CARBON INNOVATION GRANTS FUNDING AGREEMENT

THE STATE OF WESTERN AUSTRALIA

AND

ORGANISATION NAME (GRANT RECIPIENT)

PILOT PROJECT: PROJECT NAME

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BETWEEN:

THE STATE OF WESTERN AUSTRALIA (**State**)

AND

_____ (**Recipient**)

RECITALS

A. The State has committed to the Carbon Innovation Grants Program to support Western Australian heavy industries to transition to net zero emissions, in accordance with the Western Australian Climate Policy.

B. The Recipient has applied to the State for funding through the Carbon Innovation Grants Program to undertake its proposed Pilot Project.

C. The State has agreed to provide Funding to the Recipient for its proposed Pilot Project on the terms and conditions set out in this Agreement.

OPERATIVE PART

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Defined terms for use in this Agreement, in addition to those set out in this clause 1.1, may appear in the Schedules.

In this Agreement, unless the context otherwise requires:

Agreement means this agreement, including its recitals, Schedules and annexures.

Annual Report includes an annual report referred to in section 319 of the *Corporations Act 2001* (Cth) or a report of a similar nature prepared in accordance with a Recipient's internal governance requirements.

Application means the Recipient's completed application form (including all its attachments) submitted to the Department for provision of funding to the Recipient that identifies and describes the proposed Pilot Project, and any other supporting or additional information provided by the Recipient in relation to the Pilot Project.

Approved Application means the Application as submitted by the Recipient and any responses provided by the Recipient in response to any questions from the State in relation to the Application in each case as finally approved by the State.

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

Associates means any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the State, including any governmental, semi-governmental or local government authority, minister, department, statutory corporation, instrumentality or government owned corporation.

Auditor General means the Auditor General for the State of Western Australia.

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.

Authorised Representative means:

(a) in respect of the Recipient, the person referred to in item 1.2(b) of Schedule 1; and

(b) in respect of the State, the person referred to in item 1.2(a) of Schedule 1,

each as may be changed from time to time in accordance with clause 33.

Balance of Funding means the amounts specified in item 2.2(b) of Schedule 2 that are to be procured and applied by the Recipient, in addition to the Funding, for the purposes of undertaking the Pilot Project.

Business Day means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

Carbon Credit Units has the same meaning as "Australian Carbon Credit Units" in the CFI Act.

Carbon Innovation Grants Program means the grant program administered by the Department of Water and Environmental Regulation that aims to build the capacity of heavy industry sectors to transition to net zero emissions by 2050. The program's aim is to fund feasibility studies and trials that help to avoid, reduce or offset carbon emissions from heavy industry processes, with a focus on supporting innovative technologies for carbon abatement and sequestration.

CFI Act means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

Change in Control in relation to the Recipient means:

(a) an entity that Controls the Recipient ceases to Control the Recipient; or

(b) an entity that does not Control the Recipient comes to Control the Recipient.

No Change in Control occurs if:

(c) the entity that ceases to Control the Recipient under paragraph (a) of this definition was, immediately beforehand, directly or indirectly Controlled by a body corporate that, immediately afterward, directly or indirectly Controls that body; or

(d) the entity that comes to Control the Recipient under paragraph (b) of this definition is a wholly–owned subsidiary of a body corporate that previously directly or indirectly Controlled, and continues to directly or indirectly Control, the Recipient.

In this definition each of **body corporate** and **wholly–owned subsidiary** have the meanings given in section 9 of the *Corporations Act 2001* (Cth) and entity has the meaning given in section 64A of the *Corporations Act 2001* (Cth).

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

Clean Energy Regulator means the Australian national regulator responsible for administering the Australian Carbon Credit Units (ACCU) Scheme under the CFI Act.

Condition Precedent means the condition set out in clause 2.1(b).

Confidential Information means information which by its nature is confidential and information that is designated by a Party as confidential, but does not include information that:

(a) is or becomes public knowledge other than by breach of this Agreement or by other unlawful means;

(b) was in the possession of the other Party without any restriction in relation to disclosure before the date of disclosure to the other Party; or

(c) has been independently developed or acquired by a Party.

Control has the meaning given in section 50AA of the *Corporations Act 2001* (Cth) except that in addition an entity controls a second entity if:

(a) the first entity would be taken to control the second entity but for subsection 50AA(4) of the Corporations Act 2001 (Cth); or

(b) the first entity has voting power (as defined in section 610 of the Corporations Act 2001 (Cth)) of at least 50% in the second entity,

and **Controlled** has a corresponding meaning.

Deliverable means each of the Recipient's deliverables specified in the Milestone Table.

Department means the Department of Water and Environmental Regulation 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.

Eligible Expenditure has the meaning given it in clause 3.3 of this Agreement.

Eligible Expenditure Start Date is the date set out in item 7.1 of Schedule 7.

Event of Default has the meaning given in clause 12 of this Agreement.

Execution Date means the date of this Agreement or, if this Agreement is undated, the date on which the last party to execute this Agreement does so.

Existing Material means Intellectual Property Rights in any work created prior to the Execution Date which are either used for the purpose of the Recipient complying with its Obligations or incorporated into New Material.

Expected Milestone Payment means an instalment of the Funding which is anticipated, as at the date of this Agreement, to be paid from the State to the Recipient as specified in the Milestone Table.

Final Report means the Final Report described in item 5.5 of Schedule 5.

Funding means the funding to be provided by the State to the Recipient in accordance with clause 3.1, the maximum amount of which is set out in item 2.2(a) of Schedule 2.

Good Faith means being fair, honest and reasonable and acting with integrity at all times.

Government Agency means any Australian Parliament or government, any Minister of the Crown, or any governmental, semi-governmental, administrative, regulatory , judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

handle has the meaning given to it in the PRIS Act.

Information Privacy Principles has the meaning given to it in the PRIS Act.

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 judgement or order for the payment or 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 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, threatens to cease, or is proposed to cease to carry on all or a material part of its business; or

(vi) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the corporation; 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; or

(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 10 of this Agreement.

Intellectual Property Rights means all rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights; and **Intellectual Property** has a corresponding meaning.

Interest Rate means the rate determined under section 8(1) (a) of the *Civil Judgments Enforcement Act 2004* from time to time.

Knowledge Sharing means the requirements for knowledge sharing by the Recipient as specified in item 4.1 of Schedule 4.

Law means all applicable 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 of law or equity;

(d) standards, codes, policies and guidelines; and

(e) for a Recipient which is listed on the Australian Securities Exchange, the Australian Securities Exchange listing rules.

Liability means any debt, obligation, cost (including legal costs), expense, Loss, damage, compensation, charge or liability of any kind (whether arising in negligence or otherwise), including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Loss includes any loss, cost, expense, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

Milestones means the milestones set out in Schedule 3.

Milestone Payment means an instalment of the Funding determined in accordance with clause 3.4 of this Agreement.

Milestone Report means a milestone report referred to in item 5.2 of Schedule 5.

Milestone Table means the milestone table of Deliverables and the Pilot Project timeline in Schedule 3.

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

New Material means anything created by, or on behalf of, the Recipient in undertaking the Pilot Project or otherwise performing an Obligation in which Intellectual Property Rights subsist.

New Milestones has the meaning given to that term in clause 3.2(d) of this Agreement.

Obligation means an obligation in this Agreement.

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

Payment Request means a written request by the Recipient for the Funding and as described in clause 3.6 of this Agreement.

Permitted Purpose has the meaning given to that term in item 4.2 of Schedule 4.

Personal Information has the meaning given to it in the PRIS Act.

Personnel means any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the Recipient.

Pilot Project means the initiative or activities described in item 2.1 of Schedule 2 and in the Approved Application.

PPS Security Interest means a security interest that is subject to the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PRIS Act means the *Privacy and Responsible Information Sharing Act 2024* (WA).

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Commissioner means the Australian Information Commissioner, the Information Commissioner and the Privacy Deputy Commissioner (as each of those terms is defined in the PRIS Act), and any other authority to whom a privacy complaint is referred under section 93 of the PRIS Act.

Privacy Laws means:

(a) the PRIS Act;

(b) the Privacy Act; and

(c) any other Commonwealth or Western Australian legislation or guidelines relating to privacy.

Provision means any term, condition, undertaking, promise, obligation or warranty of, made or given by the Recipient, or otherwise applicable to the Recipient, under this Agreement.

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

Schedule means any schedule to, and forming part of, this Agreement.

Security Interest means:

(a) a PPS Security Interest;

(b) any other mortgage, pledge, lien or charge; or

(c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

State Government means the Government of the State of Western Australia.

Technology Readiness Level or TRL has the same meaning given to that term set out in the document linked at https://www.arena.gov.au/assets/2019/01/trl-guide.pdf.

Term means the period set out in item 2.3 of 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 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 partnership or a trust and the legal personal representatives, successors and 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;

(g) an Obligation incurred in favour of 2 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;

(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; and

(q) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow.

2. CONDITION PRECEDENT AND WITHDRAWAL

2.1 Condition Precedent

(a) This Agreement (other than clauses 1, 11, 22 and this clause 2 which will commence with immediate effect on the Execution Date) has no effect unless the Condition Precedent in clause 2.1(b) is satisfied on or before the day which is 183 days after the Execution Date or another date agreed by the Parties in writing.

(b) The Condition Precedent to this Agreement is the securing of the Balance of Funding, along with evidence to the reasonable satisfaction of the State that it is committed and secured to the Pilot Project, by the Recipient.

(c) The Recipient must immediately give the State notice in writing when the Condition Precedent has been satisfied and provide evidence to the satisfaction of the State that establishes that the Condition Precedent has been satisfied.

2.2 Recipient’s Withdrawal from the Agreement

(a) If the Condition Precedent has not been satisfied by the Recipient by the last date determined under clause 2.1(a), the State has the right to give the Recipient a notice that it failed to satisfy the Condition Precedent by the required date. This right may be exercised at the State’s absolute discretion at any time after that date and before the Condition Precedent is satisfied. The Condition Precedent can still be satisfied by the Recipient complying fully with its requirements, even though the date set under clause 2.1(a) has passed, unless the State has already given a notice under this clause 2.2(a). Upon the State giving notice to the Recipient that it failed to satisfy the Condition Precedent by the required date in accordance with this clause 2.2(a), the Recipient is deemed to have withdrawn from this Agreement.

(b) The Recipient may withdraw from this Agreement at any time before payment of the first Milestone Payment for any reason or no reason at all if the Recipient provides notice in writing to the State of an intention to withdraw from this Agreement.

(c) If the Recipient has by clause 2.2(a), been deemed to have withdrawn from this Agreement or withdraws from this Agreement under clause 2.2(b), then this Agreement shall be at an end and both Parties shall be released from all Obligations and Liability under this Agreement other than any that commenced because of the operation of this clause 2 and are expressed to survive the termination of this Agreement and the Recipient also acknowledges and agrees it will not be entitled under this Agreement or otherwise at Law to any payment by the State or any Associate in any way related to the Pilot Project.

3. FUNDING

3.1 Payment

Subject to the terms of this Agreement, the State agrees to pay the Funding to the Recipient at the times, and using the method specified in items 2.6 and 2.7 of Schedule 2.

3.2 Use of Funding

(a) The Recipient must use the Funding for the carrying out of the Pilot Project in accordance with this Agreement. All of this expenditure must be effected in a commercially prudent, sensible and reasonable manner.

(b) The Recipient must not apply any part of the Funding to expenditure that is not Eligible Expenditure.

(c) In carrying out the Pilot Project, the Recipient must comply with and meet all Milestones.

(d) Without in any way limiting the State's rights under this Agreement, including under clause 12 or clause 13, or under Law, if the Recipient fails to comply with or meet a Milestone, the Recipient may approach the State with its offer to amend the Milestones in a way which achieves the carrying out of the Pilot Project otherwise in accordance with this Agreement (**New Milestones**). The State will consider the New Milestones proposed and if, in its absolute discretion it agrees, the Parties will amend this Agreement and the New Milestones will apply. If New Milestones are agreed, the Recipient must comply with and meet all New Milestones. If the Recipient fails to comply with or meet a New Milestone, the Parties have the same rights as set out above in relation to agreeing further New Milestones without in any way limiting the State's rights under this Agreement, including under clause 12 or clause 13, or otherwise under Law.

3.3 Eligible Expenditure

Item 2.5 of Schedule 2 specifies expenditures that are Eligible Expenditure and specifies expenditures that are not Eligible Expenditure. If any items appear in the table in item 2.5 of Schedule 2, the table sets out express examples of what is and what is not Eligible Expenditure (as applicable).

3.4 Amount of Milestone Payments

A Milestone Payment will be an amount which is the lesser of:

(a) the Expected Milestone Payment; and

25% of the Eligible Expenditure, that corresponds to the relevant Milestone.

3.5 Advancing the Funding

The State will have no obligation to the Recipient under this Agreement whatsoever unless, at the time when the State is obliged to advance the Funding:

(a) no Event of Default or breach of any Provision exists;

(b) the State has received from the Recipient a Payment Request to the satisfaction of the State and completed in accordance with clause 3.6 of this Agreement; and

(c) the Milestone to which the Payment Request relates as described in the Milestone Table has been achieved.

3.6 Payment Request

The Payment Request must:

(a) be a tax invoice signed by the Authorised Representative of the Recipient;

(b) be accompanied by a declaration by the Authorised Representative that no Event of Default or breach of any Provision exists;

(c) be further accompanied by evidence to the satisfaction of the Department, that the Payment Request relates only to Eligible Expenditure that has been paid by the Recipient as at the date of the Payment Request;

(d) be further accompanied by evidence, to the satisfaction of the Department, that the Balance of Funding remains available as required by clause 4.1(b);

(e) be further accompanied and supported by a Milestone Report to the satisfaction of the State in its absolute discretion; and

(f) be provided to the State prior to the expiration of the Term.

3.7 Additional Expenditure

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

4. OBLIGATIONS OF RECIPIENT

4.1 Balance of Funding

(a) The Recipient must use the Balance of Funding to carry out the Pilot Project in accordance with this Agreement and for no other purpose.

(b) Balance of Funding must remain available to the Recipient at all times during the Term apart from the amounts of the Balance of Funding which are expended by the Recipient in performing the Pilot Project in accordance with this Agreement.

4.2 Eligibility conditions

(a) The Recipient must comply, and must ensure that the Pilot Project complies, with the following conditions at all times:

(i) the Pilot Project applies to specific sites or locations within Western Australia;

(ii) the Pilot Project is completed within the Term;

(iii) the Pilot Project is undertaken by staff with relevant experience and capability in delivering similar Pilot Projects;

(iv) appropriate and adequate resources are allocated to successfully administer and deliver the Pilot Project;

(v) it has the financial capacity to fund its contribution to the costs of the Pilot Project (excluding any funding to be obtained after the date of this Agreement as described in the Milestone Table, if applicable), including ongoing operation and maintenance costs within the Term; and

(vi) the Milestones are utilised to manage the delivery of the Pilot Project.

(b) The State may, at any time during the Term, require in writing that the Recipient provides evidence that the Recipient is meeting one or more of the conditions set out in clause 4.2(a).

(c) If the State makes a request in accordance with clause 4.2(b), the Recipient must respond within the time specified in the request.

(d) The Recipient must, promptly on becoming aware that the Recipient or the Pilot Project (or both of them) is not in compliance with a condition set out in clause 4.2(a), give notice to the State identifying and describing the instance of non-compliance and any measures being taken by the Recipient to remedy or mitigate it.

4.3 General Undertakings of the Recipient

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

(a) 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) at all times (including if any part of its Obligations are sub-contracted) ensure that its Obligations are managed by people who are fit and proper persons to engage in the Recipient's activities by reference to:

(i) no disqualification by Law from performing their role,

(ii) no conflict of interest or any conflict that may create a material risk that they will fail to properly perform in their role,

(iii) their legal right to carry out the Pilot Project;

(c) without limiting clause 4.3(b), at all times (including if any part of its Obligations that are sub-contracted) ensure that its Obligations are carried out by people with appropriate skills and expertise;

(d) at all times duly perform and observe its Obligations and will promptly inform the State of any occurrence which might materially adversely affect its ability to perform its Obligations;

(e) comply with the terms of each Authorisation necessary to enter into this Agreement, observe obligations under each Authorisation and allow them to be enforced and obtain and renew on time each such Authorisation;

(f) acknowledge that funding provided under this Agreement is public money and is subject to compliance by the Recipient with the terms of this Agreement;

(g) undertake its responsibilities under this Agreement with Good Faith and probity in accordance with good corporate governance practices;

(h) cooperate fully with the State in the administration of this Agreement;

(i) comply with all relevant Law; and

(j) permit the State, any officers of the Department or any other person authorised by any of them to (at their cost) enter the Recipient's premises at any reasonable time to determine whether the Recipient is performing its Obligations, 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 and complies with any site rules and directions imposed by the Recipient (acting reasonably).

4.4 Recipient's Warranties

The Recipient represents and warrants that:

(a) it is not entering into this Agreement as trustee of any trust or settlement or for, or on behalf of, any other person;

(b) where the Recipient is not an individual, it has been properly established in accordance with all relevant Laws;

(c) it is duly authorised and has the power to enter into this Agreement and observe its Obligations;

(d) its Obligations are valid and binding and are enforceable against it in accordance with their terms;

(e) all conditions and things required by any applicable Law to be fulfilled or done (including the obtaining and maintaining of any necessary Authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its Obligations have been fulfilled or done;

(f) 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 any materially adverse effect on the Recipient's ability to perform this Agreement;

(g) to the best of its knowledge or belief this Agreement and performance under it does not violate any Laws or any agreement, order or award binding on the Recipient;

(h) 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 is true, accurate and complete and, without limiting the first part of this clause 4.4(h), 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;

(i) it has, after diligent inquiry and investigation, fully disclosed to the State and the Department all material information which could reasonably be regarded as affecting in any way the State's decision to enter into this Agreement;

(j) it knows of no impediment to it performing its Obligations;

(k) it has complied, and continues to comply, throughout the Term, with its Obligations in this Agreement;

(l) without limiting clause 4.4(k), the Balance of Funding remains available to the Recipient at all times during the Term apart from the amounts of the Balance of Funding which are expended by the Recipient in performing the Pilot Project in accordance with this Agreement; and

(m) it will comply with all prior representations made by it in connection with the Recipient itself and in connection with this Agreement.

4.5 Made Continuously

The representation and warranties made by the Recipient under clause 4.4 are taken to be made continuously throughout the Term.

4.6 Recipient diligence

The Recipient must carry out the Pilot Project fully, properly, competently, carefully, diligently and efficiently in accordance with the Approved Application and the terms and conditions of this Agreement. The Recipient must use the Funding efficiently and not extravagantly, wastefully or irresponsibly.

4.7 Notification to State

The Recipient must:

(a) notify the State of any actual, pending or threatened Claim, against one or more of the Recipient or a Related Body Corporate as soon as practicable after the Recipient first becomes aware of that Claim;

(b) notify the State promptly and without delay if the Recipient is in breach of any Law, receives an audit qualification, or breaches, fails to obtain or is under scrutiny through an inquiry or decree in respect to (as applicable) any Authorisation or any agreement, order or award

binding on the Recipient or which the Recipient requires in order to carry out one or both of the Pilot Project and its business; and

(c) notify the State promptly and without delay if the Recipient becomes aware of any fraud or corruption in relation to the Pilot Project, the Funding, any interest which accrues on the Funding, or this Agreement.

4.8 No Changes

(a) Subject to clause 27, the Recipient must not make any changes to the Pilot Project, the Approved Application, the Milestones or any agreed budget without the prior written consent of the State. Consent will be granted or withheld at the State's absolute discretion.

(b) The Recipient must promptly notify the State in writing if any part of the Funding has not been used in accordance with this Agreement.

4.9 No Endorsement

The Recipient agrees that nothing in this Agreement constitutes an endorsement by the State of any goods or services provided by the Recipient to any person.

4.10 Benefits to Western Australian industry and other users

The Recipient acknowledges that underlying the Funding is the State's belief that the Funding will provide benefits to Western Australia and therefore that the Recipient will seek to ensure that the Pilot Project delivers benefits and opportunities to Western Australia consistent with the objectives of the Carbon Innovation Grants Program.

4.11 Regulation and Approvals

The Recipient acknowledges and agrees that any Authorisations necessary for the undertaking of the Pilot Project are the sole responsibility of the Recipient to obtain and to comply with.

4.12 Assets

(a) For Assets purchased with the Funding, the Recipient must follow ordinary and commercially prudent procedures and arrangements for the purchase, installation, maintenance and preservation of such Assets including to the extent the Recipient obtains right that gives rise, or may give rise, to one or more PPS Security Interests in favour of the Recipient and ensure that it protects each PPS Security Interest by registering it within the time necessary so that any Security Interest is, and remains, fully effective or perfected (or both), and that each Security Interest has the priority to protect the Recipient's priority interest in the Assets.

(b) The Recipient must ensure that all Assets purchased with the Funding must be available for priority use for the Pilot Project.

(c) The Recipient must keep Assets purchased with the Funding within Western Australia, unless the State has first given the Recipient

written approval to move any items outside Western Australia or is otherwise agreed in Schedule 8.

(d) The Recipient must not sell, transfer, dispose of, mortgage, charge or otherwise encumber Assets purchased with the Funding without the prior written consent of the State which may be withheld by the State in its absolute discretion, or as otherwise agreed in Schedule 8.

4.13 Ethical clearances

The Recipient must ensure that any research conducted under or in connection with this Agreement obtains, and complies with, all appropriate ethical clearances from the relevant committees or authorities as prescribed by the Law or the Recipient's research rules.

5. ACKNOWLEDGEMENTS, PUBLICATIONS AND PUBLICITIES

(a) Subject to clause 5(b) the Recipient must ensure that the outcomes of the Pilot Project are communicated in accordance with the Knowledge Sharing provisions in item 4.1 of Schedule 4 and, where appropriate and possible, to potential end-users, relevant stakeholders and the community at large, including participation in promotional activities as agreed by the parties.

(b) The Recipient is not required to disclose any information which may prejudice the protection or commercialisation of any Intellectual Property created under or in connection with the Pilot Project. However, the Recipient must notify the State in general terms as to the reasons for its inability or unwillingness to disclose information under this Agreement.

(c) When, at any time during or after completion of the Pilot 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 Pilot Project, the Recipient must:

(i) equally represent the Parties when logos are displayed relating to the Pilot Project, including containing the logos and names specified by the Department and the Recipient's logo and name in an equally prominent position; and

(ii) be consistent with the policies for marketing, communications and acknowledgements which the Department notifies to the Recipient from time to time.

(d) The respective roles of the Department and the Recipient must be acknowledged at relevant forums, conferences, and events where the Pilot Project is promoted.

(e) The Recipient must ensure that all media events relating to the Pilot Project are coordinated with and agreed upon with the Department in writing.

(f) The State recognises and accepts that on occasion, the Recipient may conduct commercially sponsored events and programs at which it may be inappropriate to acknowledge the Department or the State Government. All Parties shall act reasonably in this regard.

(g) Unless the Agreement is terminated under clause 13 (in which case this clause 5 will also terminate at that time), this clause 5 survives the Term for a period of 12 months.

6. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

(a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors 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 Department.

(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, or have any power or authority to bind or represent the State or the Department.

7. LIMITATION OF LIABILITY

(a) The State is not responsible or liable in any way for the success or otherwise of the Pilot Project or for any losses suffered by the Recipient in undertaking the Pilot Project. Except for breaches of this Agreement by the State, the Recipient releases the State and the Associates from all Liability in relation to the Pilot Project, this Agreement and any related matter and agrees that, except for breaches of this Agreement by the State, neither it nor any Related Body Corporate will make a Claim against the State or any of the Associates arising directly or indirectly in relation to one or more of the Pilot Project, this Agreement or any related matter. This clause 7 may be pleaded by the State and 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 Pilot Project, this Agreement and any related matter.

(b) The Recipient must indemnify the State and the Associates and must keep them indemnified and hold the State and the Associates harmless from and against all Claims or Liability, suffered or incurred by or brought against the State or any Associates whether before or after the date of this Agreement caused by, arising out of or relating directly or indirectly to any:

(i) breach of any Provision by the Recipient; or

(ii) act or omission of the Recipient or its employees, contractors, officers or agents; or

(iii) breach of any Law by the Recipient or any of its employees, contractors, officers or agents.

(c) This indemnity is reduced to the extent that the indemnified Party caused or contributed to the Liability.

(d) This clause 7 survives the expiry or earlier termination of this Agreement.

8. RECORDS, REPORTS, INFORMATION AND AUDIT

8.1 Records

(a) The Recipient must keep proper, detailed, accurate, complete and up-to-date written records of:

(i) its income, expenditure and financial commitments in relation to the Pilot Project (including bills, accounts, invoices, dockets, receipts, timesheets and the like); and

(ii) the activities, performance, progress, successes, achievements, setbacks, failures and remedial actions of and associated with the Pilot Project.

(b) Such records must be kept for five years after the end of the Term.

8.2 Reporting

The Recipient must comply with the reporting requirements in relation to the Pilot Project set out in Schedule 5. All such reports must be in writing and properly detailed, accurate, complete and up to date.

8.3 Evaluation

The Recipient must use all reasonable endeavours to ensure that it is available, upon request, to contribute to, and participate in, evaluation (as prescribed by the State) relating to the Pilot Project during the Term, and for at least four years after the end of the Term.

8.4 Information

(a) The State may, at any time during the Term, require in writing that the Recipient provide to the State, any information and documents (including supporting evidence) in connection with the Pilot Project or this Agreement that the State requests from time to time, including, without limitation, any written records described in clause 8.1(a) and any other information and documents (including supporting evidence):

(i) relating to the Recipient's use and expenditure of any amounts of the Funding that have been paid to the Recipient; or

(ii) which the State requires in considering whether the State is or should be satisfied of or with any matter in connection with the Pilot Project or this Agreement.

(b) If the State has required information and documents under clause 8.4(a), the Recipient must provide the required information and documents within 20 Business Days of the date of the State's written

requirement or within such other period specified by the State in the written requirement.

(c) 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; 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 provide the State with full details of the change or with updated copies of the accounts or financial statements (as the case may be).

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

8.5 Audit Rights

(a) 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 Pilot Project and the Funding. If the State arranges for an independent audit to be carried out:

(i) the State must provide reasonable written notice to the Recipient that the State has arranged for an independent audit to be carried out;

(ii) 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 for the purpose of carrying out the independent audit; and

(iii) the Recipient must allow the Auditor General, the internal audit branch of the Department, or the Authorised Representative (or their delegate), to have access to and examine records and information concerning the Pilot Project and the Funding, during normal business hours upon giving not less than 5 Business Days' written notice to the Recipient.

(b) Where the State considers that any information or evidence provided by the Recipient under this Agreement is incorrect, out-of-date, 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.

8.6 Survival

This clause 8 and Schedule 5 survive the expiration or early termination of this Agreement for the periods necessary.

9. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006

(a) This Agreement and information regarding it, is subject to the *Freedom of Information Act 1992* (WA). The State may publicly disclose information in relation to this Agreement, including its terms 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* (WA), the *Financial Management Act 2006* (WA) or the Recipient's obligations (if any) in relation to these Acts. To the extent permitted by Law, the Recipient must allow the Auditor General, or the Authorised Representative (or their delegate), 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 Pilot Project.

10. INSURANCE

10.1 Insurance to be Obtained and Maintained

The Recipient must hold or must obtain and maintain (or procure the obtaining and maintenance of) the insurances set out in Schedule 6 during the Term.

10.2 Reputable and Solvent Insurer

Any policy of insurance held or taken out by the Recipient must be held or taken out with a reputable and solvent insurer acceptable to the State which carries on insurance business in Australia and is:

(a) an Australian Prudential Regulatory Authority approved insurer; or

(b) 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

(c) an insurer established under Law.

10.3 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, cover note, receipt and other usual evidence of the Insurance;

(c) use its best endeavours to 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 the Pilot 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 use its best endeavours 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 below the limits specified in Schedule 6 or transfer or change the same to any other insurer without providing written notice to the State.

11. NOTICES

In order for any notice or other communication (including any request, approval or the like) that may or must be given under this Agreement to be effective, that notice or other communication:

(a) must be in writing;

(b) must be given by the Authorised Representative of the Party;

(c) must be:

(i) hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out in item 1.1 of Schedule 1; or

(ii) sent by email to the email address of the Party receiving the notice set out in item 1.1 of Schedule 1; or

(iii) where this Agreement provides that the Recipient must notify the State of, or provide it with, any occurrence or thing, hand-delivered or sent by prepaid post to the address of the State set out in item 1.1 of Schedule 1 or sent by email to the email address of the State set out in item 1.1 of Schedule 1;

(d) subject to clause 11(e), is taken to be received:

(i) in the case of hand delivery, on the date of delivery;

(ii) in the case of post, on the 7th Business Day after posting; and

(iii) in the case of email, on the date of transmission; and

(e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

12. DEFAULT

12.1 Event of Default by the Recipient

(a) An Event of Default occurs if the Recipient breaches any Provision, which breach continues without the Provision being performed in accordance with this Agreement (otherwise than as to its time for

performance) for a period of 30 Business Days after notice in writing has been served on the Recipient by the State.

(b) An Event of Default occurs immediately, without requiring any notice to the Recipient given by the State as contemplated by clause 12.1(a), if:

(i) the Recipient fails to comply with or meet a Milestone or a New Milestone; or

(ii) a written commitment or promise to do something (**Undertaking**) given to the State or its Associates by the Recipient or another person not set out in this Agreement but in connection with this Agreement is breached or not wholly performed within the period specified in the Undertaking or, if no period is specified, within 5 Business Days from the date of the Undertaking; or

(iii) the Recipient suffers, or is or becomes subject to, an Insolvency Event; or

(iv) the State believes, in its absolute discretion, that the Recipient is unwilling or unable to comply with any one or more of the Provisions; or

(v) the Pilot Project, as performed or proposed to be performed by the Recipient, is or is to become to any extent inconsistent with, or will not achieve each of the outcomes outlined Schedule 2 of this Agreement;

(vi) the Recipient repudiates the Agreement; or

(vii) a warranty given by or representation made by the Recipient is or becomes untrue; or

(viii) the Recipient persistently, regularly, consistently or continually breaches the Provisions; or

(ix) in the reasonable opinion of the State the reputation of the State or the Department is, or is likely to be, damaged by any act or omission of, or any conduct by, the Recipient; or

(x) the Recipient fails to commence or complete the Pilot Project in accordance with item 2.4(c) of Schedule 2; or

(xi) where this Agreement provides for or contemplates the Parties reaching further agreement in relation to anything the subject of, or related to, either or both of this Agreement and the Pilot Project, this further agreement is not reached and recorded in writing within a reasonable time.

13. TERMINATION

13.1 Effect of Event of Default

(a) If an Event of Default occurs, the State may terminate the Agreement by providing notice in writing to the Recipient and the Agreement is then terminated from the date specified in that notice.

(b) If the Agreement is terminated under clause 13.1(a) or otherwise terminated unlawfully by the Recipient:

(i) the State has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient;

(ii) the Recipient must remit to the State within 20 Business Days from the termination date specified by 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 by the State; and

(iii) if the Agreement is terminated under clause 13.1(a) arising out of:

(A) an Event of Default occasioned by any fraud of the Recipient; or

(B) in any other case is an Event of Default under any one or more of clause 12.1(b)(iii), 12.1(b)(vi), 12.1(b)(vii) (in the case of the Recipient knowing that a warranty it gave is untrue to any extent), 12.1(b)(viii) (in the case of the Recipient knowingly or deliberately persistently, regularly, consistently or continually breaching the Provisions); or

(C) is otherwise terminated unlawfully by the Recipient,

then if requested by the State in writing, the Recipient must remit to the State within 20 Business Days from the date of the State's request all Funding paid to the Recipient under the Agreement and all interest accrued on that Funding that has been spent or committed. If the State only requests the Recipient to remit part of those monies, then the Recipient must remit that part of those monies within 20 Business Days from the date of the State's request.

(c) Without limiting the State’s rights under clause 13.1(a), if the Recipient is in breach of this Agreement, the State may suspend the performance of its Obligations until such time as it is satisfied in its absolute discretion that the Recipient has remedied or mitigated that breach.

14. REPAYMENT AND RETENTION OF THE FUNDING

At the completion of the Pilot Project or the expiration or earlier termination of this Agreement (whichever occurs first):

(a) without limiting the operation of clause 13.1(b), if any part of the Funding that the State has paid, has not been used or committed in accordance with this Agreement, the Recipient must remit to the State that part of the Funding within 20 Business Days; and

(b) the State will retain any unpaid part of the Funding.

15. SUBCONTRACTING

If the Recipient subcontracts any of its rights under this Agreement or Obligations:

(a) the engagement by the Recipient of a subcontractor in no way relieves the Recipient from its obligation to perform the Recipient's Obligations;

(b) the Recipient must include in any subcontract provisions consistent with clauses 8, 9, 10, 21, 22, 23 and this clause 15, as if references in those clauses to the Recipient referred instead to the subcontractor.

16. WAIVER

(a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by the Party to be bound by or subject to the waiver.

(b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.

(c) Any failure to enforce any part 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 any rights under this Agreement or under any Law.

17. 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 with respect to the subject matter of this Agreement.

18. COSTS AND DUTY

Each Party agrees to bear its own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and of other related documentation.

19. ACCESS TO LAND

If the Pilot Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, the Recipient must obtain before it enters or occupies that land, and keep in place 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. A copy of this consent is to be provided to the State.

20. ASSIGNMENT

(a) This Agreement is personal to the Recipient, and the Recipient must not, nor attempt to sell, transfer, assign or mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations without the prior written consent of the State, which may be withheld in the State's absolute discretion. The State may at any time, in its absolute discretion, assign or transfer its rights and Obligations as it sees fit.

(b) For the purposes of this clause 20, 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 including any Change in Control of the Recipient.

21. INTELLECTUAL PROPERTY

21.1 Ownership of Intellectual Property Rights in New Material

All Intellectual Property Rights in all New Material are vested in the Recipient upon their creation.

21.2 Licence of Intellectual Property Rights in New Material

The Recipient grants to the State an irrevocable perpetual, non-exclusive, royalty free licence to use, adapt and re-produce any New Material solely for the Permitted Purpose (as outlined in item 4.2 of Schedule 4).

21.3 Existing Material - Licence

(a) Nothing in clause 21.1 affects the ownership of any Intellectual Property Rights in any Existing Material.

(b) The Recipient:

(i) grants, and the Recipient must ensure that any other owner of any Intellectual Property Rights (other than Moral Rights) in any Existing Material grants, to the State in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise the rights of an owner of Intellectual Property Rights in the Existing Material solely for the Permitted Purpose during the remainder of the duration of the Intellectual Property Rights in that Existing Material; and

(ii) must, if a third party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third-party owner in relation to his or her Moral Rights to enable the State to use the Existing Material solely for the Permitted Purpose without regard to the third party’s Moral Rights.

21.4 Warranty

The Recipient warrants that:

(a) the Recipient has the right to grant the licences granted under clauses 21.2 and 21.3(b)(i);

(b) no Intellectual Property Rights in any New Material or Existing Material is or will be owned by any third party unless:

(i) if the third party owns any Intellectual Property Rights (other than Moral Rights) in the New Material or Existing Material (as applicable), the Recipient has obtained a written licence from the third party owner to the same effect as the licence referred to in clauses 21.2 and 21.3(b)(i) and

(ii) if the third party owns Moral Rights in the New Material or Existing Material (as applicable), the Recipient has obtained a written consent and waiver from the third-party owner in relation to his or her Moral Rights to enable the State to use the New Material or Existing Material (as applicable) without regard to the third party's Moral Rights;

(c) any New Material will not infringe the Intellectual Property Rights of any third party; and

(d) all the Personnel:

(i) who are employed or engaged solely for the purposes of the Agreement are employed or engaged under written agreements under which all Intellectual Property Rights (other than Moral Rights) in any New Material vest in the Recipient on the creation of that New Material; and

(ii) who are not employed or engaged solely for the purposes of the Agreement are employed or engaged under written agreements under which all Intellectual Property Rights (other than Moral Rights) in any work (as defined in the *Copyright Act 1968* (Cth)), product or other material created by the Personnel vest in the Recipient on the creation of that work, product or other material.

21.5 Intellectual Property Rights Indemnity

Without limiting clause 7(b), the Recipient indemnifies and will keep indemnified the State and all its Associates from and against all Costs, Liabilities and Claims resulting from the Recipient's failure to comply with this clause 21, including any breach of warranty under clause 21.4, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights of any third party by the Recipient.

21.6 Continuing obligation

The obligations of the Recipient under this clause 21 are continuing obligations and survive the expiration or earlier termination of this Agreement.

22. CONFIDENTIAL INFORMATION

(a) Subject to this clause 22, each Party must keep the other Party's Confidential Information confidential. A Party (**Receiving Party**) that receives Confidential Information of the other Party (**Disclosing Party**) must not use or disclose to any person the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent except:

(i) as required by any Law, stock exchange or judicial body; or

(ii) where necessary for the purpose of carrying out the Pilot Project; or

(iii) as authorised in writing by the State or the Recipient (as applicable); or

(iv) when required (and only to the extent required) to the Receiving Party's professional advisers, and the Receiving Party must ensure that such professional advisers, other than a Party's legal advisers, are bound by the confidentiality obligations imposed on the Receiving Party under this clause 22; or

(v) where the Receiving Party is the State, the State discloses information to any parliamentary body or Government Agency, including disclosure in response to parliamentary questions, ministerial enquiries and enquiries conducted by or on behalf of the Auditor General.

(b) If the Receiving Party uses or discloses the Confidential Information pursuant to clause 22(a)(i) or clause 22(a)(ii), they must give written notification to the other Party as soon as practicable.

(c) Clause 9 operates in full despite anything in this clause 22.

(d) This clause 22 survives the expiration or earlier termination of this Agreement.

23. PRIVACY

23.1 Application of Privacy Laws

(a) The Recipient must, to the extent relevant to this Agreement:

(i) comply with its obligations (if any) under or arising pursuant to the Privacy Act;

(ii) comply with the Information Privacy Principles set out in the PRIS Act as if it were required to comply with those principles (regardless of whether it is otherwise bound to do so);

(iii) do all things reasonably requested by the State to facilitate the State's compliance with its obligations under the Privacy Laws; and

(iv) not do or omit to do anything that the Recipient knows (or ought to know) would cause the State to contravene any privacy-related Law by which the State is bound (including the Privacy Laws).

(b) The Recipient also agrees to comply with the following, to the extent they are stated in or relevant to this Agreement:

(i) any other Commonwealth, State or Territory legislation related to privacy;

(ii) any directions made by a Privacy Commissioner (or other Government Agency);

(iii) any reasonable policies, procedures and guidelines of the State related to privacy; and

(iv) any other reasonable direction of the State relating to privacy.

23.2 Obligations

(a) If the Recipient discloses Personal Information to the State in connection with this Agreement, the Recipient warrants (and must ensure) that:

(i) the Recipient has the right (including any required consents from, or on behalf of, the individual) to disclose that Personal Information to the State for handling by the State and its Associates for the purposes contemplated by this Agreement; and

(ii) the individual is provided with or directed to the Department's collection notice or privacy policy approved by the Department for that purpose.

(b) Without limiting the Recipient's Obligations under clause 23.1, the Recipient must, in relation to any Personal Information which it handles, has access to or otherwise deals with in connection with this Agreement:

(i) access and handle the Personal Information only for the purposes of performing the Recipient's Obligations;

(ii) not modify or disclose the Personal Information except with the State's prior written approval;

(iii) take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure;

(iv) where any breach of privacy occurs due to the Recipient's failure to comply with any obligation under this clause 23.2, do all things necessary to mitigate the consequences of that breach;

(v) ensure the Personal Information is returned to the State (or is permanently destroyed if the State so elects) when it is no longer required for the performance of the Recipient's Obligations; and

(vi) ensure that any of the Recipient's Personnel who handle the Personal Information are made aware of, and undertake in writing to observe, the Recipient's Obligations under this clause 23.

(c) The Recipient must immediately notify the State (providing full details), and provide any reasonable assistance and cooperation required by the State, if the Recipient:

(i) becomes aware of any suspected or actual misuse of, or any unauthorised access to or disclosure of, Personal Information held or used by the Recipient or the Recipient's Personnel in connection with this Agreement; or

(ii) becomes aware of any request, complaint or enquiry made by a Government Agency or any individual in relation to the Recipient's use of Personal Information in connection with this Agreement; or

(iii) becomes aware that a disclosure of Personal Information held or used by the Recipient or the Recipient's Personnel in connection with this Agreement may be required by Law; or

(iv) is approached, in connection with this Agreement, with respect to privacy by any Government Agency or individual.

23.3 Other matters

(a) Nothing in this clause 23 is intended to limit any obligation of the Recipient with respect to Personal Information under the PRIS Act or the Privacy Act.

(b) This clause 23 survives the expiration or earlier termination of this Agreement.

24. DISPUTE RESOLUTION

24.1 Dispute

(a) The Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement until the procedure in this clause 24.1 has been followed (except a Party commencing proceedings for urgent interlocutory relief or at any time there is a dispute and the other Party does not comply with this clause 24).

(b) The Parties agree that any dispute arising during the Term that has not been resolved between the Authorised Representatives of the Parties will be dealt with as follows:

(i) the Party claiming that there is a dispute will send the other Party a written notice setting out the nature of the dispute; and

(ii) the Parties will try to resolve the dispute through direct negotiation between one or more senior representatives from each Party.

(c) If there is no resolution of the dispute within 30 Business Days of the dispute being referred to the senior representatives from each Party, any Party may request the other to agree to a commercial mediation of the dispute or failing agreement in that regard, the Party may commence legal proceedings.

24.2 Continue to Perform

Despite the existence of a dispute, each Party must (unless the Parties otherwise agree in writing) continue to perform their respective Obligations.

25. GST

25.1 Definitions

In this clause:

Additional Amount, **Recipient** and **Supplier** have the meanings given in clause 25.3.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Any terms used in this clause 25 that are defined in the GST Act have the same meanings as in the GST Act.

25.2 Prices do not include GST

All prices or other amounts fixed or determined under, or referred to in, this Agreement are exclusive of GST, except where expressly provided to the contrary in this Agreement.

25.3 Recipient must pay GST

Subject to clause 25.4, if GST is or becomes payable by a Party (**Supplier**) in relation to any supply that it makes under, in connection with, or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for that supply, the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (**Additional Amount**) at the earlier of:

(a) the same time as the relevant consideration or any part of it is provided; or

(b) if the Supplier is required under the GST Act to pay GST prior to receiving the relevant consideration for the supply, within 2 Business Days of the Supplier's due date for payment of the GST liability as notified by the Supplier to the Recipient in writing.

25.4 Tax Invoice

The Obligation to pay the Additional Amount only arises once the Supplier has issued a tax invoice (and any adjustment note) to the Recipient in respect of the Additional Amount.

25.5 Reimbursements

If, under this Agreement, one Party is required to pay an amount to reimburse or compensate the other Party for any cost or liability incurred by that other Party, the amount to be reimbursed or compensated excludes any GST component of that cost or liability for which that other Party is entitled to claim an input tax credit.

26. ADMINISTRATION OF THIS AGREEMENT

The Recipient acknowledges that the Department will be administering this Agreement for and on behalf of the State.

27. VARIATION

(a) Any modification, amendment or other variation to this Agreement must be made in writing and must, unless the State in its absolute

discretion directs in writing otherwise, be duly executed by both Parties.

(b) The State's agreement to a modification, amendment or other variation that has been proposed by the Recipient is at the absolute discretion of the State.

28. RIGHTS, POWERS AND REMEDIES

28.1 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.

28.2 State's Rights

The State may do one or more of the following:

(a) at any time during the Term, upon reasonable notice to the Recipient in writing, which notice must not be less than 10 Business Days, attend at the Recipient's place of business to verify the contents of a Milestone Report; and

(b) accept or reject any invoice provided by the Recipient, having regard to any other matter or thing which the State considers relevant, including the purpose for which the Funding has been provided.

28.3 Remedies

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at Law.

29. FORCE MAJEURE

If any Party is prevented from or delayed in performing an Obligation by any event or occurrences beyond its reasonable control, such as weather or oceanic conditions or related issues indirectly or directly affected by weather or oceanic events, or an outbreak, epidemic or pandemic, and promptly acts to mitigate the event or occurrence, the obligation is suspended during the period the event or occurrence continues and any further period which is reasonable in the circumstances. However, if the event or occurrence extends for more than 6 months, then either Party can lawfully terminate this Agreement without any further Obligations accruing to any Party.

30. GOVERNING LAW

This Agreement is governed by the laws in force in the State of 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 therefrom in relation to any legal action, suit or proceeding arising out of or with respect to the Agreement.

31. EXECUTION

This Agreement may be executed in counterparts by the respective Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

32. SPECIAL CONDITIONS

The Recipient must comply with any special conditions set out in item 2.4 of Schedule 2 in accordance with their terms.

33. AUTHORISED REPRESENTATIVE

(a) A Party (the **First Party**) may nominate another person to be the Authorised Representative for that Party (the **Substitute Authorised Representative**) from time to time by notice in writing to the other Party, provided that any such Substitute Authorised Representative must have sufficient authority to perform each duty of the First Party's Authorised Representative under this Agreement.

(b) Despite clause 11(b), a notice given under clause 33(a) may be given by a senior representative of the First Party with authority of the First Party to give that notice. The other Party may rely on any notice given under this clause 33 without inquiry as to the authority of the person giving that notice.

Schedule 1. Authorised Representative

1.1 Notice Addresses

(a) State

Registered Mail:	Locked Bag 10, Joondalup WA 6919
Email:	carbongrants@dwer.wa.gov.au

(b) Recipient

Registered Mail:	
Emails:	

1.2 Authorised Representative

(a) State

Job Title:	Director General
Phone:	6364 7000
Email:	carbongrants@dwer.wa.gov.au
Postal Address:	Locked Bag 10, Joondalup WA 6919
Street Address:	Prime House, 8 Davidson Terrace, Joondalup WA 6027

(b) Recipient

Name:	
Job Title:	
Phone:	
Email:	
Postal Address:	
Street Address:	

Schedule 2. Schedule 2 – Pilot Project Details

2.1 Pilot Project Description

The purpose of the Funding is to support the undertaking of the Pilot Project as detailed in the Approved Application.

The scope of works of the Pilot Project must include but are not limited to: (As mentioned in Brief Project Description - section 3.2, of the application form)

(a) _____

(b) _____

The key Deliverables of the Pilot Project are: (As mentioned in Key Deliverables – section 4.2.10 of the application form)

i. _____

ii. _____

2.2 Amount of the Funding and Balance of Funding

(a) The maximum amount of the Funding payable under this Agreement is $ _____ excluding GST.

(b) Balance of Funding (total Pilot Project cost less the Funding) required for the Pilot Project is $_____ excluding GST.

2.3 Term

The Term of this Agreement commences on the date the Condition Precedent is satisfied and expires 25 Business Days after the date for completion of the final Milestone as specified in Schedule 3 unless it terminates earlier in accordance with its terms.

2.4 Special Conditions

(a) The Recipient must make a monetary contribution to the Pilot Project of at least 25 per cent of total Eligible Expenditure.

(b) The Recipient must declare whether the Pilot Project has or will at any time throughout the Term, leverage any Australian Government or other State Government funding.

(c) The Pilot Project must be commenced no later than the date which is 6 months following the commencement of the Term and must be completed within 36 months from the commencement of the Term.

(d) Should the Recipient, by the Pilot Project also propose to generating of Carbon Credit Units, it must provide evidence as to how it would meet the eligibility criteria of the relevant methodology determination under the CFI Act as administered by the Clean Energy Regulator.

2.5 Eligible Expenditure

(a) Examples of Eligible Expenditure include:

(i) capital costs of equipment used for carbon abatement or sequestration;

(ii) essential enabling equipment such as energy storage, feedstock storage, pumps, tanks, system control equipment, system power or energy conversion equipment, pipework, monitoring or communications equipment and structures used for housing power system equipment;

(iii) essential non-equipment expenditure including design, professional services, transport, installation and commissioning, laboratory testing, field sampling, related to the attainment of a Pilot Project objective or Milestone; and

(iv) Pilot Project management costs and Funding administration costs.

(b) Activities and elements that will not be Eligible Expenditure are (unless expressly set out in the following table as Eligible Expenditure):

(i) land acquisition;

(ii) venture capital expenditure to third parties;

(iii) purchase of carbon credits (including any Carbon Credit Units) to achieve a net emissions reduction;

(iv) legal costs such as those associated with preparing grant applications, negotiating, finalising, or managing compliance with a funding agreement (including this Agreement);

(v) statutory permit or licence costs;

(vi) costs associated with core business or business-as-usual activities;

(vii) ongoing administrative and operational costs including rent, electricity and salaries of existing staff working their usual hours and duties;

(viii) feasibility studies that seek retrospective funding for work already undertaken;

(ix) works already underway or completed at the Eligible Expenditure Start Date, including but not limited to contracts already in place to construct infrastructure or buy equipment or where construction has commenced;

(x) contracts entered into prior to the Eligible Expenditure Start Date;

(xi) ongoing maintenance of projects to which organisations have committed as part of a previous grant; and

(xii) costs of preparing applications, reports or associated supporting material for the purposes of applying for the Funding or entering this Agreement.

(c) Table to record expenditure types agreed to be eligible or ineligible.

Eligible Expenditure	**Not Eligible Expenditure**

2.6 Bank Account

Payment of the Milestone Payments will be by electronic funds transfer. The Recipient's bank details are as follows:

Name of Bank:	
BSB:	
Account Number:	
Account Name:	

2.7 Payment

(a) Payment of each Milestone Payment will be made following completion of the corresponding Milestone.

(b) No part payments of a Milestone Payment will be made for partly achieved Milestones.

(c) Subject to the Recipient complying with the remainder of clause 3, the State must make payments within 25 Business Days of receipt of a valid Payment Request from the Recipient.

(d) All the amounts set out in the table below are exclusive of GST.

Schedule 3. Milestone Table

The Recipient must perform the Deliverables set out in the table below by the relevant date for Milestone completion. The Deliverables must include a Milestone Report and necessary supporting documentation for the relevant Milestone. A Milestone is not completed until such time as the Department is satisfied with the Deliverables.

Milestone (Number and Name)	Recipient's Deliverables	Performance Measures (Evidence)	Expected total Eligible Expenditure to complete the Milestone	Milestone Payment (Percentage)	Expected Milestone Payment (in AUD)	Date for Milestone completion (Date and Month and Year)
1.		•				
2.		•				
3.		•				
4.	Knowledge	• Evidence of initiatives				
5.	Final Report	• Detailed final Pilot Project report.				
Totals						

Schedule 4. Knowledge Sharing and Permitted Purpose

4.1 Knowledge Sharing provisions

For Knowledge Sharing of the Pilot Project, the Recipient shall:

(a) share as much knowledge and know-how as possible on a reasonable basis _____

(b) contribute to an understanding of its technology and products via communication channels such as site visits, conference presentations, publications, media, and workshops to industry associations, research organisations and other relevant stakeholders.

(c) Set out any specific knowledge sharing Deliverables in the Milestone Table.

4.2 Permitted Purpose

(a) Permitted Purpose in respect of the Existing Material means for the sole purpose of the State complying with Laws, judicial orders and public accountability obligations, including disclosure to any parliamentary body or governmental agency.

(b) Permitted Purpose in respect of the New Material means:

(i) subject to clause 22 of this Agreement, for the purpose of the State promoting the Carbon Innovation Grants Program and the Pilot Project (the Recipient must act reasonably in identifying or making any claim that any New Material proposed by the State to be used to promote the Carbon Innovation Grants Program and the Pilot Project, is Confidential Information); and

(ii) for the purpose of the State complying with Laws, judicial orders and public accountability obligations, including disclosure to any parliamentary body or governmental agency.

Schedule 5. Reporting Requirements

5.1 Defined Terms

The following terms are defined for the purposes of this Schedule.

Financial Report means a report which includes the following information:

(a) statement of financial position;

(b) total approved budget;

(c) balance brought forward from previous reporting period;

(d) Funding received from the State to date;

(e) total monies committed in the current period from the Funding and other funds received (if any), including Balance of Funding;

(f) actual payments to date;

(g) initial estimated cost of the Pilot Project;

(h) amount of interest earned on the Funding and on any income generated by the Pilot Project;

(i) amount of Balance of Funding from other sources;

5.2 Forecast cost to complete the Pilot Project Milestone Report

Requirement and Timing

The Recipient must provide the Milestone Report with the relevant Payment Request under clause 3.6 of this Agreement.

Contents

The Milestone Report must include the details set out in the Milestone Report Template and, to the extent not already contained in that document:

(a) evidence that the Deliverables for a Milestone have been achieved;

(b) evidence that there has been sufficient Eligible Expenditure to justify payment of the Milestone Payment;

(c) any other information reasonably required by the State.

5.3 Annual Report

Requirement and Timing

If the Recipient must provide an Annual Report during the Term, then on or around the time that it provides the Annual Report as required by any Law or in accordance with its internal governance requirements, the Recipient must also provide the State with an electronic copy of that document.

5.4 Progress Report

Requirement and Timing

The State may request progress reports at any time during the Term but must not request progress reports at more regular intervals than every week.

Contents

The State may determine in its absolute discretion what information the Recipient is required to include in a progress report.

5.5 Final Report

Requirement and Timing

The Recipient must submit, on the date specified in the Milestone Table or within 30 Business Days of the Agreement being terminated, whichever is the earlier, a Final Report in respect of the Pilot Project and the expenditure of the Funding for the State's written approval (or otherwise).

Contents

The Final Report must include the following:

(a) an overall summary of all activities undertaken, outputs delivered, and outcomes achieved during the Term;

(b) a summary of how the outcomes achieved align with the Approved Application;

(c) description of all income, and expenditure of the Funding, the Balance of Funding and all funding required to be obtained after the date of this Agreement and set out in the Milestone Table, in relation to the Pilot Project over the Term (including a Financial Report detailing the items against which the Funding has been expended and showing any unspent balance of the Funding, signed by the Recipient's Chief Financial Officer or equivalent as being true and correct); and

(d) a Pilot Project report for the Term.

State acceptance of Final Report

The final Milestone will not be completed until the Final Report has been accepted by the State as containing the information described in this item 5.5.

Further information

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

Schedule 6. Insurance Requirements

The Recipient must hold or obtain and maintain (or procure the obtaining and maintenance of, including by any subcontractors) the following insurances covering the legal liability of the Recipient and all subcontractors engaged by the Recipient in connection with the Pilot Project during the Term:

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

(b) public liability insurance in the minimum amount of $20,000,000 per claim; and

(c) for any professional service providers that the Recipient engages in connection with the Pilot Project, professional indemnity insurance in the minimum amount of $1,000,000 per claim which insurance must be held so as to apply for a period of 7 years following the expiration or earlier termination of this Agreement or alternatively the Recipient must effect run-off cover under the insurance policy for at least 7 years after expiration or earlier termination of this Agreement.

Schedule 7. Eligible Expenditure Start Date

7.1 Eligible Expenditure Start Date

Date when Minister announces successful grant recipients for Round 3

Schedule 8. Assets

The State consents to security being granted over the following Assets for the purposes of securing debt funding for the Pilot Project:

(a) all plant and equipment comprising the Pilot Project; and

(b) all input or output products associated with the Pilot Project.

EXECUTED by the Parties as an Agreement.

Signed for and on behalf of the)
STATE OF WESTERN AUSTRALIA)
acting though the Department of)
Water and Environmental Regulation)
by the Director General)
)

on the _____ day of _____,
_____(year) in the presence of:

_____ _____
Signature of witness Signature

_____ Director General of the Department of
Name of witness (print) Water and Environmental Regulation

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **(recipient organisation name):**))))))

on the _____ day of _____,
_____(year):

_____ _____
Signature of Director Signature of Director/Secretary

_____ _____
Name of Director (print) Name of Director/Secretary (print)