After selection of High Merit projects, ARENA reserves the right to amend the Funding Agreement and Knowledge Sharing Plan to reflect the Activity proposed to be undertaken by the Recipient, including representations, undertakings, repayment events, events of default and conditions precedent.

Australian Government
Australian Renewable Energy Agency

Demand Response Funding Agreement (NSW Projects)

PROJECT DETAILS	
PART 1 - ACTIVITY OVERVIEW	
1. Activity Title	[Advancing Renewables Programme - Demand Response]
2. Contract Number	[*to be obtained from ARENA's Procurement Officer*]
3. Recipient	[***Per Returnable Schedule -*** *insert full legal name and ABN. Identify trustee or agency capacity (if any).*]
PART 2 - KEY ACTIVITY DETAILS	
4. Activity	See item 1.1 of Schedule 1
5. Outcomes	See Item 1.2 of Schedule 1
6. Reserve Enabling Assets and Reserve Enabling Expenditure	See Item 1.3 of Schedule 1
7. ARENA Funding	[***Per Returnable Schedule -*** *to be bid; 50% of total funding*], comprised of the Performance Amount and the Knowledge Sharing Amount and payable in Payment Instalments
7A. NSW Funding	[***Per Returnable Schedule -*** *to be bid; 50% of total funding*], comprised of the Performance Amount and the Knowledge Sharing Amount and payable in Payment Instalments
8. Performance Amount	[●]% of the Funding [*Note: The percentage funding allocated as "performance" will be determined by ARENA having regard to the firmness of reserve and the benefits to be gained from knowledge sharing. This may differ depending on the proposed solution.*]
9. Knowledge Sharing Amount	[●]% of the Funding [*Note: The percentage funding allocated as "knowledge sharing" will be determined by ARENA having regard to the firmness of reserve and the benefits to be gained from knowledge sharing. This may differ depending on the proposed solution.*]
10. Recipient's Personnel	[***Per Returnable Schedule -*** *insert nominated Personnel of the Recipient who will be carrying out the Activity under the Agreement, where known*]

Demand Response Funding Agreement (NSW Projects)

11. Activity participants	[***Per Returnable Schedule -*** *insert full legal name and ABN of entities participating in the Activity*]
PART 3 - OTHER CONTRACT INFORMATION	
12. Guidelines	Advancing Renewables Programme - Programme Guidelines 2017
13. Insurance requirements	1. Workers compensation in accordance with relevant State or Territory legislation 2. Public Liability insurance for a minimum amount of [$20 million] 3. Professional indemnity insurance for a minimum amount of [$10 million] 4. [***Per Returnable Schedule -*** *other insurances appropriate for nature of Activity*]
14. Acknowledgement of Support	The Recipient must acknowledge the support received from ARENA by including the following statement in any media or collateral associated with the Activity: *This Activity received funding from ARENA as part of ARENA's Advancing Renewables Programme - Demand Response and from the NSW Government*
15. Recipient Confidential Information	5 years
16. Address for Notices	**ARENA:** Program Manager, Contract Management Services **Postal and email address:** GPO Box 643, Canberra ACT 2601 arenacontracted@arena.gov.au **The Recipient:** [***Per Returnable Schedule -*** *insert name and position of person to receive notices*] **Postal and email address:** [***Per Returnable Schedule -*** *insert*]

ARENA agrees to provide the ARENA Funding, administer the provision of the NSW Funding and the Recipient agrees to complete the Activity and achieve the Outcomes, subject in each case to the terms of this Agreement.

Demand Response Funding Agreement (NSW Projects) General Conditions

1 Duration of Agreement

1.1 This Agreement begins on the date that it is signed by both parties and continues for 4 years (**End Date**), unless otherwise terminated in accordance with its terms.

2 Recipient to undertake the Activity

2.1 Unless otherwise agreed, and subject to the terms of this Agreement, the Recipient must undertake the Activity and achieve the Outcomes.

3 Knowledge sharing

3.1 The Recipient must:

(a) in consultation with ARENA, implement and comply with the Knowledge Sharing Plan; and

(b) as reasonably required by ARENA, participate in relevant meetings, conferences, seminars, workshops, surveys and interviews, deliver presentations and provide briefings to the ARENA Board and ARENA staff and other relevant industry forums on Activity progress and achievement of the Outcomes.

3.2 It is the Recipient's responsibility to ensure that any Activity documentation or information (including any reports) prepared for public release do not contain any Recipient Confidential Information.

4 Funding

4.1 Subject to this Agreement, including satisfaction of the Payment Criteria, ARENA will:

(a) provide funding to the Recipient as set out in item 2.1 of Schedule 1 (**ARENA Funding**);

(b) pay the ARENA Funding to the Recipient in accordance with item 2.2 of Schedule 1;

(c) remit each invoice addressed to NSW to NSW for payment of the NSW Funding by NSW.

4.2 ARENA's liability under or in connection with this Agreement is limited to the lesser of:

(a) the ARENA Funding; and

(b) the amount of funding paid under this Agreement by ARENA (and any amount of funding for which ARENA is liable under clause 15.2).

4.3 The Recipient must pay:

(a) all costs incurred by the Recipient in respect of this Agreement and the Activity; and

(b) subject to clause 19, all taxes, duties and government charges imposed or levied in connection with the performance of this Agreement.

4.4 ARENA may set-off any money due for payment by ARENA to the Recipient under this Agreement against any money due for payment by the Recipient to ARENA under this Agreement or any other agreement between the parties under which ARENA provides funding to the Recipient.

5 Purpose of Funding

5.1 The Recipient acknowledges that the Funding is provided to it only for the purposes of funding Eligible Expenditure, including the Response Enabling Assets and Response Enabling Expenditure incurred in connection with undertaking the Activity and purposes that are incidental to the Activity [and in accordance with the Budget].

6 Other funds

6.1 With the exception of the Funding, the Recipient is responsible for providing or securing all funds and resources necessary to complete the Activity.

7 Variation of Funding

7.1 Without limiting its other rights, ARENA may adjust the amount of the Funding:

(a) if the highest performing test or activation undertaken in the *First Test Period* or the 2 month period prior to the commencement of each Payment Period pursuant to the RERT Panel Agreement yields an outcome where the available capacity of the *reserve* is less than the initial contracted *reserve*, ARENA may, on a pro rata basis, reduce the Payment Instalment attributable to the Performance Amount for the Payment Period to which those test or activation results apply.

For example, where the *reserve* initially contracted is 10MW, but the highest performing test result or activation during the *First Test Period* yields a *reserve* of 8MW, the Payment Instalment attributable to the Performance Amount will be 80% for the first Payment Period. Within the 2 months prior to the next Payment Period, where the highest performing test result yields a *reserve* of 10MW, the Payment Instalment attributable to the Performance Amount for the next Payment Period will be 100% of the original Payment Instalment.

(b) for any period for which the Recipient notifies AEMO that the *reserve* is not available for activation under the RERT Panel Agreement, the Payment Instalment attributable to the Performance Percentage for the relevant Payment Period shall be adjusted pro rata for any period of unavailability.

8 Representations and warranties

8.1 The Recipient represents and warrants that:

(a) (**transaction permitted**): it will not be breaching any Law, Authorisation or agreement by signing and performing this Agreement;

(b) (**no misleading information**): all information provided to ARENA (including in the Application) is true, correct and complete in all material respects and is not misleading;

(c) (**conflicts of interest**): to the best of its knowledge after making diligent inquiry, and except as otherwise disclosed to ARENA, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement;

(d) (**employee entitlements**): it is not subject to any judicial decision against it relating to employee

entitlements (not including decisions under appeal) where it has not paid the claim; and

(e) (**Licensed Materials**): the Licensed Materials and ARENA's and NSW's use of the Licensed Materials will not infringe the Intellectual Property Rights or Moral Rights of any person.

8.2 The representations and warranties in clause 8.1 will, unless otherwise specified, be made on signing of the Agreement by the Recipient and be repeated on the date of each Funds Payment Request and on the date of each payment of Funding to the Recipient.

8.3 The Recipient acknowledges and agrees that ARENA has entered into this Agreement and performs this Agreement in reliance on these representations and warranties.

9 Undertakings and Acknowledgments

9.1 The Recipient must:

(a) (**RERT Panel Agreement**):

(i) (***usage charge***): enter into the RERT Panel Agreement with a *usage charge* for *short notice reserve* of not more than $[*to be bid - not more than $1000*] per MWh;

(ii) (**maintain *reserve***): operate and maintain the *reserve* to ensure it remains capable of satisfying the *contracted levels of performance* at all times (as may be adjusted under the RERT Panel Agreement) during the Term;

(iii) (**testing**): request testing under the RERT Panel Agreement as frequently as permitted by clause [6.3] of the RERT Panel Agreement where testing is required to ensure evidence of its *reserve* during the *First Test Period* and within 2 months of the commencement of each Payment Period. For the avoidance of doubt, the Recipient may, but is not required to, request testing under the RERT Panel Agreement where the *reserve* has been activated by AEMO under a *reserve contract* within the relevant period;

(iv) (**comply with RERT Panel Agreement and each *reserve contract***): comply with the RERT Panel Agreement and each *reserve contract* in all material respects;

(v) (**information**): provide ARENA with copies of all documents and notices issued to the Recipient by AEMO under the RERT Panel Agreement, including testing results, *Requests for Tender* and any notice of breach;

(vi) (**not amend or terminate**): not agree to amend or terminate the RERT Panel Agreement without ARENA's prior written consent; and

(vii) [*For aggregation solutions only*] (**changes to underlying portfolio**): ensure that any changes to the portfolio must not result in any material changes to the types of technologies delivering demand response or customer types represented in the Activity;

(b) (**standards**): undertake the Activity diligently, efficiently, safely and to a high professional standard and in accordance with this Agreement and the RERT Panel Agreement;

(c) (**Laws**): comply with:

(i) all applicable Laws; and

(ii) all relevant Australian industry standards, best practice and guidelines (including those specified in item 12 of the Project Details) or, where none apply, relevant international industry standards, best practice and guidelines;

(d) (**privacy**): use and ensure the use of Personal Information (as defined in the Privacy Act 1988 (Cth)) provided by ARENA or collected by or for the Recipient in connection with this Agreement only for the purposes of performing its obligations under this Agreement;

(e) (**FOI**): assist ARENA to comply with any request under the *Freedom of Information Act* 1982 (Cth) for access to a document created by, or in the possession of, the Recipient or any subcontractor that relates to the performance of this Agreement (and not to the entry into the Agreement), including providing assistance to object to a request where an exception applies to a document;

(f) (**Intellectual Property**):

(i) grant to, or obtain for, ARENA an irrevocable, royalty-free, fee-free, non-exclusive licence to use, reproduce, adapt, modify, communicate, broadcast, distribute, publish, disseminate and sublicence the Licensed Materials solely for the purpose of giving effect to the Knowledge Sharing Plan or to carry out its objectives under the ARENA Act;

(ii) if someone claims, or ARENA reasonably believes that someone is likely to claim, that all or part of the Licensed Materials or their use in accordance with this Agreement infringe their Intellectual Property Rights or Moral Rights, in addition to the indemnity under clause 18.1(b) and to any other rights that ARENA may have, promptly, at the Recipient's expense: (A) use its best efforts to secure the rights for ARENA to continue to use the affected Licensed Materials free of any claim or liability for infringement; or (B) replace or modify the affected Licensed Materials so that the Licensed Materials or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any other person without any degradation of the performance or quality of the affected Licensed Materials;

(g) (**crisis notification**): advise ARENA as soon as possible of any Crisis (and in accordance with any protocol notified by ARENA to the Recipient from time to time);

(h) (**subcontracting**):

(i) not enter into a subcontract with a subcontractor named as an organisation that

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has not complied with the *Workplace Gender Equality Act 2012* (Cth);

(ii) not subcontract all or substantially all of the Activity (other than subcontracts that are necessary between the Recipient and its customers where the Activity involves aggregation of demand response from multiple sources); and

(iii) ensure that contracts with any subcontractors, consultants or other persons participating in the Activity contain those provisions necessary to enable the Recipient to comply with its obligations under this Agreement;

(i) (**insurance**): in connection with the Activity, have and maintain the insurance specified in item 13 of the Project Details and (except to the extent specified in item 13 of the Project Details) ensure that its subcontractors have and maintain such insurance and, if requested by ARENA provide certificates or other sufficient evidence to satisfy ARENA that the Recipient has and maintains such insurance;

(j) (**books and records**): at its own cost, during the period of this Agreement and for a period of seven years after the End Date, ensure the keeping of adequate books and records in sufficient detail to enable:

(i) all receipts and payments related to the Activity to be identified and reported in accordance with this Agreement; and

(ii) the amounts payable by ARENA under this Agreement or NSW under the NSW Commitment Letter to be determined;

(k) (**monitoring**): meet with ARENA at the times and in the manner reasonably required by ARENA to discuss any issues in relation to this Agreement or the Activity;

(l) (**conflicts**): promptly disclose to ARENA in writing any actual or reasonably likely conflict of interest in connection with the Activity or this Agreement and take such steps as reasonably required by ARENA to deal with the conflict; and

(m) (**acquittal statement**) within 90 days of the End Date (or earlier termination of this Agreement), provide ARENA with an acquittal statement setting out the Funding paid by ARENA under this Agreement and by NSW under the NSW Commitment Letter and the total Eligible Expenditure incurred by the Recipient in undertaking the Activity signed by an officeholder of the Recipient.

9.2 The parties acknowledge and agree that:

(a) this Agreement does not affect ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material; and

(b) all Intellectual Property Rights in the items referred to in paragraph (iii) of the definition of Licensed Materials vest in the Recipient upon creation;

(c) all information provided by the Recipient under or in connection with this Agreement will be provided by ARENA to NSW.

10 Evaluation

10.1 Without limiting its other rights, ARENA may at any time undertake, or engage a third party to undertake, a review or evaluation of the Activity. The Recipient must provide all reasonable assistance to ARENA (and any third party appointed by ARENA) for such review or evaluation.

11 Audits and access

11.1 ARENA or its nominee may:

(a) conduct audits relevant to the performance of the Recipient's obligations under this Agreement and in respect of the Activity; and

(b) upon giving the Recipient reasonable notice, access the Recipient's premises, require the provision of records and information and inspect and copy any documentation or record reasonably necessary for that purpose.

11.2 The Recipient must provide all reasonable assistance to ARENA and its representative (if any) for such audit or access. ARENA will use reasonable endeavours to minimise any disruption to the Activities caused by any audit or access and will comply with the Recipient's reasonable workplace policies.

11.3 The rights of ARENA under this clause 11 apply equally to:

(a) the Auditor-General or an Information Officer, for the purpose of performing the Auditor-General's or Information Officer's statutory functions or powers; and

(b) any nominee engaged for the purpose of clause 10.

11.4 Nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or an Information Officer.

11.5 The rights of ARENA under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or an Information Officer.

12 Acknowledgement and publicity

12.1 The Recipient must (and must ensure that any Activity participants must) in all publications, promotional and advertising materials, public announcements, events and activities in relation to the Activity, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support received from ARENA and NSW, as specified in item 14 of the Project Details or otherwise approved by ARENA prior to their use.

12.2 ARENA and NSW reserve the right to publicise and report on the awarding of the Funding, and may include: the name of the Recipient, Recipient's shareholders and Activity Participants, the amount of the Funding and a brief description of the Activity.

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13 Confidentiality

13.1 Subject to clause 3, ARENA must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to another person.

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

(a) in accordance with the Knowledge Sharing Plan;

(b) to ARENA's Personnel or advisers;

(c) to a House or a Committee of the Parliament of the Commonwealth of Australia, the Auditor-General, the Information Officer or any of the Commonwealth or State or Territory Ombudsmen;

(d) to ARENA's responsible Minister or Portfolio Department;

(e) to a State or Territory government, where this serves ARENA's, the Commonwealth's, the State's or the Territory's legitimate interests;

(f) to the Auditor-General Ombudsman Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner;

(g) to AEMO for the purpose of any joint project between ARENA and AEMO, in which case the Recipient hereby grants its consent to any relevant disclosures; or

(h) where required by Law.

13.3 Where ARENA provides Material to the Recipient on a confidential basis, the Recipient must ensure that such Material is kept confidential and is not disclosed without ARENA's consent.

14 Force Majeure

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

(a) are beyond its reasonable control (other than, in respect of the Recipient only, lack of funds for any reason or any strike, lockout or labour dispute which is not national or State-wide in scope); and

(b) could not have been prevented or overcome by the Affected Party (or, where the Affected Party is the Recipient, the Recipient and its subcontractors) exercising a standard of care and diligence consistent with that of a prudent and competent person operating within the relevant industry,

(**Force Majeure Event**).

14.2 When the circumstances described in clause 14.1 arise, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. The Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement.

15 Termination

15.1 Without limiting any other rights or remedies ARENA may have arising out of or in connection with this Agreement, ARENA may, by notice and in its absolute discretion, immediately terminate this Agreement if:

(a) there has been a change in Commonwealth government policy with respect to ARENA or funding provided by ARENA that relates to ARENA's obligations under this Agreement;

(b) the Recipient commits a breach of this Agreement (other than an Insolvency Event) and the breach has not been remedied or its effects overcome within 20 Business Days of notice from ARENA;

(c) an Insolvency Event occurs in relation to the Recipient;

(d) the RERT Panel Agreement is terminated for any reason, expires, is repudiated, is void or is not binding or enforceable;

(e) the Recipient triggers a repayment obligation under clause 16.1(d) or 16.1(e) more than twice in the Funding Period;

(f) the Recipient changes the *reserve* such that it is provided in a manner that is inconsistent with the product scope and specifications set out in the Funding Announcement;

(g) a Force Majeure Event continues or the effects of a Force Majeure Event continue and cannot be overcome for more than 6 consecutive months or 12 months in aggregate during the Term.

15.2 If this Agreement is terminated under clause 15.1(a), ARENA is liable to the Recipient only for payments due under clause 4.1 in accordance with this Agreement paid or payable before the effective date of termination.

15.3 Without limiting any of ARENA's other rights or remedies, on termination of this Agreement:

(a) subject to clause 15.2, ARENA is not obliged to pay to the Recipient any outstanding amount of funding under this Agreement; and

(b) ARENA is entitled to exercise any right to recover from the Recipient, including pursuant to repayment rights under clause 16.

15.4 Termination of this Agreement does not affect any accrued rights or remedies of a party.

16 Repayment of Funding

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

(a) (**misspent Funding**): the amount of any Funding which, in ARENA's opinion (acting reasonably) and at any time, has been spent or used other than in accordance with this Agreement;

(b) (**unspent Funding**): the amount of any Funding which has not been spent on Eligible Expenditure in accordance with this Agreement at the End Date (or earlier termination of this Agreement);

(c) (**abandoned Activity**): an amount equal to all Funding paid to the Recipient if the Recipient Abandons the Activity (whether or not ARENA has

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terminated the Agreement in accordance with clause 15.1(b)) and does not resume performance within 10 Business Days after receiving notice requiring it to do so;

(d) (**Alternative use of *reserve***): if the Recipient responds to a *Request for Tender* but does not activate the *reserve* pursuant to the relevant *reserve contract*, an amount equal to $[1000]/MWh of *reserve* shortfall to the amount of *reserve* required to be activated under the relevant *reserve contract*, capped at the Payment Instalment (as may be adjusted pursuant to this Agreement) attributable to the Performance Amount for the relevant Payment Period;

(e) (**double recovery**) unless otherwise agreed by ARENA in writing, an amount equal to any payments received by the Recipient from a third party on account of making available the same *reserve* for demand response as that specified in a *reserve contract*, other than payments from AEMO under a *reserve contract.* For the avoidance of doubt, this does not prevent the Recipient from contracting with third parties for demand response activities provided it is not paid for the same *reserve* actually activated more than once;

(f) (**Insolvency Event**): an amount equal to all Funding paid to the Recipient if an Insolvency Event occurs in respect of the Recipient (whether or not ARENA has terminated the Agreement in accordance with clause 15.1(c)).

16.2 ARENA may give the Recipient a repayment notice requiring the Recipient to repay to ARENA an amount which ARENA is entitled to recover under clause 16.1. The Recipient must, within 20 Business Days of the date of the repayment notice, repay the amount (including interest calculated as set out in clause 16.4) specified in the repayment notice.

16.3 ARENA can elect to require repayment of a lesser amount of Funding than otherwise required under clause 16.1. ARENA can exercise this right in its absolute discretion and is not required to exercise this discretion for the Recipient's benefit.

16.4 The Recipient must pay interest to ARENA in connection with any amount notified as owing to ARENA under clause 16.1. The rate of interest will be calculated:

(a) on the amount to be repaid to ARENA as set out in ARENA's repayment notice;

(b) at the Interest Rate;

(c) on a semi-annually compounding basis upon the principal amount specified in the notice as repayable to ARENA; and

(d) from and including the date the amount is payable under clause 16.2 up to but excluding the day on which the Recipient repays the total amount specified in the notice as owing to ARENA, without any set off, counter-claim, condition, abatement, deduction or withholding.

16.5 This clause 16 does not limit any other right or remedy of ARENA.

16.6 The Recipient acknowledges that the amounts to be paid by it to ARENA under this clause 16 are a genuine pre-estimate of the losses incurred by ARENA for the defaults described in this clause 16.

16.7 ARENA and the Recipient agree that the amount of any repayments payable to ARENA by the Recipient under this clause 16 shall not exceed the amount of Funding paid to the Recipient.

16.8 ARENA agrees that it shall not receive repayment under both clause 16.1(d) and 16.1(e) with respect to the same event.

16.9 The Recipient acknowledges all claims under this clause will be made by ARENA and that 50% of all amounts payable by it under this clause will be payable to NSW in repayment of NSW Funding.

17 Dispute resolution

17.1 Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination (**Dispute**) must be resolved in accordance with this clause 17.

17.2 Any party claiming a Dispute has arisen must give the other parties to the Dispute a notice setting out details of the dispute (**Notice of Dispute**).

17.3 Within 10 Business Days after a Notice of Dispute is received (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use all reasonable endeavours through a meeting of Senior Management (or their nominees) to resolve the Dispute.

17.4 If the Dispute is not resolved within 10 Business Days under clause 17.3, the Dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules.

17.5 The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one, unless the parties to the Dispute agree in writing that the Dispute shall be decided by three arbitrators.

17.6 For the avoidance of doubt, each party retains the right to apply to any court of competent jurisdiction for interim measures, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

18 Liability and Indemnity

18.1 The Recipient will at all times indemnify ARENA, NSW and their Personnel (referred to in this clause 18 as "those indemnified") from and against any loss, damage, cost, expense or liability (including legal costs on a solicitor and own client basis), arising out of or as a consequence of:

(a) the carrying out of works, provision of services or supply of goods in connection with the Activity;

(b) the Licensed Materials (including the use of the Licensed Materials by ARENA, NSW or its Personnel) infringing or allegedly infringing the Intellectual Property Rights or Moral Rights of any person;

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(c) any breach of this Agreement by the Recipient; or

(d) negligence or wrongful or unlawful act or omission on the part of the Recipient, its Personnel or subcontractors.

18.2 The Recipient's liability to indemnify those indemnified will be reduced proportionally to the extent that any breach of this Agreement by those indemnified, or any negligent act or omission of those indemnified, contributed to the loss.

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

18.4 ARENA has no liability to the Recipient for:

(a) any failure by NSW to make payments to the Recipient of the NSW Funding; or

(b) for any other act or omission of NSW under the NSW Commitment Letter or otherwise.

19 GST

19.1 In this clause 19,

(a) unless otherwise stated, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Act; and

(b) a reference to a party or an entity includes the representative member of any GST group of which the relevant party or entity is a member.

19.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided to ARENA or NSW under this Agreement are exclusive of GST.

19.3 Subject to this clause 19, if ARENA or NSW makes a taxable supply to another party (**GST Recipient**) under or in connection with this Agreement in respect of which GST is payable, the GST Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount is payable at the same time that any part of the consideration for the supply is first paid or provided. ARENA or NSW must provide a tax invoice to the GST Recipient in accordance with the GST Act.

19.4 If an adjustment event arises in respect of a taxable supply made by ARENA or NSW under this Agreement, the amount payable by the GST Recipient will be recalculated to reflect the adjustment event and a payment will be made by the GST Recipient as the case requires. ARENA or NSW must provide an adjustment note to the GST Recipient in accordance with the GST Act.

19.5 If the GST payable in relation to a supply is less than the amount the GST Recipient has paid ARENA or NSW under clause 19.3, the Supplier is only obligated to pay a refund of GST to the GST Recipient to the extent the Supplier receives a refund of that GST from the Commissioner.

19.6 If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which that loss, cost or expense relates.

19.7 This clause 19 will survive the termination of this Agreement by any party.

20 Notices and other communications

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

(a) in writing, in English and signed by a person duly authorised by the sender; and

(b) hand delivered or sent by prepaid post or email to the recipient's address specified in item 16 of the Project Details (or as updated by written notice from time to time).

20.2 Any notice, approval, consent or other communication under clause 20.1 takes effect when it is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);

(c) if sent by email, upon receipt of a message confirming that the email has been delivered, or if the sender's email system is unable to generate a message confirming delivery, when the email comes to the attention of the Recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

21 Variations

21.1 Except as expressly contemplated by this agreement including clause 21.2, no agreement or understanding varying the terms of this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

21.2 ARENA may, by written notice and in its discretion, direct or agree a Minor Variation by notice to the Recipient. A Minor Variation does not need to be agreed in writing and signed by both parties.

22 Miscellaneous

22.1 Clauses 9.1(m), 11, 12, 13, 16, 17, 18, 19, 20 and 22 survive the expiry or termination of this Agreement, together with any provision of this Agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this Agreement.

22.2 The Recipient must not, without the prior written consent of ARENA, use the Funding, this Agreement or any assets created or acquired in the course of the Activity as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation.

22.3 Except where this Agreement expressly states otherwise, ARENA must act reasonably when considering approvals or consents, in exercising any discretion or forming any

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opinion, or in taking any action under this Agreement and may also, if acting reasonably, give conditionally or unconditionally, or withhold any approval or consent, under this Agreement.

22.4 The Recipient may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of ARENA.

22.5 ARENA may assign its rights or novate its rights and obligations under this Agreement if it is to an Authority or an entity where the ultimate legal or beneficial interest is held by an Authority.

22.6 The Recipient agrees that it is fully responsible for undertaking the Activity even if it subcontracts any aspect of the Activity and for the performance of all of the Recipient's obligations under this Agreement.

22.7 Each party must pay its own costs of negotiating, preparing and executing this Agreement.

22.8 This Agreement may be executed in counterparts. All executed counterparts constitute one document.

22.9 This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

22.10 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

22.11 A term, or part of a term, of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms, or parts of the terms, of this Agreement continue in force.

22.12 Waiver of any provision of or right under this Agreement must be in writing and signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.

22.13 This Agreement does not create a relationship of employment, agency or partnership between the parties. The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

22.14 This Agreement is governed by the law of the Australian Capital Territory.

22.15 As between NSW on the one hand and the Recipient on the other hand, NSW has the benefit of this Agreement (subject to its terms).

23 Definitions

23.1 Except where the contrary intention is expressed, capitalised:

(a) **Abandon** means:

(i) the Recipient ceases to undertake the Activity for a period of 12 months, except where it is relieved of doing so under this Agreement; or

(ii) the Recipient disposes of any *Reserve Enabling Assets* where those *Reserve Enabling Assets* are required for the provision of the *reserve* and those assets are not replaced within 30 days;

(b) **Activity** means the Activity described in item 1.1 of Schedule 1;

(c) **Activity Participants** means the entities specified in 11 of the Project Details;

(d) **AEMO** means the Australian Energy Market Operator Limited (ABN 94 072 010 327) of Level 22, 530 Collins Street, Melbourne, Victoria 3000;

(e) **Agreement** means this agreement between ARENA and the Recipient, as varied from time to time in accordance with its terms, and includes the Schedules and any attachments;

(f) **Application** means the application submitted by, for or on behalf of the Recipient for funding under the Advancing Renewables Program in relation to the Activity;

(g) **ARENA** means the Australian Renewable Energy Agency (ABN 35 931 927 899) of 2 Phillip Law St, New Acton, Canberra ACT 2601 in its own right and for and on behalf of NSW insofar as it is administering the NSW Funding (as contemplated by this Agreement, the NSW Commitment Letter and any agreement between ARENA and NSW);

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

(i) **ARENA Funding** means the amount specified in item 2.1 of Schedule 1, as varied in accordance with this Agreement;

(j) **Authorisation** means any authorisation, approval, licence, permit, consent, determination, certificate, notice, requirement or permission from any Authority which must be obtained or satisfied (as the case may be) to undertake the Activity;

(k) **Authority** means any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any other person having jurisdiction in connection with work required for the Activity;

(l) **Budget** means the budget submitted by the Recipient with its Application;

(m) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the notice is received;

(n) **Commissioning Instalment** means an amount equal to 25% of the Funding;

(o) **Commonwealth** means the Commonwealth of Australia;

(p) **Consequential Loss** means loss of profits, anticipated loss of profit or revenue, loss of production, loss of business opportunity, loss of or

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damage to goodwill or reputation, loss of use or any other similar loss, but excludes:

(i) loss recoverable under a policy of insurance to the extent of the amount recovered or that should have been recovered but for a breach of the policy or a failure to maintain insurances required under this Agreement;

(ii) loss arising from death or personal injury;

(iii) loss arising from criminal acts, fraudulent conduct or wilful misconduct committed by the Recipient or its Personnel;

(iv) loss arising from an infringement of any Intellectual Property Right or Moral Rights by the Recipient or its Personnel;

(v) loss arising from breach of clauses 9.1(d) or 13 by the Recipient or its Personnel;

(vi) loss arising from liability which by Law, the parties cannot contract out of; and

(vii) any amounts expressly payable by the Recipient to ARENA under this Agreement;

(q) **Crisis** means any time of intense difficulty or danger in relation to the Activity;

(r) **End Date** has the meaning given in clause 1.1;

(s) **Funding** means the ARENA Funding and NSW Funding;

(t) **Funding Announcement** means the Demand Response Competitive Round Funding Announcement published by ARENA on [8 June 2017] as amended from time to time prior to the date of this Agreement;

(u) **Funding Period** means the period from 1 December 2017 until 30 November 2020;

(v) **Funds Payment Request** means a funds payment request in the form set out in Schedule 2;

(w) **General Conditions** means clauses 1 to 24 of this Agreement;

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

(y) **Information Officer** means the Information Commissioner, the Freedom of Information Commissioner and the Privacy Commissioner appointed in accordance with section 14 of the Australian Information Commissioner Act 2010 (Cth), or a delegate of that person;

(z) **Insolvency Event** means the occurrence of any liquidation or insolvency event, including the appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;

(aa) **Intellectual Property Rights** means all intellectual property rights, including:

(i) copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;

(ii) any application or right to apply for registration of any of the rights referred to in paragraph (a); and

(iii) all rights of a similar nature to any of the rights in paragraphs (i) and (ii) which may subsist in Australia or elsewhere,

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

(bb) **Interest Rate** means the ten year Treasury Bond Rate as published in the Australian Financial Review on the date of this Agreement;

(cc) **Knowledge Sharing Amount** has the meaning given in item 9 of the Project Details;

(dd) **Knowledge Sharing Plan** means the knowledge sharing plan in item 4 of Schedule 1 (including relevant activities and deliverables), as varied by agreement in writing between the parties from time to time;

(ee) **Law** means any applicable statute, regulation, by-law, ordinance, subordinate legislation or rule in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, regulatory body, recognised stock exchange, or a local government, and includes the common law and rules of equity as applicable from time to time;

(ff) **Licensed Materials** means:

(i) Pre-existing Material included, embodied in or attached to Material referred to in paragraph (iii) below;

(ii) Third Party Material; and

(iii) any Material created by, for or on behalf of the Recipient on or following the date of this Agreement, for the purpose of or as a result of performing its obligations under this Agreement, including modifications required under clause 9.1(f);

(gg) **Material** includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights;

(hh) **Minor Variation** means:

(i) an extension of time for any deliverable from the Recipient under this Agreement (including the Knowledge Sharing Plan); or

(ii) a variation that does not or is not likely to significantly adversely affect the Activity or

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Outcomes (including without limitation, the Knowledge Sharing Plan) or the cost of the Recipient in undertaking the Activity.

(ii) **Moral Rights** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act* 1968 (Cth);

(jj) **NSW** means the State of New South Wales as represented by the Department of Planning and Environment;;

(kk) **NSW Commitment Letter** means the letter between NSW and the Recipient setting out the NSW Funding to be paid by NSW to the Recipient in accordance with the terms of this Agreement;

(ll) **NSW Funding** means the amount specified in item 2.1 of Schedule 1, as varied in accordance with this Agreement;

(mm) **Outcomes** means the outcomes for the Activity, as set out in item 1.2 of Schedule 1;

(nn) **Payment Criteria** means the payment criteria specified in item 2.2(a)of Schedule 1;

(oo) **Payment Instalment** means the Upfront Instalment, Commissioning Instalment and each subsequent payment of Funding, as adjusted in accordance with this Agreement, comprised of the Performance Amount and the Knowledge Sharing Amount;

(pp) **Payment Period** means each period of 6 calendar months ending on 31 May and 30 November, commencing from 1 December 2017 and ending on 30 November 2020;

(qq) **Performance Amount** has the meaning given to it in item 8 of the Project Details;

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

(i) in the case of the Recipient, also of any subcontractor;

(ii) in the case of ARENA, including staff made available under section 62 of the ARENA Act; and

(iii) in the case of NSW, including officer, employee, volunteer, agent, contractor or sub-contractor of NSW or any agency, department, instrumentality, authority, ombudsman or other statutory body.

(ss) **Pre-existing Material** means Material owned by a party before execution of this Agreement;

(tt) **Project Details** means the Project Details at the beginning of this Agreement;

(uu) **Recipient** means the party specified in item 3 of the Project Details;

(vv) **Recipient Confidential Information** means confidential information of the Recipient identified as Recipient Confidential Information in the Knowledge Sharing Plan for the period specified in the Knowledge Sharing Plan or, if no period is specified, then the period specified in item 15 of the Project Details. It does not include information that is or becomes public knowledge (save where it is or becomes public knowledge because of a breach of this Agreement or a confidentiality obligation);

(ww) **RERT Panel Agreement** means the agreement of that name to be entered into by the Recipient and AEMO on or about the date of this Agreement;

(xx) **Schedules** means the schedules to this Agreement;

(yy) **Senior Management** means the Chief Executive Officer in the case of the Recipient and the Chief Financial Officer in the case of ARENA;

(zz) **Third Party Material** means Material owned by another person that is:

(i) included, embodied in or attached to the Licensed Material; or

(ii) used in undertaking the Activity; and

(aaa) **Upfront Instalment** means an amount equal to 5% of the Funding.

24 Interpretation

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

(a) italicised terms have the meaning given to them in the RERT Panel Agreement;

(b) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(c) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;

(d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and

(f) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

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

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(a) General Conditions;

(b) Schedule 1;

(c) Project Details;

(d) other Schedules;

(e) any attachments to the Schedules; and

(f) documents incorporated by reference in this Agreement.

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Schedule 1 - The Activity

1. Activity

1.1 Activity

To:

(a) procure, install and maintain the Reserve Enabling Assets

(b) incur the Reserve Enabling Expenditure

(c) respond to each *Request for Tender* for *short notice reserve* as a *Reserve Provider* on the *Panel* and, where its response is accepted by AEMO, comply with each *reserve contract*, in accordance with the RERT Panel Agreement

(d) participate in knowledge sharing required by the Knowledge Sharing Plan.

1.2 Outcomes

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

(a) Delivery of Knowledge Sharing in accordance with Knowledge Sharing Plan.

(b) Contribution to the following objectives:

(i) Demonstrate that demand response is an effective source of reserve capacity for maintaining reliability of the electricity grid during contingency events and that demand response resources can be rapidly developed for deployment from 1 December 2017.

(ii) Provide an evidence base to inform the merits and design of a new market, or other mechanism, for demand response to assist with grid reliability and security, allowing for greater uptake of renewable energy.

(iii) Improve the commercial and technical readiness of demand response providers and technologies, in particular to help demonstrate and commercialise the use of demand response for grid security and reliability.

(c) [*Include other specific outcomes from the Activity*]

1.3 Reserve Enabling Assets and Reserve Enabling Expenditure

(a) Reserve Enabling Assets mean:

(i) [*Describe technology, plant, equipment required to deliver the reserve described in the RERT Panel Agreement*]

(ii) [●]

(b) Reserve Enabling Expenditure means:

(i) [*Describe the costs and expenditure set out in the Budget provided with the Application. This may include all costs associated with the establishment and maintenance of the Reserve Enabling Assets, including in the case of aggregators, customer acquisition costs*]

(ii) [●]

2. Funding

2.1 Funding

Subject to this Agreement, the total amount of funding provided by ARENA under this Agreement will not exceed $[*to be bid - 50%*] (excluding GST) (**ARENA Funding**).

Subject to this Agreement and the NSW Commitment Letter, the total amount of funding provided by NSW under the NSW Commitment Letter and administered by ARENA under this agreement will not exceed $[*to be bid - 50%*] (excluding GST) (**NSW Funding**).

The Funding will be paid in the instalments set out in paragraph 2.2, subject to satisfaction of the conditions in paragraph 2.2 and adjustment pursuant to clause 7 of the Agreement.

2.2 Payment of Funding

(a) Payment Criteria

The Recipient must satisfy the following payment criteria as a condition precedent to payment of the Payment Instalment:

Payment Criteria	Date for Funds Payment Request	Amount (GST exclusive)
(a) For the Upfront Instalment: (i) ARENA and the Recipient have duly executed the Funding Agreement (ii) AEMO and the Recipient have duly executed the RERT Panel Agreement (iii) NSW and the Recipient have duly executed the NSW Commitment Letter (iv) the Recipient has provided a Funds Payment Request and each Tax Invoice for the relevant Payment Instalment	Within 5 Business Days of the satisfaction of the relevant Payment Criteria.	$[*To be bid*] [*5% of Funding*]
(b) For the Commissioning Instalment: (i) evidence that testing within the *First Test Period* for the *reserve* under the RERT Panel Agreement has been accepted by AEMO or evidence that the *reserve* has been activated within the *First Test Period* and the Recipient has complied with the *reserve contract* for that activation (ii) evidence that the *conditions precedent* to the RERT Panel Agreement have been fulfilled by the Recipient and accepted by AEMO (iii) the Recipient has provided a Funds Payment Request and each Tax Invoice for the relevant Payment Instalment	Within 5 Business Days of the satisfaction of the relevant Payment Criteria.	$[*To be bid*] [*25% of Funding*]
(c) For each subsequent Payment Instalment, attributable to the Performance Amount: (i) evidence that the Recipient has responded to each *Request for Tender* issued by AEMO for *short notice*	Within 10 Business Days of the end of each Payment Period.	$[*to be bid*] (as may be adjusted pursuant to clause 7)[*6 equal instalments of balance of Funding x Performance Amount %*]

Payment Criteria	Date for Funds Payment Request	Amount (GST exclusive)
reserve in the preceding Payment Period. Where AEMO does not issue any *Request for Tender* in the relevant period, this condition will be deemed satisfied. (ii) evidence of test results or activation performance under the RERT Panel Agreement (iii) confirmation that the types of technologies represented and customer types in delivering the *reserve* and undertaking the Activity has not changed in that Payment Period (iv) the Recipient has provided a Funds Payment Request and each Tax Invoice for the relevant Payment Instalment		
(d) For each subsequent Payment Instalment: (i) the Recipient has delivered all Knowledge Sharing Deliverables and undertaken any Knowledge Sharing Activities in the preceding Payment Period as defined in and in accordance with the Knowledge Sharing Plan (ii) the Recipient has provided a Funds Payment Request and each Tax Invoice for the relevant Payment Instalment (*This may be aggregated with the Funds Payment Request and Tax Invoice submitted by the Recipient for payment under paragraph (c)*)	Within 10 Business Days of the end of each Payment Period.	$[*to be bid*][*6 equal instalments of balance of Funding x Knowledge Sharing Amount %*]
TOTAL		**$[*To be bid*]**

3. Payment

3.1 Time for Payment

Subject to this Agreement, if the Recipient has met the Payment Criteria for a payment the subject of a Funds Payment Request, ARENA must make payment within 30 Business Days after receiving a correctly rendered invoice addressed to ARENA into the account nominated by the Recipient.

3.2 Invoicing requirements

The Recipient is required to submit two invoices with each Funds Payment Request - one invoice addressed to ARENA for 50% of the relevant Payment Instalment and one invoice addressed to NSW for 50% of the relevant Payment Instalment.

Each invoice must, to be correctly rendered:

(a) be accompanied by a Funds Payment Request; and

(b) meet the requirements of a tax invoice as set out in the GST Law;

(c) be in a form approved by ARENA; and

(d) set out:

  (i) the agreement number and Activity title; and

  (ii) the amount of funding to be paid by ARENA or NSW (as the case may be).

All invoices must be submitted to:

Contract Management Services - Project Delivery
Australian Renewable Energy Agency
GPO Box 643, Canberra ACT 2601
Email: arenacontracted@arena.gov.au

4. Knowledge Sharing Plan [*Refer to separate template*]

Schedule 2 - Form of Funds Payment Request

Funds Payment Request

To: Australian Renewable Energy Agency (ABN 35 931 927 899) (**ARENA**)

Attention: [*insert*]

[*insert date*]

Funds Payment Request – Australian Renewable Energy Agency Funding Agreement number [*insert*] dated [*insert*] between [*insert name of Recipient*] (**Recipient**) and ARENA (**Funding Agreement**)

This is a Funds Payment Request for the purposes of the Funding Agreement.

Terms used but not defined in this Funds Payment Request have the meaning given to them in the Funding Agreement.

1. Submission of invoice

(a) The Recipient submits the **attached** invoices for payment in accordance with the Funding Agreement.

(b) The invoices are for the aggregate amount of A$[*insert*] (excluding GST) and is for the [Upfront Instalment / Commissioning Instalment / Payment Instalment for the Payment Period ended [*insert month and year*]].

(c) The Payment Instalment shall be deposited into the following nominated account:

(i) [*insert*]

2. Other matters

(a) The representations set out in clause 8 of the Funding Agreement are true and correct in all material respects as at the date of this Funds Payment Request [other than: [*insert*]].

(b) No breach of the Agreement is continuing or would result from the payment.

(c) The Recipient confirms that all Payment Criteria for the relevant Payment Instalment have been satisfied and that the Funding is for reimbursement of or for payment of Eligible Expenditure.

_____

[*insert name of signatory*], being an authorised officer of [*insert name of Recipient*] for the purposes of the ARENA Funding Agreement

Executed as an agreement.

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

_____	←	_____	←
Signature of witness		Signature of delegate	
_____		_____	
Name of witness (print)		Name of delegate (print)	
_____		_____	
Date		Position of delegate (print)	

Signed for and on behalf of **[insert]** in accordance with section 127 of the *Corporations Act 2001* by two directors

[*Note: Recipient to confirm execution formalities*]

_____	←	_____	←
Signature of director		Signature of director	
_____		_____	
Name of director (print)		Name of director (print)	
_____		_____	
Date			