

**AGREEMENT BETWEEN**

**THE STATE OF WESTERN AUSTRALIA**

**AND**

**[*Recipient*]**

**FINANCIAL ASSISTANCE AGREEMENT UNDER  
THE LOWER CARBON GRANTS PROGRAM – GORGON FUND**

**FOR**

**[*Project*]**

**Contents**

- 1. DEFINITIONS AND INTERPRETATION..... 4
- 2. GRANT..... 9
- 3. COMMENCEMENT OF PROJECT..... 10
- 4. RECIPIENT’S UNDERTAKINGS..... 11
- 5. REPRESENTATIONS AND WARRANTIES..... 12
- 6. BENEFITS TO WESTERN AUSTRALIAN INDUSTRY AND OTHER END-USERS ... 13
- 7. INTELLECTUAL PROPERTY..... 13
- 8. ASSETS..... 13
- 9. LAWS..... 14
- 10. ASSIGNMENT AND SUB-CONTRACTING ..... 14
- 11. REPORTS, INFORMATION AND AUDIT..... 14
- 12. RELATIONSHIP ..... 16
- 13. DEFAULT..... 17
- 14. CONSEQUENCES OF EVENT OF DEFAULT ..... 18
- 15. INSURANCE ..... 18
- 16. RISK MANAGEMENT ..... 20
- 17. INDEMNITY..... 20
- 18. FORCE MAJEURE ..... 21
- 19. REPAYMENT AND RETENTION OF THE FUNDING ..... 21
- 20. LIMITATION OF LIABILITY..... 21
- 21. CONFIDENTIALITY..... 22
- 22. ACKNOWLEDGMENTS, PUBLICATIONS AND PUBLICITY..... 23
- 23. NOTICES..... 25
- 24. WAIVER..... 26
- 25. PARTIES’ RIGHTS ..... 26
- 26. REMEDIES..... 26
- 27. ENTIRE AGREEMENT ..... 26
- 28. GOVERNING LAW AND JURISDICTION..... 26
- SCHEDULE 1 – CONTACT OFFICERS..... 27
- SCHEDULE 2 – PROJECT DETAILS..... 29
- SCHEDULE 3 – REPORTING..... 31
- SCHEDULE 4 – MILESTONES..... 33
- SCHEDULE 5 – SPECIAL CONDITIONS..... 35

This Agreement is made on the *[insert day]* day of *[insert month]* 2024

BETWEEN

**THE STATE OF WESTERN AUSTRALIA (“State”)** acting by and through the Department of Jobs, Tourism, Science and Innovation of Level 11, 1 William Street, Perth, Western Australia (“**Department**”)

AND

*[insert Recipient Name]* (ABN XX XXX XXX XXX) of *[insert Recipient address]*

and *[insert additional Recipient Name]* (ABN XX XXX XXX XXX) of *[insert additional Recipient address]* [*Drafting note: delete second recipient text if only one Recipient*] (“**Recipient**”)

## **BACKGROUND**

- A. The State has allocated funding under the Lower Carbon Grants – Gorgon Fund which will support the Government’s aim to cut Western Australia’s Government emissions by 80% below the 2020 levels by 2030.
- B. The State has agreed to provide funding to the Recipient to use for the Project in accordance with the provisions of this Agreement.
- C. The Recipient acknowledges the State is required by law to ensure accountability for public money, and the Recipient is required to be accountable for all State funding.

## OPERATIVE PART

The Parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement unless the context otherwise requires:

**Asset** includes personal, real or incorporated property, with a value of \$5,000 or more, but shall not mean intellectual property.

**Authorised Officer** means a person appointed by the Recipient to act as its authorised officer under this Agreement.

**Budget** means the budget which the Recipient submitted and was approved by the State in writing, as varied from time to time.

**Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks are open for general banking business in Western Australia.

**Commencement Date** means the date specified in Schedule 2.

**Communications Plan** means the plan which sets out the manner in which the State and the Recipient will communicate the nature, objectives and benefits of the Lower Carbon Grants Program to the wider community, and which incorporates promotional and publicity strategies.

**Confidential Information** means any information relating to the State, this Agreement or the Project which is confidential or which is justifiably specified by a Party as confidential in nature.

**Cth** or **Commonwealth** means the Commonwealth of Australia.

**Department** means the Department of Jobs, Tourism, Science and Innovation or such other agency or instrumentality of the State which is charged with the administration of this Agreement from time to time for and on behalf of the State.

**Discloser** means the Party who provides Confidential Information to the other Party.

**Event of Default** means an event so described in clause 13.

**Execution Date** means the date when the last party to execute this Agreement does so.

**Force Majeure** occurs where any Party is prevented from or delayed in performing an obligation by any event or occurrences beyond its reasonable control, such as weather, oceanic conditions, epidemic or pandemic, or related issues indirectly or directly affected by such events.

**Grant** means the amount payable by the State to the Recipient under this Agreement.

**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 or 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 judgement or order for the payment of money or the recovery of any property;
- (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 or section 585 of the *Corporation 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 which could result in the event;
- (i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
  - (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Insurance** means the insurance referred to in clause 15.

**Intellectual Property** or **IP** includes all copyright and associated rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**KPIs** means the key performance indicators set out in the Project Plan.

**Law** means any rule or requirement of a statute, subordinate legislation, the common law or equity.

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

**Personnel** means officer, employee or contractor.

**Project** means the Project described in Schedule 2 and in the Project Plan.

**Project Cost** means the total cost of the Project and described in Schedule 2.

**Project Plan** means the Lower Carbon Grants Program - Gorgon Fund application, including project plan submitted by the Recipient that was deemed successful for funding, subject to this Agreement.

**Purposes** means the purposes of this Agreement, including the Project.

**Risk Management Plan** means a document created, implemented and maintained by the Recipient, which details identified risks to the project, estimates of the risks' impact, probability of the risks occurring and, provides plans and responses to mitigate those risks

**Schedules** means the Schedules to, and forming part of, this Agreement.

**Special Conditions** means the conditions set out in Schedule 5.

**Specified Person** in relation to a Party means:

- (a) a related body corporate of that Party;
- (b) an adviser of that Party; or
- (c) Personnel of that Party or any entity referred to in items (a) or (b) of this definition.

**State** means the State of Western Australia.

**Substantial Change** means a substantial change in activities and outcomes from those proposed, described or set out in the Project Plan, which in terms of their scope or nature or otherwise, are of a kind or magnitude that is likely to materially affect the Budget, timetable for achievement or the reasons for, or purposes or objectives set out in that plan.

**Term** means the duration of this Agreement as set out in Schedule 2.

## 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 gender;

- (c) references to persons include corporations;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) 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);
- (f) 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;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include facsimile transmissions;
- (h) an obligation of two or more persons binds them jointly and severally;
- (i) an obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (j) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (k) references to this Agreement include its recitals, schedules and annexures (if any);
- (l) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (m) references to time are to local time in Perth, Western Australia;
- (n) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (o) references to currency are to Australian currency unless otherwise stated;
- (p) no rule of construction applies to the disadvantage of a Party on the basis that that Party put forward this Agreement or any part of this Agreement;



- (q) 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 nothing herein implies that part performance of an obligation equals full performance thereof; and
- (r) when the day or last day for doing an act is not a Business Day in the place where that act is to be done, then the day or last day for doing the act will be the directly preceding Business Day in the place where that act is to be done.

## **2. GRANT**

### **2.1 Payment**

Subject to the terms of this Agreement, the State agrees to pay the Grant to the Recipient as specified in Schedule 2 and Schedule 4.

### **2.2 Approved Project**

- (a) The Recipient must use the Grant solely for carrying out the Project, in the time and manner set out in the Project Scope at Schedule 2, unless otherwise agreed by the Parties in writing.
- (b) The Recipient must ensure that it has all the requisite access to property, contracts and commercial arrangements in place to ensure the proper carrying out of the Project.
- (c) If the actual cost of carrying out the portion funded by the Department is less than the amount of the Grant, the Recipient must within 20 business days pay to the Department the difference.
- (d) If any portion of the Grant is applied for any purpose not referred to in the Agreement, Schedule or otherwise approved in advance in writing by the Department, the Department may refuse to pay the whole or part of any outstanding funding instalments.
- (e) The Department may withhold or defer the payment of any instalment or portion of instalment of the Grant due to delays in the Project or delays in acquittal of instalments of the Grant previously paid to the Recipient.
- (f) The Recipient must carry out the Project fully, properly, competently, carefully, diligently and efficiently. The Recipient must use the Grant efficiently and not extravagantly, wastefully or irresponsibly.

### **2.3 No Changes**

- (a) The Recipient must not implement, or permit or suffer the implementation of any Substantial Change without the prior written approval of the State, which approval must not be unreasonably withheld but may be given with or without conditions.
- (b) The Recipient must immediately notify the State if any part of the Grant has not been used in accordance with this Agreement.
- (c) Without prejudice to the State's other rights under this Agreement in the event of breach, the Recipient must repay to the State any part of the Grant which has not been used in accordance with this Agreement.

### **2.4 Variation**

Any modification, amendment or other variation to this Agreement must be in writing and duly executed by both Parties.

### **2.5 Additional Expenditure**

The Recipient acknowledges and agrees that it is solely responsible for any expenditure in relation to the Project which exceeds the Grant. The State has no liability whatsoever to provide any additional funding to the Recipient over and above the Grant.

## **3. COMMENCEMENT OF PROJECT**

If the Recipient, within three months after the Commencement Date, without the State's prior written consent, does not commence the Project (proof whereof to the State's satisfaction shall be on the Recipient), then the Recipient shall within 20 Business Days pay to the State any instalment of the Grant that has been received by the Recipient.

The State may, at the State's total discretion, if considered fair and reasonable to do so, and if the State considers that the Recipient has at all times acted and will continue to act in good faith and reasonably, extend the aforesaid three month period for a further reasonable period to be determined by the State.

## **4. RECIPIENT'S UNDERTAKINGS**

### **4.1 Recipient's General Undertakings**

The Recipient covenants and agrees in favour of the State that during the Term:

- (a) (representation or warranty incorrect) it will notify the State promptly if any representation or warranty made or taken to be made by or on behalf of the Recipient in or in connection with this Agreement is found to be incorrect or misleading when made or taken to be made, or has become or is likely to become untrue;
- (b) (performance of obligations) it will at all times duly perform and observe its obligations arising out of or in connection with this Agreement, including its Schedules, and will promptly inform the State of any occurrence which might materially adversely affect its ability to perform;
- (c) (authorisations) it will comply with the terms of each authorisation necessary to enter into this Agreement, observe obligations under it and allow it to be enforced and it will obtain and renew on time each such authorisation;
- (d) (acknowledge) it acknowledges that funding provided under this Agreement is public money and is subject to compliance by the Recipient with the terms of the Grant as detailed in this Agreement;
- (e) (undertake) it will undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (f) (cooperate) it will cooperate fully with the State in the administration of this Agreement;
- (g) (laws) it will comply with all State and Commonwealth Laws;
- (h) (inspection) it will permit the State, any officers of the Department or any other person authorised by any of them to enter the Recipient's premises at any reasonable time to determine whether the Recipient is performing its obligations under this Agreement, provided that any person entering the Recipient's premises does so in a manner so as to cause minimal disruption to the Recipient's business.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 Recipient's Warranties**

The Recipient represents and warrants that:

- (a) it is duly authorised and has the power to enter into and observe its obligations under this Agreement;
- (b) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms;
- (c) all authorisations, registrations, consents, approvals licences and permits which are or will be required in connection with the performance by the Recipient of its obligations under this Agreement have been or will be obtained or effected and are or will be and will remain in force and effect for as long as necessary;
- (d) to the best of its knowledge or belief there is no litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the Recipient which could have a materially adverse effect on the Recipient's ability to perform this Agreement;
- (e) to the best of its knowledge or belief this Agreement and performance under it does not violate any law or government order or decree or any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient;
- (f) all information provided by or on behalf of the Recipient to the State or to the Department relating to the Recipient's affairs and this Agreement are true, accurate and complete and, without limiting this clause 5.1(f), all financial information provided by or on behalf of the Recipient to the State or the Department is, in all material respects, a true, fair and accurate statement of its financial position as at the date of preparation of the information; and
- (g) it has, after diligent inquiry and investigation, fully disclosed to the Department and the State all material information which could reasonably be regarded as affecting in any way the State's decision to enter into this Agreement;

(h) it will comply with all prior representations made by it in connection with the Recipient or this Agreement.

## **5.2 Made Continuously**

The representation and warranties made by the Recipient under this clause 5 are taken to be made continuously throughout the Term.

## **6. BENEFITS TO WESTERN AUSTRALIA**

The Recipient acknowledges that underlying the Grant is the State's commitment to cut Western Australia's Government emissions by 80% of 2020 levels by 2030 and reach net zero by 2050.

## **7. INTELLECTUAL PROPERTY**

- (a) Intellectual Property created under the Project is owned by the Recipient
- (b) The Recipient will, upon request, grant to government departments and agencies of the State whose work is associated with the Project (at no cost to the State) a permanent, irrevocable, non-exclusive, royalty-free licence to use the IP (excluding confidential information, which includes trade secrets and know-how) created under the Project and owned by the Recipient for internal, non-commercial research within those departments and agencies, provided such use does not prejudice the protection or commercialisation of the IP.

## **8. ASSETS**

- (a) For Assets purchased with the Grant, the Recipient must follow ordinary and commercially prudent procedures and arrangements for the purchase, installation, maintenance and preservation of such Assets.
- (b) The Recipient must ensure that all Assets purchased with the Grant must be available for priority use for the Project.
- (c) Assets purchased with the Grant must vest in the Recipient.
- (d) Assets purchased with the Grant should be kept within the State unless the State has first given the Recipient written approval to move any items outside Western Australia.

- (e) The Recipient must not sell, transfer, dispose of, mortgage, charge or otherwise encumber Assets purchased with the Grant without the prior written consent of the State.

## **9. LAWS**

The Recipient must under and in connection with this Agreement comply with all Laws.

## **10. ASSIGNMENT AND SUB-CONTRACTING**

- (a) The Recipient shall not assign this Agreement without the State's prior written consent.
- (b) If the Recipient intends to sub-contract out a substantial or significant aspect of the Project, then it shall give the State reasonable written notice of its intention. The State may prevent such sub-contracting from happening (by withholding its consent to the same), but only on reasonable grounds.

## **11. REPORTS, INFORMATION AND AUDIT**

### **11.1 Records**

The Recipient shall keep proper, detailed, accurate, complete and up-to-date written records of:

- (a) its income, expenditure and financial commitments in relation to the Project (including bills, accounts, invoices, dockets, receipts and the like); and
- (b) the performance, progress, successes, achievements, setbacks and failures of and associated with the Project.

Such records must be kept for four years after the termination, expiry or otherwise conclusion of the Agreement. The State may access the above records at all times.

### **11.2 Reporting**

The Recipient must comply with the reporting requirements set out in Schedule 3. All such reports must be in writing and properly detailed, accurate, complete and up-to-date.

### 11.3 Notification

- (a) The Recipient must provide to the State notification of any legal proceedings or debt recovery actions against the Recipient or any of its officers or employees, where such legal proceedings could have a materially adverse effect on the ability of the Recipient to perform its obligations under this Agreement.
- (b) Any information provided under paragraph (a) above shall be provided on a confidential basis, and may only be used by the State for the purposes of considering or enforcing its rights under this Agreement.

### 11.4 Information

The Recipient must promptly provide to the State information and documents (including supporting evidence) in connection with the Recipient or this Agreement that the State requests from time to time including, without limitation, any information and documents (including supporting evidence) which the State requires in considering whether the State is or should be satisfied of any matter in connection with this Agreement.

Where:

- (i) any document or other matter previously provided under this Agreement has changed and that change would, or might, result in, or cause, circumstances which would, or might, adversely affect the ability of the Recipient to comply with its obligations under this Agreement; or
- (ii) any accounts or financial statements provided by the Recipient under this Agreement have been replaced by later accounts or financial statements since having been provided to the State,

The Recipient must promptly provide the State with full details of the change or with updated copies of the accounts or financial statements (as the case may be).

All information and documentation provided by the Recipient to the State hereunder must be true, accurate, complete, sufficiently detailed, up-to-date and in no way misleading or deceptive.

## 11.5 Audit Rights

The State may arrange, at its own cost, for an independent audit to be carried out of the Recipient's activities and finances that relate directly to the Project and the Grant. If the State arranges for an independent audit to be carried out:

- (a) the State must provide reasonable written notice to the Recipient that the State has arranged for an independent audit to be carried out;
- (b) the Recipient must allow all persons appointed by the State to carry out the independent audit to have full access to the financial records of the Recipient that relate directly to the Project and the Grant for the purpose of carrying out the independent audit;
- (c) the Recipient must allow the Auditor General for the State, the Internal Audit Branch of the Department, or an authorised representative, to have access to and examine records and information concerning the Project and the Grant.

Where the State considers that any information or evidence provided by the Recipient under this Agreement is incorrect, incomplete or inaccurate and arranges for an independent audit to be carried out in respect of that information or evidence, and where the audit substantiates the State's concern, then the independent audit will be at the Recipient's expense.

## 12. RELATIONSHIP

- (a) The Parties acknowledge and agree that nothing in this Agreement may be construed to make either of them a partner, agent, employee or joint venturer of the other.
- (b) The Recipient will not by virtue of this Agreement be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Department, nor shall the Recipient have any power or authority to bind or represent the State or the Department.
- (c) The Recipient must not represent itself, and must ensure that its employees, contractors (at any tier), or agents do not represent themselves, as being an employee, partner or agent of the State or the Department or as otherwise able to bind or represent the State or the Department.



## 13. DEFAULT

### 13.1 Event of Default

The State and Recipient agree that it is an Event of Default if:

- (a) the Recipient breaches this Agreement and such breach cannot be remedied;
- (b) a representation or warranty made or taken to be made by the Recipient under or in connection with this Agreement is found or is notified by the State to be materially incorrect or misleading when made;
- (c) an undertaking given to the State or its legal representatives by or on behalf of the Recipient is breached or not wholly performed within the period specified in the undertaking or, if no period is specified, within five Business Days from the date of the undertaking; [the number of business days (5,10 or 20) may be negotiated with the Recipient]
- (d) a person is appointed under legislation to investigate or manage any part of the affairs of the Recipient;
- (e) an Insolvency Event occurs in respect of the Recipient;
- (f) without the prior written consent of the State which consent will not be unreasonably withheld, the persons who at the date of this Agreement have control of the Recipient, cease to have control of the Recipient;
- (g) this Agreement is or becomes wholly or partly void, voidable, unenforceable or ineffective, or is claimed to be so by the Recipient;
- (h) the Recipient persistently or regularly breaches this Agreement;
- (i) the Recipient does not observe any obligation under this Agreement and, if the non-observance can be remedied, does not remedy the non-observance within five Business Days or other period as may be mutually agreed between the parties depending on the nature of the non-observance; or [the number of business days (5,10 or 20) may be negotiated with the Recipient]

- (j) in the reasonable opinion of the State the reputation of the State is, or is likely to be, damaged by any act or omission of, or any conduct by, the Recipient.

### **13.2 Suspension During Breach**

Whilst a Party is in breach of this Agreement, the other Party may suspend the performance of its obligations under this Agreement.

## **14. CONSEQUENCES OF EVENT OF DEFAULT**

If an Event of Default occurs during the Term, the State may terminate this Agreement with notice to the Recipient whereupon:

- (a) the State shall cease to be liable for any unpaid amount of the Grant;
- (b) the Recipient must not incur any further commitments or make any further expenditure relating to the Purpose of this Agreement unless permitted in writing by the State to do so;
- (c) the State, in its absolute discretion, may by notice in writing to the Recipient, demand that part or all of the Grant disbursed is due and payable by the Recipient to the State; and
- (d) if the State makes a demand under clause 14(c), the Grant or the part thereof demanded is due and payable by the Recipient to the State in immediately available funds within 20 Business Days after the date of the notice is received by Recipient.

## **15. INSURANCE**

### **15.1 Insurance must be obtained**

The Recipient must obtain and maintain (or procures the obtaining and maintenance of) during the Term:

- (a) insurance in respect of workers' compensation in accordance with statutory requirements;

- (b) insurance to cover the full replacement value of the Assets purchased with Grant monies;
- (c) public liability insurance in the minimum amount of \$10,000,000 per claim; and
- (d) professional indemnity insurance in the minimum amount of \$10,000,000 per claim,

With:

- (i) an Australian Prudential Regulatory Authority approved insurer; or
- (ii) an overseas insurer with a Standard and Poor's, or any other internationally recognised financial rating Agency, with a credit rating of at least A minus (A-); or
- (iii) an insurer established under either Commonwealth or State law.

## **15.2 Undertakings in Relation to Insurance**

The Recipient must:

- (a) pay or ensure the payment of all premiums and amounts necessary for effecting and keeping up the Insurance before the same are due and obtain a receipt upon payment;
- (b) if requested, provide or arrange to be provided to the State, as soon as practicable after the Recipient receives it, a copy of any certificate of currency of the Insurance;
- (c) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective any Insurance;
- (d) provide written notice to the State of any enforced, conducted or settled claims related to this Project under any policy of Insurance;
- (e) comply with the requirements of the Insurer in relation to the Insurance at all times so as to prevent the invalidation of the policy or policies of Insurance and not to do, permit, or suffer to be done any act, matter, thing, or other circumstance which might prejudice the Insurance or reduce the obligations of the Insurer; and

- (f) not at any time reduce the amount of the Insurance or transfer or change the same to any other insurer without providing written notice to the State.

## **16. RISK MANAGEMENT**

- (a) For the duration of this Agreement, the Recipient must develop, implement and update a Risk Management Plan for the Project and if requested, provide a copy of the Risk Management Plan to the State.
- (b) The Recipient acknowledges and agrees that if the State requests a copy of the Risk Management Plan, the provision of the Risk Management Plan is for information purposes only and does not constitute approval or endorsement by , the State or the Department of the Risk Management Plan in any manner or form arising out of this Agreement or in respect of the Project. The provision of the Risk Management Plan by the Recipient pursuant to this clause 16 does not alter or reduce the Recipient's obligations under the terms of this Agreement.

## **17. INDEMNITY**

- (a) The Recipient hereby agrees to indemnify and keep indemnified the State and the State's respective officers, employees and agents against all damages, losses, liabilities, cost and expenses (including legal fees) claimed, suffered or incurred by the State or any of the State's respective officers, employees and agents whether before or after the date of this Agreement to the extent directly caused by any:
  - (i) breach of an obligation of this Agreement by the Recipient;
  - (ii) negligent or other wrongful or unlawful act or omission of the Recipient or its officers, employees, partners, joint venturers, contractors (at any tier), officers or agents; or
  - (iii) breach of a State or Commonwealth law relevant to the Agreement by the Recipient or its officers, employees, partners, joint venturers, contractors (at any tier), officers or agents.
- (b) This indemnity is reduced to the extent that the indemnified party caused or contributed to the liability or damage.
- (c) This indemnity shall survive expiration or termination of this Agreement.

## **18. FORCE MAJEURE**

- (a) A party is not liable for its inability to perform, or for any delay in performing, any of its obligations under this Agreement (other than an obligation to pay money), to the extent that, and during the time that, the inability or delay is caused by an Event of Force Majeure.
- (b) If a party is prevented from performing its obligations under this Agreement by an Event of Force Majeure, then that party:
  - (i) must notify the other party of the Force Majeure, giving details, of the nature of the Event of Force Majeure, and the effect the Event of Force Majeure will have on the party's performance of its obligations under this Agreement; and
  - (ii) must use its reasonable endeavours to minimise the effect of the Force Majeure on the party's performance of its obligations under this Agreement.
- (c) Subject to sub-clause 18(d), the time for performance of any obligation by either party under this Agreement will be extended by a period which is reasonable in the circumstances.
- (d) If a party's performance is affected by an Event of Force Majeure for a period equal to or greater than three (3) months, either party may terminate this Agreement with immediate effect by notice in writing to the other party and the provisions of clause 14 will apply unless otherwise agreed by the Parties in writing.

## **19. REPAYMENT AND RETENTION OF THE FUNDING**

At the completion of the Project or the conclusion of this Agreement (whichever occurs first), the Recipient must remit to the Department within 20 Business Days any part of the Grant which the Department has paid and which has not been used or committed in accordance with this Agreement.

## **20. LIMITATION OF LIABILITY**

The State shall not have any responsibility or liability for the success or otherwise of the Project. The State shall not be liable for any losses suffered by the Recipient in

undertaking the Project. If the Grant is insufficient for the Recipient to properly meet all of its obligations, then the Recipient is solely responsible for funding any shortfall.

## 21. CONFIDENTIALITY

- (a) Each Party must treat as confidential the Confidential Information and must ensure that its Personnel keep confidential the Confidential Information.
- (b) Each Party must not, and must ensure that its Personnel do not, at any time, directly or indirectly record, disclose to any person (who is not a Party), use, copy, transmit or exploit the Confidential Information for any purpose, without the prior written consent of the other Party.
- (c) Each Party must:
  - (i) only access and use the Confidential information for the Purposes;
  - (ii) only create, or cause or permit to be created, a document that reproduces, is based on, utilises or relates to Confidential Information if that creation is solely for, and is necessary for, the Purposes; and
  - (iii) only disclose Confidential Information:
    - A. to a Specified Person solely for the Purposes and where such disclosure is necessary for the Purposes; or
    - B. with the prior written consent of the Discloser.
- (d) The obligations of a Party under clauses 21(a), (b) and (c) will not be taken to have been breached where the Confidential Information:
  - (i) is or becomes generally available other than by breach of this Agreement by that Party or any breach of any legal or equitable obligation by anyone else;
  - (ii) is required to be disclosed by a Party by any written law or valid court order; or
  - (iii) is required to be disclosed under a provision of a statute in operation in the Commonwealth of Australia or the State, by law or by the rules of any stock exchange or listing authority; or

- (iv) in the case of the State, or the Department it is required to disclose any such information by virtue of an order, request or direction given to it by or on the part of the government of the State or the Parliament of the State or a committee of it; or
  - (v) the Parties agree in writing to disclose the information.
- (e) If the Recipient must make a disclosure as described in clause 21(d)(ii) or (iii), it must:
  - (i) disclose only the minimum of that Confidential Information that is required to comply with the applicable law;
  - (ii) disclose the information to the person that the Recipient must disclose it to, and no one else; and
  - (iii) use its reasonable endeavours to provide the State with prior written notice of the disclosure, and the extent of the proposed disclosure.
- (f) Any minister of the government of the State may be required to disclose any Confidential Information in response to a Parliamentary request, question or direction.
- (g) A Party must immediately notify the other Party of any unauthorised record, disclosure, use, copying, transmission or exploitation of the Confidential Information of which a Party becomes aware, and must take all reasonable steps which the other Party may reasonably require in relation to such unauthorised record, disclosure, use, copying, transmission or exploitation.

## **22. ACKNOWLEDGMENTS, PUBLICATIONS AND PUBLICITY**

- (a) The State reserves the right of first option to announce, publicise, and report on the awarding of the Grant and the Project and may include:
  - (i) the name of the Recipient, its shareholders, project partners or subcontractors;
  - (ii) the amount of the Grant;
  - (iii) the Project cost, a brief description of the Project and its objectives and outcomes to the Gorgon Fund.

- (b) The Recipient must collaborate with the State to determine an appropriate announcement or launch date.
- (c) The Recipient must provide draft media releases, statements and alerts to be approved by the WA Government, with such approval to be completed within 10 Business Days of receipt.
- (d) When, at any time during or after completion of the Project, the Recipient publishes or participates in the publication of media releases, promotional material, website material, books, articles (including journal articles and full conference papers), television or radio programs, newsletters or other literary or artistic works which relate to the Project, the Recipient must, and must ensure that any project partners:
  - (i) acknowledge, at a prominent place in the publication, the support of the WA Government, including where appropriate and possible, by using the State Government Badge and/or text acknowledgment (Acknowledgment); and
  - (ii) stipulate in clear and express terms that the WA Government does not endorse any information, product, process or outcome, arising from or in relation to the Project (Disclaimer); and
  - (iii) acknowledge the WA Government's support in any publicity and onsite signage pertaining to the Project (Signage).
- (e) The form of Acknowledgement and (if applicable) Disclaimer and Signage must be as specified in the Project Details or as otherwise approved by the State prior to its use.
- (f) The State recognises and accepts that on occasion, the Recipient may conduct commercially sponsored events and programs or publish information at or in respect of which it may be inappropriate to include the Acknowledgement and/or the Disclaimer. The Recipient will inform the State a minimum of ten (10) Business Days prior to such events or publications.
- (g) Before making a public announcement in connection with the Grant or this Agreement, the Recipient must obtain the State's written consent to the announcement, except if required by Law or regulatory body or relevant stock



exchange, in which case the State should be notified of any requirement as soon as practicable.

## **23. NOTICES**

### **23.1 Notices**

A notice or other communication that may or must be given under or in connection with this Agreement, to be valid and effective, must:

- (a) be in writing;
- (b) be given by an Authorised Officer of either Party; and
- (c) be:
  - (i) sent by prepaid ordinary post to, or left at the address of, the addressee at the address set out in Schedule 1; or
  - (ii) sent by email to the email address of the addressee set out in Schedule 1.

### **23.2 Receipt of Notices**

A notice or other communication takes effect from the time it is received, unless a later time is specified in the notice or communication. For the purposes of this clause 23, a letter, facsimile or email is taken to be received:

- (a) in the case of a letter sent by post, on the third Business Day after posting; and
- (b) in the case of an email, on production of a printed copy of the sent email which shows that the entire email, including all attachments, was sent to the email address of the addressee set out in Schedule 1.;
- (c) A notice or other communication which is received after 5.00 pm on a day is taken to be received on the next Business Day after that day.

### **23.3 Address for Service**

The Parties' addresses for service are set out in Schedule 1.

## **24. WAIVER**

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.
- (b) A waiver by either Party pursuant to clause 24(a) will not prejudice that Party's rights in respect of any subsequent breach of this Agreement by the other Party.
- (c) Subject to clause 24(a), any failure by either Party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party will not be construed as a waiver of rights under this Agreement.

## **25. PARTIES' RIGHTS**

A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

## **26. REMEDIES**

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

## **27. ENTIRE AGREEMENT**

This Agreement constitutes the full and complete understanding between the Parties in relation to its subject matter and supersedes all prior negotiations, understandings and agreements with respect thereto.

## **28. GOVERNING LAW AND JURISDICTION**

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

**SCHEDULE 1 – CONTACT OFFICERS**

**1. Notice Addresses**

State and Department

|                  |   |
|------------------|---|
| Registered Mail: | Level 11, 1 William Street, Perth WA 6000 |
| Email:           |   |

Recipient

|                  |  |
|------------------|--|
| Registered Mail: |  |
| Email:           |  |

**2. Contact Officers**

State

|                 |   |
|-----------------|---|
| Name:           |   |
| Job Title:      |   |
| Phone:          |   |
| Email:          |   |
| Postal Address: | Level 11, 1 William Street, Perth WA 6000 |
| Street Address: | Level 11, 1 William Street, Perth WA 6000 |
| Supervisor:     |   |

Recipient

|            |  |
|------------|--|
| Name:      |  |
| Job Title: |  |

|                 |  |
|-----------------|--|
| Phone:          |  |
| Email:          |  |
| Postal Address: |  |
| Street Address: |  |
| Supervisor:     |  |

Recipient financial contact

|            |  |
|------------|--|
| Name:      |  |
| Job Title: |  |
| Phone:     |  |
| Email:     |  |

## SCHEDULE 2 – PROJECT DETAILS

**1. Project Name**

[ ]

[Sourced from Good Grants/Grant Manager Packs]

**2. Project Summary**

Description of the Project, including an overview of the key objectives and outcomes

[Sourced from Good Grants/Grant Manager Packs. If there is a significant variation in the project scope, this will require a variation and approval before signing the FAA]

**3. Commencement Date**

The commencement date of the project is [ ]

**4. Grant**

The Grant is \$ [ ] exclusive of GST.

**5. Project Cost**

The total cost of the Project is \$[ ] exclusive of GST.

[Sourced from Good Grants/Grant Manager Packs. If the project cost is less than 50% of the approved amount, the grant amount provided should be reduced in the milestones to reflect the difference]

**6. Term**

The Term is [ ] years from the Execution Date, subject to clause 13 (DEFAULT) and any other relevant express provision of this Agreement.

**7. Payment of Grant**

Payment of the Grant instalments will be by electronic funds transfer to the following Recipient bank account:

Name of Bank:

Location:

Address:

BSB:

Account Number:

Account Name:

## **SCHEDULE 3 – REPORTING**

### **1. Biannual Report**

The Recipient must submit no later than 31 July and 31 January, Biannual Reports in respect of the purpose and expenditure of the Grant for the State's written approval (or otherwise). The reporting of progress will be consistent with the Project Plan.

The Biannual Report shall be on the template provided by the Department and shall include description of the following:

- progress made against the Project Plan objectives and outputs;
- progress made towards achieving the Project Plan outcomes;
- progress made against the Project Plan KPIs and milestones;
- personnel working on the Project;
- all income and expenditure of the Grant and any revenue generated in relation to the Project against the budget for the reporting period;
- variances from the Project Plan for the relevant Reporting Period;
- highlights and difficulties encountered or failures in respect to the Project;
- improvements put or to be put in place by the Recipient; and
- how due acknowledgement was given to the State Government's funding.

The State will review the financial and non-financial performance set out in the Bi-annual Report, and if, in the reasonable opinion of the State, the Bi-annual Report is deemed inadequate, the Recipient must promptly provide such further information as the State may require.

## **2. Final Report**

The Recipient must, by no later than [ ] or within 60 Business Days after this Agreement expires or is terminated (as the case may be), whichever is the earlier, submit a Final Report in respect of the purpose and expenditure of the Grant for the State's written approval (or otherwise).

The Final Report must also satisfy the requirements of a Biannual Report for the Term. The reporting of progress will be consistent with the Project Plan.

The Final Report shall be on the template provided by the Department.

## **3. Post-Project Reports**

Pursuant to the Lower Carbon Grants Program - Gorgon Fund Guidelines, the Recipient must submit annual evaluation reports assessing success in meeting stated objectives, outputs and outcomes after the completion of the Project. Depending on the significance, these evaluation reports may be required for up to three (3) years following this Agreement's expiry or termination.

The Recipient may be required to contribute information on outcomes, including longer-term impacts beyond completion, for use in program evaluation reviews and marketing or media materials. It is the responsibility of the Recipient to put in place adequate collection arrangements to capture appropriate data relating to outputs and outcomes.

[The requirement for ongoing reporting is sourced from the conditions in the Gorgon Fund Guidelines, provided as part of the application process]



## SCHEDULE 4 – MILESTONES

The Recipient's deliverables are set out in the table below.

The table has both date based Milestones as well as action based Milestones. Action based Milestones may vary in timing (indicative timing), subject to agreement. Date based Milestones are set in time (fixed timing).

The Department may only commit parts of the Funding of the amount authorised for expenditure subject to the achievement of the following Milestones:

| No | Milestone Description  | Evidence   | Indicative Timing or Fixed | Funding Amount | Indicative Recipient Co-contribution |
|----|--|--|----------------------------|----------------|--------------------------------------|
| 1  | <i>Execution of the Financial Assistance Agreement (FAA)</i>   | <i>The fully executed FAA</i>  |                            |                |                                      |
| 2  | <i>Order placed and deposit paid on the key equipment (consider a better description so it not lots of separate components).</i> | <i>Copy of the order request.<br/>Copy of the deposit invoice.<br/>Payment of the invoice.</i> |                            |                |                                      |
| 3  | <i>1st bi-annual report</i>  | <i>Provision of the biannual report per Schedule 3</i>   |                            | <i>Nil</i>     |                                      |
| 4  |  |  |                            |                |                                      |
| 5  |  |  |                            |                |                                      |

|   |   |   |  |  |  |
|---|---|---|--|--|--|
| 6 | <i>Demonstrated matched funding</i>                           | <i>Summary report of the full cost at commissioning the plant, certified by the CFO</i> |  |  |  |
| 7 | <i>Demonstrated co-contribution of the total Project Cost</i> | <i>Final budget of the Project, certified by the CFO.</i>                               |  |  |  |

[The indicative recipient co-contribution is included to support negotiating milestones that encourage co-contributions of 50% or more by the recipient]

**SCHEDULE 5 – SPECIAL CONDITIONS**

**1. Recipient’s obligations**

(a) The Recipient agrees that prior to the release of any Grant funds by the State, it will provide written confirmation that the Project Budget included in the application does not allocate funding to ineligible costs, as defined in the Lower Carbon Grants Program – Gorgon Fund Guidelines.

**2. Matched Funding**

(a) The Recipient must obtain the funding from the sources set out in the table immediately below (Matched Funding), which the Recipient must use to carry out the Project in accordance with this Agreement and for no other purpose

| Source of Funding               | Amount (\$) |
|---------------------------------|-------------|
| Partner Name 1                  | \$XXXX      |
| Partner Name 2                  |             |
| Insert more lines if applicable |             |
| Total                           | \$XXXX      |

(b) Despite anything express or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to provide evidence to the Department which proves to the satisfaction of the State, in its absolute discretion, that the Recipient has obtained the Matched Funding. If the Recipient does not obtain any part of the Matched Funding (that part being the **Shortfall**), the State may reduce the amount it is to pay the Recipient under this Agreement by the amount of the Shortfall.

**3. Communications Plan**

(a) The Recipient and State agree to develop a Communications Plan which will set out the manner in which the State and Recipient will communicate the nature, objectives and benefits of the Lower Carbon Grants program to the wider community.

#### **4. Conflict of Interest**

- (a) No Recipient or member of the Recipient group will in connection with the Agreement: (A) enter into any business arrangement with any director, employee or agent of the State or any of its Affiliates without the State's prior written consent or (B) give to or receive from any director, employee or agent of the State, or any of its affiliates anything that is more than a nominal cost or value. The Recipient shall ensure that members of the Recipient group comply with this requirement.

#### **5. Improper Influence**

- (a) The Recipient agrees that no member of the Recipient may, directly or indirectly, offer, promise, or give anything of value to any official or immediate family member or close business associate of an official, of any government, public international organization, or political party (including any officer or employee of any department, agency, or instrumentality of any government or public organization), or to any political party or candidate for public office to influence an act or decision, or to gain any other advantage for State or Recipient arising out of the Agreement. The Recipient shall ensure group members of the Recipient comply with these requirements.

#### **6. Pre-Contract Communications and Reporting**

- (a) The Recipient represents and warrants that no event has occurred prior to the Commencement Date, which if it had occurred after the Commencement Date, would be a violation of the Communications Plan between the State and the Recipient. The Recipient shall immediately notify the State of any breach the Communications Plan.

#### **7. Records and Inspection**

- (a) Notwithstanding Clause 11 of the Agreement, During the Term and for 24 months from the end of the calendar year in which the Agreement is completed or terminated, (A) The Recipient shall ensure that group members of the Recipient retain all records related to the Agreement (or until expiry of the statute of limitations for taxes or import or export charges and other applicable laws) and (B) The State may inspect, at no cost to the State and at any time, all records to confirm compliance with the Agreement.

## **8. Trade Sanctions Compliance**

(a) The Recipient represents and warrants that neither it nor any member of the Recipient performing work in relation to the Project are (A) subject to economic sanctions or any trade restrictions imposed by the U.S. government or any other applicable jurisdiction, (B) listed on any U.S. restricted parties list, including the U.S. Treasury Department List of Specially Designated Nationals and Blocked Persons, the U.S. Commerce Department Denied Persons List or Entity List, or any similar restricted parties list under applicable law, or (C) debarred, excluded, or declared ineligible to participate in U.S. government contracts, grants, or other programs financed in whole or part by the U.S. government (collectively "Restricted Parties"). Upon learning that the Recipient or a member of the Recipient is a Restricted Party, the Recipient shall promptly, and in no event later than 90 days, notify the State. The Recipient shall promptly take such steps as may be necessary to remove such designation or debarment and, pending such removal, terminate performance of this Agreement by any such member of the Recipient group. Personnel of the Recipient performing work must not be citizens of countries subject to comprehensive U.S. trade sanctions without the State's prior written consent. The Recipient shall not release State information to any country that is the subject of economic sanctions or trade restrictions imposed by the U.S. government or any other applicable jurisdiction. No products supplied under this Agreement may be sourced from any Restricted Parties or originate from any sanctioned country. The State reserves the right to demand an end user certification from the Recipient.

**EXECUTED** by the Parties hereto on the date first hereinbefore mentioned.

Signed for and on behalf of the State of Western Australia, acting by and through its Department of Jobs, Tourism, Science and Innovation by a duly authorised signatory in the presence of:

.....

REBECCA BROWN

Director General

Department of Jobs, Tourism, Science and Innovation

Date .....

Signed by **[Recipient NAME]** in accordance with Section 127 of the *Corporations Act 2001* (Cth)

.....

Signature of Authorised Officer

.....

Name and title of Authorised Representative

Date .....