 or 14.3, the amount of any over-payment made by the State to the Recipient shall be returned to the State. If there are any overpayments or underpayments to the Recipient, without limiting any other rights, those amounts may be offset against any amount subsequently due to be paid to the Recipient by the State under this agreement.
- (c) On and from receipt of Funding, the Recipient must keep a separate record of income, expenditure and interest relating to the Funding. All interest

accruing in respect of the Funding must be retained and used as for the purposes of the Project.

#### **4.2. Use of Funding**

- (a) The Recipient will hold and apply the Funding solely for the purposes of the Project. All the Recipient's expenditure of the Funding must be effected in a commercially prudent, sensible and reasonable manner and seeking to achieve value for money.
- (b) The Recipient may only apply Funding to acquire Assets for the Project with the approval of the State.

### **5. OBLIGATIONS OF THE RECIPIENT**

#### **5.1. General undertakings of the Recipient**

The Recipient must, and must ensure that its officers, members, employees and agents:

- (a) perform and observe its obligations under this agreement and promptly inform the State of any occurrence which might adversely affect its ability to do so in a material way;
- (b) conduct themselves with integrity and probity and in accordance with good corporate governance practices;
- (c) comply with all Laws, including at all times discharge its responsibilities under all statutory requirements relating to work health and safety, including the *Work Health and Safety Act 2020 (WA)* and the *Work Health and Safety (General) Regulations 2022 (WA)* and mandatory codes of practice or guidelines, that are applicable to the Project;
- (d) declare any private interest or pecuniary benefit they may gain from the Funding;
- (e) ensure that processes and procedures are put in place to establish, maintain, operate, and demonstrate an appropriate framework of business controls, to cover all operational, technical, commercial, financial, and administrative activities in undertaking the Project; and
- (f) cooperate with the State in the administration of this agreement.

#### **5.2. Veracity of information**

The Recipient warrants that all information and representations (in whatever form) provided or made by it to the State under, in connection with, or preparatory to, this agreement are true and correct, up to date, and complete and in no way misleading or deceptive. If information or a representation so given or made is or becomes untrue or incorrect in any way, the Recipient must promptly notify the State, giving the State all relevant details.

### **5.3. Performance of the Project**

- (a) The Recipient must plan, manage, co-ordinate and carry out the Project in a manner that enables completion of all activities and works comprising the Project by the Project end date specified in item 2 of Schedule 1.
- (b) The Recipient must achieve each Milestone by the time specified for that Milestone in Schedule 2. The parties may review and update the Milestones by agreement.
- (c) The Recipient must fully implement the Project, and ensure that Funding is expended or committed, and final reports submitted by the project end date specified in Schedule 1 of this Agreement.
- (d) The Recipient shall inform the State in writing of any circumstance which may result in any aspect of the Project not being completed.

### **5.4. Works**

- (a) Where the Project involves any construction activity, the Recipient shall:
  - (1) comply with Best Industry Practice;
  - (2) if the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, whilst the Recipient is on or occupying that land, the written consent of the person owning or leasing that land to such entry or occupation by the Recipient.

### **5.5. Asset management**

- (a) The Recipient must maintain a register of all Assets acquired with Funding provided under this agreement showing purchase price and date.
- (b) The Recipient must undertake a stocktake of portable Assets at least annually and management action with respect to missing items must be recorded.
- (c) The Recipient shall insure Assets acquired with Funding provided under this agreement to the full replaceable value as on the date of purchase and shall be maintained in a secure environment with all reasonable care taken to reduce damage or other loss of value to them.
- (d) The Recipient shall operate and maintain any Assets acquired with the Funding for a period of three years from the date of purchase.
- (e) The Recipient shall not dispose of or decommission Assets acquired with the Funding within 3 years from the date of purchase without the written agreement of the State.
- (f) If the Recipient disposes of or decommissions an Asset within a period of three years from the date of purchase, the Department may recover from the Recipient as a debt due to the State:

- (1) the sale price of the Asset; or
  - (2) the value of the Asset at the time of disposal or decommissioning, to be determined by the Department, whichever is higher.
- (g) This clause survives the expiry or termination of this Agreement.

## **5.6. Reporting**

- (a) The Recipient must provide financial reports, and documentary evidence substantiating items in the report, by the due dates specified in the Project Schedule, to the State that:
- (1) are in a format prescribed by the Department; and
  - (2) include:
    - (i) details of acquittal of the Funding received and expended or committed for the activity specified;
    - (ii) detail of Recipient matching contributions where applicable; and
    - (iii) copies of invoices and evidence of payment in relation to the Project.
- (b) The Recipient must ensure that Financial Reports and statements are drawn up in accordance with all Laws and generally accepted Australian accounting standards, principles and practices.
- (c) The Recipient must provide milestone reports by the due dates specified in the Project Schedule, to the State that:
- (1) are in a format prescribed by the Department; and
  - (2) include:
    - (i) an overview of activities and progress achieved during the Milestone reporting period;
    - (ii) evidence that the Milestone has been achieved.
- (d) The Recipient must submit to the State a project evaluation report (in a template prescribed by the Department, with any additional information included as an attachment) by the date specified in the Project Schedule detailing:
- (1) achievement of Objectives;
  - (2) the contribution of the Project to continuous improvement in waste avoidance or resource recovery;
  - (3) the achievement of Milestones;

- (4) relevant statistics, including the amount of material recovery and e-waste diverted from landfill during the term of the Project;
  - (5) purchased Assets;
  - (6) income and expenditure verification in relation to the Funding;
  - (7) Project performance measured against Outcomes;
  - (8) community and other participation; and
  - (9) any other information reasonably requested by the State, including in relation to the ongoing processing of e-waste after completion of the Funding, employment generated by the Project and whether that employment is continuing after completion of the Funding.
- (e) The final Financial Report and the Project Evaluation Report should be submitted together.
  - (f) All reports required by this clause 5.6 are to be signed off by the Recipient's authorised representative.
  - (g) Reports which are of inadequate quality, or do not contain the required information, will be returned by the Department to the Recipient for correction of the deficiencies.

#### **5.7. Information**

- (a) The Recipient must keep and maintain accurate, complete, up-to-date and properly detailed written records of income, expenditure, work, activities, progress, setbacks, problems and business and commercial arrangements and dealings in relation to either or both of this agreement and the Project, and promptly provide the Department with information or documentation (relating in any way to the Project or this agreement) requested by the State. The Recipient must ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive.
- (b) The Recipient must maintain accurate records relating to approved Funding including financial details such as receipts and expenditure, reports submitted in accordance with clause 5.6, Funding-related correspondence and other Project Material for a period of at least five years after the completion of the Project or any earlier termination of this agreement.
- (c) The Recipient shall meet all reasonable requests from the State or their agents for access to the site where Project activities are undertaken and to related Project Material, financial and other records.
- (d) The Recipient shall provide updates in relation to the ongoing processing of e-waste and the amount of material recovery and e-waste diverted from landfill after completion of the Funding as reasonably requested by the

Department after the Project end date. This clause survives the expiry or termination of this agreement.

#### **5.8. Evaluation and audit rights**

At any time until 5 years after the completion of the Project or any earlier termination of this Agreement, the State may arrange for an evaluation or audit to be carried out in relation to either or both of the Project and this agreement by either the Department, an auditor or any other person that the State in its absolute discretion wishes to carry out the evaluation or audit. If the State arranges for an evaluation or audit:

- (a) the State must notify the Recipient that the State has arranged for an evaluation or audit to be carried out; and
- (b) the Recipient must allow all persons appointed by the State to carry out the evaluation or audit to:
  - (1) have full access to all documents, records and premises in the control or possession of the Recipient for the purpose of carrying out the evaluation or audit; and
  - (2) make and take copies of any and all documents and records in the control or possession of the Recipient relating in any way to either or both of the Project and this agreement.

This clause survives the expiry or termination of this agreement.

#### **5.9. Acknowledgement of the State**

- (a) The Recipient must acknowledge the Funding contributions of the State to the Project in the public presentation of Project activities funded under this Agreement in accordance with this clause 5.9.
- (b) Any communication activity, including publications, articles, newsletters, or other literary works, forums, conferences and launches relating to the Project, must acknowledge that the Project has received financial support from the State Government, and must display the agreed generic logos. The Department may require review of materials prior to publication. Acknowledgement requirements are provided at: ~~XXXXXXXXXXXXXXXX~~
- (c) On and from the installation or completion of infrastructure that is part of the Project, the Recipient must with approval of the Department install and maintain promotional signage that shows the infrastructure was supported by grants administered by the Department.

#### **5.10. Relationship of parties**

The Recipient agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents, and subcontractors do not represent themselves, as being an officer or employee, partner, or agent of the State, or as otherwise able to bind or represent the State.

## **6. RE-PAYMENT**

Within 14 days of the completion date specified in Schedule 1 of this agreement, the Recipient must remit to the State all Funding paid to the Recipient under the agreement, and any interest which has accrued on that Funding, that has not been spent or committed in accordance with this agreement.

## **7. LIABILITY AND INDEMNITY**

- (a) The State is not responsible or liable in any way for the success or otherwise of the Project or for any Losses suffered or incurred by the Recipient in undertaking the Project. The Recipient releases the State from all Liability suffered or incurred by the Recipient in relation to one or more of the Project, this agreement and any related matter and agrees that neither it nor any Related Body Corporate will make a Claim against the State or any of the State's Associates arising directly or indirectly in relation to one or more of the Project, this agreement and any related matter. This clause 7 may be pleaded by the State or its Associates as a bar to any proceedings commenced by the Recipient against the State or its Associates in relation to one or more of the Project, this agreement and any related matter.
- (b) If the Funding is insufficient for the Recipient to properly fulfil all of its obligations in this agreement, then the Recipient must still fulfil its obligations at its own cost.
- (c) The Recipient must at all times indemnify, hold harmless and defend the State of Western Australia, its officers, employees and agents from and against all Claims or Liability suffered or incurred by or brought against the State of Western Australia or any of its officers, employees and agents caused by, or arising out of or relating directly or indirectly to any negligent or unlawful act or omission of the Recipient arising out of or in connection with conducting activities funded in part or in full through this agreement.
- (d) This clause 7 survives the expiry or termination of this agreement.

## **8. INSURANCE**

### **8.1. Insurance requirements**

- (a) The Recipient must effect, maintain and keep in force, for the duration of the Project or this agreement (whichever is the longer period), insurance policies for all matters, and for not less than the minimum amounts and on the terms specified in Schedule 3 with a reputable and solvent insurer (with a Standard and Poors rating of not less than A minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.
- (b) The Recipient shall provide, upon request by the Department, proof of the existence and currency of the insurance required by this clause.

- (c) The Recipient must give notice to the Department immediately if:
- (1) an event occurs which may give rise to a claim under any insurance policy in relation to the Project (including under any insurance policy held by a sub-contractor in relation to the Project) and must keep the Department informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;
  - (2) an event occurs which could adversely affect any insurance policy in relation to the Project (including under any insurance policy held by a sub-contractor in relation to the Project); or
  - (3) any insurance policy in relation to the Project (including under any insurance policy held by a sub-contractor in relation to the Project) is cancelled.
- (d) The Recipient must give the Department prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any insurance policy effected by the Recipient in relation to the Project or in accordance with the *Insurance Contracts Act 1984 (Cth)*.

## **8.2. Settlement of claims**

- (a) Upon settlement of a claim under any insurance policy effected by the Recipient in relation to the Project, to the extent that works to be reinstated have not been completed, the Recipient must promptly repair or reinstate those works on:
- (1) the State's request (if the Recipient has already received the proceeds of insurance); and
  - (2) receipt of the proceeds of insurance (if the Recipient has not received the proceeds of insurance by the date of the State's request).
- (b) In order to ensure that the Recipient can fulfil its obligations under this clause 8, the Recipient must ensure that any other party named as an insured or otherwise noted or covered under any of the policies of insurance effected by the Recipient in relation to the Project has a contractual obligation to the Recipient to, if it receives proceeds of insurance under any of those policies, pay on request:
- (1) the Recipient; or
  - (2) the State if directed by the Recipient to do so,
- within a sufficient timeframe a sufficient part of those proceeds of insurance, to enable the Recipient to fulfil its obligation to the State in this clause 8.2.



## **9. FINANCIAL MANAGEMENT AND DISCLOSURE**

- (a) The Recipient acknowledges and agrees that this agreement and information regarding it is subject to the *Freedom of Information Act 1992* and that the State may publicly disclose information in relation to this agreement, including its terms, the Funding amount and the details of the Recipient.
- (b) Despite any express or implied provision of this agreement to the contrary, nothing in this agreement in any way alters, limits, or affects the operation of the *Auditor General Act 2006*, the *Financial Management Act 2006*, or the Recipient's obligations (if any) in relation to these Acts.
- (c) The Parties acknowledge and agree that, despite any other provision of this agreement to the contrary, the powers and responsibilities of the Auditor General are not limited or affected by this agreement.
- (d) To the extent permitted by law, the Recipient must allow the Auditor General, or an authorised representative, to have access to and audit (or otherwise review, examine, or evaluate) the Recipient's records and information concerning either or both of this agreement and the Project.

## **10. INTELLECTUAL PROPERTY**

- (a) The Recipient warrants to the State that:
  - (1) no Intellectual Property Rights or Moral Rights or other rights of any person will be infringed or breached:
    - (i) in undertaking the Project; or
    - (ii) by the use of any Project IP or Project Material as permitted or contemplated by this agreement,  
by the State or the Department or any person nominated or authorised by the State; and
  - (2) it owns all Intellectual Property Rights in the Project IP or, to the extent that it does not, it has the authority to grant the assignments and licences in this clause 10.
- (b) Ownership of Intellectual Property Rights in any Background IP owned by the State or the Recipient or their respective head licensors is unaffected by this clause, unless otherwise agreed.
- (c) Intellectual Property Rights in the Project IP and any modifications of the Project IP created by the Recipient shall vest in and remain the property of the Recipient.
- (d) The Recipient:

- (1) acknowledges that the State and the Department may use or exploit the Project IP (including all modifications to the Project IP made by the Recipient) for any purpose consistent with the general objectives of the Department;
  - (2) grants to the State and the Department a world-wide, irrevocable, non-exclusive, royalty-free, perpetual licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Project IP, such modifications and any Recipient Background IP to the extent such Background IP is incorporated into the outputs of the Project or otherwise required to enable the Project IP to be exploited for those purposes, including use, subject to clause 11, on the Department's websites; and
  - (3) acknowledges that the State and the Department may use and reproduce the Recipient's name, logo and organisational summary for promotion and reporting of the Project.
- (e) The Recipient indemnifies and will keep indemnified the Department, the State and all their respective officers, employees and agents from and against all Claims or Liability resulting from the Recipient's failure to comply with this clause 10, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Recipient.

## **11. CONFIDENTIAL INFORMATION**

Subject to clause 9, the Department will not publish or disclose on its website information in Project IP (including modifications and any Background IP to the extent such Background IP is incorporated into the outputs of the Project or otherwise required to enable the Project IP to be exploited) which the Recipient specifies is confidential or commercially sensitive, except if required to do so:

- (a) in accordance with Laws or approvals;
- (b) to the Auditor General for the purposes of satisfying its statutory duties;
- (c) where the disclosure is in the course of the official duties of the Department, the Minister or the Director General; or
- (d) to satisfy any other recognised public requirement.

## **12. TAXES, DUTIES AND CHARGES**

- (a) For the purposes of this agreement, including this clause 12, the terms "GST", "recipient-created tax invoice", "registered", "supply", "tax invoice", and "taxable supply" have the same meanings as in the GST Act.
- (b) The amounts specified in or calculated under this agreement, including without limitation the Funding, are exclusive of GST that is payable in

relation to any supply made under this agreement, unless expressly stated to include GST.

- (c) The State will pay the Recipient the amount of GST that the Recipient pays or is liable to pay in relation to the Funding at the same time and in the same manner as paying the Funding.
- (d) The Recipient must provide the Department with a tax invoice in respect of each supply made by the Recipient in relation to the Funding. The tax invoice must be provided prior to payment of the Funding and include any additional amount payable under this clause and the Recipient's ABN.
- (e) If the Recipient does not notify the Department of its ABN, the Department will withhold 48.5% of the Funding.
- (f) Subject to this clause, all taxes, duties, and government charges imposed or levied in Australia or overseas in connection with this agreement must be borne by the Recipient.

### **13. NOTICE**

- (a) A Party giving any notice under this agreement must do so in writing, signed by the sender or a person duly authorised by the sender and delivered to the intended recipient by:
  - (1) prepaid post;
  - (2) hand; or
  - (3) email, provided:
    - (i) the notice is sent as a pdf attachment to the email and is not sent as a temporary file or link; and
    - (ii) the size of the email is less than 10MB,to the address or email specified in Schedule 1 or to the address or email last notified by the intended recipient to the sender.
- (b) A notice will be conclusively taken to be duly given or made:
  - (1) in the case of delivery in person, when delivered;
  - (2) in the case of delivery by post, five Business Days after the date of posting (if posted to an address in Australia) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (3) in the case of email, the earlier of:

- (i) the time the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
- (ii) the time the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
- (iii) 24 hours after the time the email is sent (as recorded on the device from which the sender sent the email), unless the sender receives, within that 24 hour period, an automated message that the email has not been received,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or is later than 5pm (local time) it will be conclusively taken to have been duly given or made at the start of business on the next Business Day.

## **14. DEFAULT AND TERMINATION**

### **14.1. Event of default**

An **event of default** occurs if the Recipient:

- (a) has failed to comply with any provision of this agreement which (if remediable) continues without remedy for 5 business days after written notice to the Recipient has been given by the State; or
- (b) has not used the Funding exclusively for the Project; or
- (c) has ceased conducting the Project; or
- (d) has failed to commence the Project within 6 months of the execution date of this agreement; or
- (e) suffers, or becomes subject to, an Insolvency Event.

### **14.2. Termination and suspension**

- (a) If an Event of Default occurs the State may terminate this agreement by providing notice in writing to the Recipient and the agreement is terminated from the date specified in that notice.
- (b) Without limiting the State's rights under clause 14.2(a), if the Recipient is in breach of this agreement, the State may suspend the performance of its obligations under this agreement until such time as it is satisfied in its absolute discretion that the Recipient has remedied that breach.
- (c) Prior to either Party giving notice under clause 14.2(a), if there is a dispute the Parties shall attempt to resolve that dispute in the manner provided for in clause 16.4.

### **14.3. Effect of termination**

- (a) Within 14 days of the agreement being terminated under this clause, the Recipient must:
  - (1) remit to the State all Funding paid to the Recipient under the agreement, and any interest which has accrued on that Funding, that has not been spent or committed in accordance with this agreement by the termination date specified in the termination notice; and
  - (2) reimburse the State any Funding that has been spent or committed by the termination date specified in the termination notice that was not used exclusively for the Project.
- (b) If the agreement is terminated, the State has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient.

### **15. SPECIAL CONDITIONS**

The special conditions (if any) set out in item 3 of Schedule 1 apply.

### **16. MISCELLANEOUS**

#### **16.1. Variation**

This agreement may be amended at any stage by agreement in writing by the Parties.

#### **16.2. No assignment**

The Recipient shall not assign or otherwise deal with its rights and obligations under this agreement without the prior written consent of the State, which may be withheld in the State's absolute discretion. For the purposes of this clause, the Recipient shall be deemed to have assigned this agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the State, to transfer, directly or indirectly, the management or control of the Recipient.

#### **16.3. Entire agreement**

This agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties (or between the State and any party negotiating on behalf of the Recipient) with respect to the subject matter of this agreement.

#### **16.4. Dispute resolution**

If the Parties disagree on any part of this agreement or its operation, a senior representative from each of the Parties shall discuss the dispute and as soon as practicable try to resolve the dispute.

**16.5. Governing law**

This agreement is governed by the laws in force in the State. Each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to the agreement.

The Common Seal of )  
 )  
was affixed in the presence of )  
 )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full Name of Witness

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

**EXECUTED** by )  
 )  
**ACN** )  
in the presence of )  
 )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Full Name of Director

\_\_\_\_\_  
Full Name of Director/Secretary

SIGNED on behalf of the **STATE OF WESTERN AUSTRALIA**  
Represented by the Department of Water and Environmental Regulation

\_\_\_\_\_  
Michelle Andrews  
Director General

\_\_\_\_\_  
Date

Department of Water and Environmental Regulation

**SCHEDULE 1. Particulars**

1. Approved Project

[insert details of Project, including that within WA and specific to the uses for which the Funding may be applied.]

2. Project end date

3. Special conditions

3.1. [Despite clauses 3(b) and 5.4(a)(2), the Recipient must either

(1) enter into a lease for; or

(2) acquire the freehold of,

the site where Project activities are undertaken on terms and conditions acceptable to the Recipient on or before [insert].]

4. Notice address

The Department of Water and Environmental Regulation

Mail Address	Department of Water and Environmental Regulation Strategic Policy Division Locked Bag 10   Joondalup DC WA 6919
Email	

Recipient

Mail Address	
Email	

5. Acknowledgment guidelines



6. Funding

Grant Amount	\$ XXXX (excl GST)
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## **SCHEDULE 2.      Project Schedule**

1.      Objectives
  
2.      Deliverables and Outcomes
  
3.      Project Milestones
  
4.      Funding Payment Schedule
  
5.      Reporting schedule

### **SCHEDULE 3. Insurance**

1. A public liability policy for an amount of indemnity of not less than 50 MILLION DOLLARS (\$50,000,000) (or any higher sum as is determined by the State from time to time (acting reasonably)) for any one occurrence and unlimited as to the number of occurrences which must:

- (a) contain or be endorsed to contain an indemnity extension in favour of the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the negligent acts or omissions of the Recipient, its employees, contractors or agents in their performance or non-performance of the Project;
- (b) cover liability resulting from loss of or damage to property and the death or illness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation insurance policy) arising out of or in connection with the Project, this Agreement or both; and
- (c) be endorsed to cover both the use of unregistered motor vehicles, plant and equipment, and sudden and accidental pollution.

2. A policy of insurance which:

- (a) insures against liability under any applicable statute relating to workers or accident compensation for death of, or illness or injury to, natural persons employed or engaged by the Recipient which are required to be insured under the *Workers' Compensation and Injury Management Act 1981 (WA)* or equivalent legislation in other Australian jurisdictions in work under this Agreement including liability by statute and, where available, at common law; and
- (b) must be extended to indemnify the State as principal ("principal" in this subitem having the same meaning as the term "principal" in section 175(1) of the *Workers' Compensation and Injury Management Act 1981 (WA)*) for liability under section 175 of the *Workers' Compensation and Injury Management Act 1981 (WA)*.

3. A policy of insurance for all property (both real and personal) which is owned or leased by the Recipient and which comprise, or are used for or in connection with, the Project, insured to their full insurable value on a replacement or reinstatement basis against loss or damage by fire, flood, storm, tempest, rainwater, cyclone, explosion, smoke, lightning, impact (including by aircraft, other vehicle or machinery), earthquake, and such other risks against which in the State's opinion an owner or lessee may and does ordinarily insure, to their full replacement value.

4. If the Project involves an element, or elements, of construction (or design and construction) or the Recipient constructing any building or other facility, for the duration of any construction (or design and construction) phase, plus any Defects Liability Period, the following policies of insurance for the Project:

- (a) where the Recipient has obligations in this Agreement to construct any structure, a policy of insurance in relation to all work required for and incidental to the construction of that structure and rectifying defects (**Works**) which must:

- (1) be in the joint names the Recipient and all agents and contractors employed from time to time in relation to the Works;
  - (2) cover against any and all physical loss or damage to the Works including covering the:
    - (A) full replacement value of that structure, including any extension of or addition to that structure;
    - (B) the cost of removal of materials and debris from the site;
    - (C) any loss or damage to any equipment used in relation to the Works;
  - (3) covering the cost of making good resultant damage arising in connection with faulty design;
  - (4) provide that any breach of the conditions of this policy of insurance by an insured under the policy will not in any way prejudice or diminish any rights which any other insured has under the policy;
  - (5) provide that the insurance provided under this policy is primary with respect to the interest of the State and any other insurance or self-insurance arrangements maintained by the State is excess to and not contributory with this policy;
- (b) where the Recipient has obligations in this Agreement to construct any structure, a vehicle and equipment policy of insurance for the Recipient's vehicles, registered plant and equipment brought on to the site or used in connection with the Project whether owned, hired or leased (**Recipient's Vehicles**) in addition to any compulsory motor vehicle third party insurance required to be taken out by the Recipient under any Law. This vehicle and equipment insurance policy must:
- (1) cover third party liability for personal injury or death (other than compulsory third party motor vehicle insurance) and property loss or damage involving the Recipient's Vehicles;
  - (2) be for not less than \$20 million third party liability insurance for any one occurrence and unlimited as to the number of occurrences;
  - (3) be endorsed to cover the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the use of the Recipient's Vehicles; and
- (c) where the Recipient has obligations in this Agreement to construct any structure, further to the insurance cover set out above, it must take out any other policies of insurance consistent with Best Industry Practice for the engineering, design, procurement, supply, construction, testing and commissioning of the Project.