

Commercialisation of R&D Funding Initiative Pilot Funding Agreement

ARENA agrees to provide the ARENA Funding, and the Recipient agrees to complete the Activity and achieve the Outcomes, in accordance with the terms of this Agreement.

ACTIVITY DETAILS

PART 1 – ACTIVITY OVERVIEW

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| 1. Activity Title | [Commercialisation of R&D – Project title] |
| 2. Contract Number | [To be obtained from ARENA’s GMS] |
| 3. Guidelines | Commercialisation of R&D Funding Initiative Pilot Guidelines – August 2019 |
| 4. Recipient | [insert full legal name and ABN] |

PART 2 – KEY ACTIVITY DETAILS

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| 5. Activity | See item 1.1 of Schedule 1 |
| 6. Outcomes | See item 1.2 of Schedule 1 |
| 7. Total Budget | [insert total Budget for the Activity, including Recipient Contributions and Other Contributions (including cash and in-kind)] |
| 8. ARENA Funding | [insert dollar amount (excl. GST) and % of total Budget] |
| 9. Recipient Contributions | [insert dollar amount (excl. GST) and % of total Budget (including both cash and in-kind contributions)] |
| 10. Other Contributions | [insert dollar amount (excl. GST) and % of total Budget (including both cash and in-kind contributions)] |
| 11. Payment type | [specify whether Instalment payments or Milestone payments are applicable] |
| 12. Changes to Budget (Clause 11) | Up to a 10% increase or decrease in the value of a line item of expenditure or quantum of the Budget |
| 13. Limit on unspent ARENA Funding (Clause 21) | 10% of ARENA Funding |
| 14. Activity Completion Date | [insert date by which the Activity must be completed] |
| 15. Specified Personnel | [insert nominated Personnel of the Recipient who will be carrying out the Activity and involved in knowledge sharing] Activity Personnel: [insert] Knowledge Sharing Personnel: [insert] |

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| 16. Approved Subcontractors (Clause 14.1(k)(ii)) | [insert name(s) of approved subcontractors] |
| 17. Activity Participants (Clause 17) | <i>[insert full legal name and ABN of entities participating in the Activity, such as academic or industry bodies. There is no need to list the Recipient's subcontractors as this will be specified under item 16. Under clause 17, Activity Participants must give an acknowledgement of ARENA's support and their involvement can be disclosed by ARENA]</i> |
| PART 3 - OTHER CONTRACT INFORMATION | |
| 18. Insurance requirements (Clause 14.1(l)) | <ol style="list-style-type: none"> 1. Workers compensation in accordance with relevant State or Territory legislation 2. Public liability insurance for a minimum amount of \$10,000,000 per occurrence 3. Professional indemnity insurance or errors and omissions insurance for a minimum amount of \$5,000,000 per occurrence 4. <i>[other insurances appropriate for nature of Activity (if applicable)]</i> |
| 19. Acknowledgement of Support (Clause 17.1) | <p>Acknowledgement</p> <p>The Recipient must acknowledge the support received from ARENA by including the following statement in any media or collateral associated with the Activity:</p> <p style="text-align: center;"><i>This Activity received funding from ARENA as part of ARENA's Commercialisation of R&D Funding Initiative Pilot</i></p> |
| 20. Disclaimer (Clause 17.4) | <p>The Recipient must include the following statement on any published material in relation to the Activity:</p> <p style="text-align: center;"><i>The views expressed herein are not necessarily the views of the Australian Government, and the Australian Government does not accept responsibility for any information or advice contained herein</i></p> |
| 21. Recipient Confidential Information (Clause 18) | <i>[Specify information of the Recipient which is confidential and the duration of confidentiality (if known) - under the Agreement, this information can only be disclosed by ARENA in accordance with clause 18.2 (which includes as specified or contemplated in the Knowledge Sharing Plan (KSP)].</i> |
| 22. Address for invoices (clause 5.5(a)) | <p>Project Manager Australian Renewable Energy Agency GPO Box 643, Canberra ACT 2601 Email: arenacontracted@arena.gov.au</p> |
| 23. Address for Notices | <p>ARENA: Client Manager, Projects Delivery and email address: Level 8, 2 Phillip Law Street Canberra ACT 2601</p> |

Commercialisation of R&D Funding Initiative Pilot Funding Agreement

arenacontracted@arena.gov.au

The Recipient:

[insert name and position of person to receive notices]

Delivery and email address:

[insert]

Standard Funding Agreement General Conditions

1 Duration of Agreement

1.1 This Agreement begins on the Commencement Date and continues until the End Date.

2 Recipient to undertake the Activity

2.1 Subject to the terms of this Agreement, the Recipient must:

- (a) undertake the Activity and achieve the Outcomes;
- (b) progress the Activity in a timely and expeditious manner (without limiting its other obligations under this clause 2.1);
- (c) meet the completion dates for the Milestones listed in item 2.2 of Schedule 1, or such other time as agreed between the parties; and
- (d) complete the Activity by the Activity Completion Date.

2.2 The Recipient must not commence any work in respect of the Activity until the preconditions set out in item 1.3 of Schedule 1 (if any) have been satisfied.

2.3 The Recipient must:

- (a) promptly notify ARENA, in writing, of any delay or anticipated delay to the progress of the Activity or achievement of a Milestone, providing:
 - (i) the reason for the delay;
 - (ii) the anticipated impact on the Activity;
 - (iii) and steps the Recipient is taking or will take to overcome the delay; and
- (b) keep ARENA updated as to the status of any such notified delay.

3 Knowledge sharing

3.1 The Recipient must:

- (a) in consultation with ARENA, implement and comply with the Knowledge Sharing Plan;
- (b) ensure the delivery of the Knowledge Sharing Deliverables; and
- (c) 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 does not contain any Recipient Confidential Information.

3.3 The Recipient must categorise the documentation and information it provides to ARENA pursuant to the Knowledge Sharing Plan as follows:

- (a) **public unrestricted:** information that may be shared freely within ARENA, with industry participants, and with the public in general;
- (b) **public restricted:** information that may be shared freely within ARENA, with industry participants, and with the public in general, subject to any reasonable restrictions specified in the Knowledge Sharing Plan; and
- (c) **Recipient Confidential Information:** information that may be shared in accordance with clause 18.

4 ARENA Funding

4.1 Subject to this Agreement, including satisfaction of the Payment Criteria, ARENA will pay the ARENA Funding to the Recipient in accordance with item 2.2 of Schedule 1.

4.2 Notwithstanding any other provision of this Agreement, ARENA's total liability under or in connection with this Agreement, including all ARENA Funding paid or payable, will not exceed an amount equal to the ARENA Funding.

4.3 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 Payment of Funds

5.1 The Recipient must satisfy the following criteria as a condition precedent to payment of ARENA Funding:

- (a) provision of any report or plan due to be provided before the date for payment in accordance with item 3.1 of Schedule 1 and ARENA's acceptance of that report or plan;
- (b) provision of all Knowledge Sharing Deliverables due to be provided before the date for payment, and ARENA's acceptance of those deliverables;
- (c) achievement of any Milestone due to be achieved (including provision of any Milestone deliverables due to be provided) and provision of a Milestone Report to ARENA and ARENA's acceptance of that report;
- (d) in respect of the final payment due under this Agreement, submission of the Final Report to ARENA, and ARENA's acceptance of that report;
- (e) written notification has been received from ARENA that the relevant Milestone has been approved;

- (f) Upon written notification from ARENA that the relevant Milestone has been approved, submission of an invoice which complies with the requirements set out in clause 5.4,
- (g) provision of a statement of income and expenditure for the ARENA Funding, certified by an authorised officer of the Recipient.

5.2 In submitting an invoice for payment in accordance with this clause **Error! Reference source not found.**, the Recipient represents and warrants that:

- (a) no Material Breach of this Agreement is continuing or would result from the payment;
- (b) the Recipient has complied with all of its obligations in connection with the Knowledge Sharing Plan;
- (c) the Recipient is able, and has sufficient funds, to complete the Activity by the Activity Completion Date in accordance with the Funding Agreement;
- (d) the representations set out in clause 13 of the Funding Agreement are true and correct in all material respects as at the date of submission of the relevant invoice;
- (e) subject to any waiver by ARENA (in its absolute discretion), the Recipient does not have unspent ARENA Funding in its bank account in excess of the amount specified in item 13 of the Activity Details; and
- (f) *[insert any other conditions to payment of ARENA Funding]*

5.3 Subject to this Agreement, if the Recipient has satisfied the criteria for payment specified in clause 5.1, ARENA must make payment within 30 days after receiving a valid Funds Payment Request, into the account nominated by the Recipient.

5.4 An invoice must, in order to be correctly rendered:

- (a) meet the requirements of a tax invoice as set out in the GST Law;
- (b) be in a form approved by ARENA; and
- (c) set out:
 - (i) the agreement number and Activity title; and
 - (ii) the amount of funding to be paid by ARENA together with the supporting documentation and other evidence specified in this clause 5.

5.5 The Recipient must:

- (a) submit invoices to the address listed in item 22 of the Activity Details; and
- (b) cooperate with any request by ARENA with respect to invoicing and payment where

ARENA advises that it is moving to a different payment system.

6 Bank account ledger

6.1 The Recipient must maintain a separate bank account ledger containing full details of funds received from ARENA under this Agreement and subsequent withdrawal or transfer of those funds.

7 Use of ARENA Funding

- 7.1 The Recipient must use the ARENA Funding only:
- (a) for the Activity;
 - (b) for Eligible Expenditure;
 - (c) as provided in the Budget (as may be varied under this Agreement); and
 - (d) in accordance with the terms and conditions set out in this Agreement.
- 7.2 Without limiting clause 10, the Recipient must not spend more than 10% of the ARENA Funding on Overseas Expenditure, other than for equipment or materials, unless otherwise agreed in writing by ARENA.

8 Contributions

- 8.1 With the exception of the ARENA Funding, the Recipient is responsible for providing or securing all funds and resources, and bearing all costs, necessary to complete the Activity (including on account of cost overruns).
- 8.2 Unless otherwise agreed in writing:
- (a) the Recipient Contributions must be provided and used for the Activity in accordance with the timeframe in item 2.3 of Schedule 1; and
 - (b) the Recipient must ensure that any Other Contributions are provided and used for the Activity in accordance with item 2.4 and/or **Error! Reference source not found.** of Schedule 1.
- 8.3 The Recipient must provide written notice to ARENA as soon as practicable if the Recipient Contributions and/or Other Contributions provided and used for the Activity in accordance with items 2.3, 2.4 and **Error! Reference source not found.** of Schedule 1 are increased.

9 Variations

9.1 Subject to clause 10, 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.

10 Minor Variations

- 10.1 ARENA may, by written notice,
- (a) direct a Minor Variation; or

- (b) agree to a written request for a Minor Variation by the Recipient, which must set out the details of the proposed variation and the impact the proposed variation will have on the Activity.

10.2 ARENA must act reasonably in:

- (a) directing a Minor Variation; and
- (b) considering the Recipient's request under clause 10.1(b), with written reasons to be provided if the request is rejected.

10.3 For the avoidance of doubt, variations that are not Minor Variations must be made in accordance with clause 9.

11 Changes to the Budget

11.1 Notwithstanding clause 10.1(b), the Recipient is not required to seek a Variation for changes to the Budget unless:

- (a) the value of an item of expenditure or quantum of the Budget increases or decreases by more than the percentage set out in item 12 of the Activity Details; or
- (b) the variation increases the amount allocated to Overseas Expenditure by more than 10% of the ARENA Funding.

12 Reporting and plans

12.1 The Recipient must provide:

- (a) the reports at the times specified in item 3.1 of this Schedule 1 and in the form and substance satisfactory to ARENA (including details of any Knowledge Sharing Deliverables in accordance with the Knowledge Sharing Plan);
- (b) reports or any other information as reasonably required by ARENA from time to time at the time and in the manner reasonably required by ARENA in relation to any significant developments concerning the Activity or any significant delays or difficulties encountered in undertaking the Activity; and
- (c) in the event this Agreement is terminated by ARENA as a result of the Recipient abandoning the Activity or being unable to complete the Activity due to technical or commercial feasibility reasons, within 20 Business Days after the termination, a report for public release explaining the reasons for such termination and the information, knowledge and lessons learned (both positive and negative) by the Recipient, its Personnel or subcontractors from the Activity.

12.2 Within 30 days of receiving a report, ARENA may:

- (a) accept the report, if it considers acting reasonably that the report satisfies all the requirements set out under item 3.1 of Schedule 1; or

- (b) reject a report, if it considers acting reasonably that the report does not satisfy all the requirements set out under item 3.1 of Schedule 1. If rejected, ARENA must provide reasons for the rejection, and the Recipient must, within 14 days, reissue the report in a form that addresses the reasons for the earlier rejection. Within 30 days of the reissued report, ARENA may accept or reject the report in accordance with this clause 12.2.

13 Representations and warranties

13.1 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;
- (e) **(Licensed Materials)**: to the best of its knowledge after making diligent enquiries, the Licensed Materials and ARENA's use of the Licensed Materials in accordance with this Agreement will not infringe the Intellectual Property Rights or Moral Rights of any person;
- (f) **(legal capacity)**: it has full legal capacity to own its own property, undertake the Activity and enter into this Agreement, and to carry out the transactions that each of these contemplate;
- (g) **(financial capacity)**: it has, or will have, sufficient funds to complete the Activity;
- (h) **(insolvency)**: no Insolvency Event has occurred, and there are no reasonable grounds to suspect that an Insolvency Event will occur, in respect of the Recipient;
- (i) **(qualifications)**: the Recipient, its Personnel and subcontractors have the necessary experience, skill, knowledge, expertise and competence to undertake the Activity and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to undertake the Activity, and are fit and proper people; and

- (j) (**trustee**): if the Recipient is a trustee, it enters into this Agreement personally and in its capacity as trustee and without any limitation of its liability as a trustee and has the power to perform its obligations under this Agreement.

13.2 The representations and warranties in clause 13.1 will, unless otherwise specified, be made on signing of this Agreement by the Recipient and be repeated on the date each invoice is submitted by the Recipient.

13.3 The Recipient acknowledges and agrees that ARENA has entered into this Agreement and performs this Agreement in reliance on the representations and warranties in clause 13.1.

14 Undertakings and Acknowledgements

14.1 The Recipient must:

- (a) (**cooperation**): cooperate with ARENA and other parties, and attend any meetings, as requested by ARENA, acting reasonably;
- (b) (**standards**): undertake the Activity diligently, efficiently, safely and to a high professional standard and in accordance with this Agreement;
- (c) (**reporting**): comply with the reporting requirements set out in item 3 of Schedule 1 and keep ARENA regularly and fully informed regarding progress of the Activity;
- (d) (**Laws**): comply with:
 - (i) all applicable Laws; and
 - (ii) all relevant Australian industry standards, best practice and guidelines (including those specified in item 3 of the Activity Details) or, where none apply, relevant international industry standards, best practice and guidelines;
- (e) (**WHS Law**):
 - (i) comply with the WHS Law, and not do or allow to be done, or omit or allow to be omitted anything which may result in ARENA being in breach of the WHS Law;
 - (ii) immediately notify ARENA of any incidents which are notifiable under WHS Law, injuries or damage to property of a serious nature that occurs in connection with the Activity;
 - (iii) in relation to any incident notified, provide to ARENA an investigation report containing findings on the causes and effects of, and corrective and preventative actions arising from, any accident, notifiable incident, injury or damage to property, and following the completion of an investigation report, where requested by

ARENA, a report identifying the status of any preventative or corrective actions identified in that investigation report;

- (iv) cooperate with ARENA as required in relation to any notifiable incident or accident, injury or damage to property of a serious nature;
- (f) (**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;
- (g) (**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 this Agreement), including providing assistance to object to a request where an exemption applies to a document;
- (h) (**Intellectual Property**):
 - (i) grant to, or obtain for, ARENA a perpetual, irrevocable, world-wide, royalty-free, fee-free, non-exclusive licence to use, reproduce, adapt, modify, communicate, broadcast, distribute, publish, disseminate and sublicense the Licensed Materials solely for 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 27 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;

- (i) (**Moral Rights**): obtain all consents (including any Moral Rights consents or waivers) necessary to perform its obligations under this Agreement;
- (j) (**Crisis notification**):
 - (i) advise ARENA as soon as possible of any Crisis (and in accordance with any protocol reasonably required by ARENA); and
 - (ii) notify ARENA as soon as practicable of any significant concerns of local community groups in relation to the Activity of which the Recipient becomes aware;
- (k) (**subcontracting**):
 - (i) not enter into a subcontract with a subcontractor named as an organisation that has not complied with the *Workplace Gender Equality Act 2012* (Cth);
 - (ii) in relation to Major Subcontract Work with respect to the Activity, only engage those subcontractors specified in item 16 of the Activity Details or otherwise approved by ARENA in writing;
 - (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;
 - (iv) unless otherwise notified by ARENA in accordance with clause 29, notify ARENA of any subcontractors engaged for the performance of work for the Activity;
- (l) (**insurance**): in connection with the Activity:
 - (i) have and maintain the insurances that would be maintained by a prudent business undertaking the Activity, including but not limited to those insurances specified in item 18 of the Activity Details;
 - (ii) with respect to such insurances:
 - A. where the Recipient takes out a 'claims-made' policy, which requires all claims and any fact, situation or circumstance that might result in item a claim to be notified within the period of insurance, maintain the policy during the term of this Agreement, and a policy in like terms for seven years after the expiry or termination of this Agreement;
 - B. where the Recipient takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of an event can occur at any time subsequently, maintain the policy during the term of this Agreement; and
- (iii) ensure that its subcontractors have and maintain appropriate insurance to cover the risk of the subcontractors' works or services;
- (m) (**books and records**): at its own cost, during the period of this Agreement and for a period of seven years after the End Date, keep, and require its subcontractors to keep, adequate books and records in sufficient detail to enable:
 - (i) all receipts and payments related to the Activity to be identified and reported to ARENA; and
 - (ii) the amounts payable by ARENA under this Agreement to be determined or verified;
- (n) (**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;
- (o) (**Change in Control**): promptly provide written notice to ARENA of any actual or proposed Change in Control;
- (p) (**conflicts**): if, during the Activity, a conflict of interest arises, or appears likely to arise, notify ARENA immediately in writing, make full disclosure of all relevant information relating to the conflict, and take such steps as ARENA requires to resolve or otherwise deal with the conflict;
- (q) (**visitations**): during the term of this Agreement and 2 years after the expiry or termination of this Agreement, subject to safety and operational requirements and appropriate confidentiality obligations being entered into:
 - (i) allow and provide ARENA escorted visits by interested persons approved by ARENA or the Recipient (Visitors) to sites under the Recipient's control where Activities are conducted;
 - (ii) use best endeavours to obtain permission for escorted visits by Visitors to sites not under the Recipient's control where Activities are conducted;
 - (iii) demonstrate the Activities to Visitors and relevant technology and provide detailed explanations where requested;
 - (iv) allow ARENA representatives to be present at visits;

- (r) **(bank account)**: comply with the bank account requirements specified in clause 6;
- (s) **(acquittal statement)**: at the time and in the manner specified in item 3.1 of Schedule 1, provide ARENA with an acquittal statement setting out the ARENA Funding paid by ARENA under this Agreement and the total Eligible Expenditure incurred by the Recipient in undertaking the Activity signed by an officeholder of the Recipient; and
- (t) **(Personnel)**:
 - (i) undertake the Activity, or any part of the Activity to which their particular expertise relates, with the active involvement of, and using the expertise of, the Specified Personnel or as otherwise agreed between the parties in writing;
 - (ii) ensure that each of the Specified Personnel is aware of and complies with the Recipient's obligations in undertaking the Activity;
 - (iii) where one or more of the Specified Personnel is, or will become, unable or unwilling to be involved in the Project:
 - A. notify ARENA immediately;
 - B. if requested by ARENA, provide a replacement person of suitable ability and qualifications at the earliest opportunity; and
 - C. obtain ARENA's written consent (which must not be unreasonably withheld) prior to appointing any such replacement person. ARENA's consent will not be unreasonably withheld; and
 - (iv) if requested by ARENA, promptly remove any of the Recipient's or its subcontractors' Personnel from carrying out work on the Project, and arrange for their replacement in accordance with clause 14.1(t)(iii); and
- (u) **(notification)**: notwithstanding any other provision of this Agreement, notify ARENA immediately if it becomes aware that:
 - (i) it has not undertaken the Activity as required under this Agreement or has not spent the ARENA Funding in accordance with this Agreement;
 - (ii) it has, or may have, committed a Material Breach;
 - (iii) it has received, or requested to receive, other funds from the Commonwealth for the Activity; and/or

- (iv) an Insolvency Event has occurred or is likely to occur with respect to the Recipient.

14.2 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 Agreement Material vest in the Recipient upon creation.

15 Evaluation

- 15.1 ARENA may undertake a review or evaluation of the Activity at any time, either directly or through a third party adviser.
- 15.2 The Recipient must, at its cost, provide all reasonable assistance to ARENA (and any adviser) for such review or evaluation.
- 15.3 Subject to clause 18, during the term of this Agreement and 5 years after the expiry or termination of this Agreement, the Recipient must provide, upon request by ARENA, any information reasonably required by ARENA on the implementation and progress of the Activity in the format requested by ARENA.

16 Audits and access

- 16.1 During the term of this Agreement and for 5 years after the expiry or termination of this Agreement, 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 records reasonably necessary for that purpose.
- 16.2 The Recipient must provide all reasonable assistance to ARENA and its nominee (if any) for such audit or access.
- 16.3 In carrying out an audit, ARENA will, and will procure that any nominee, use reasonable endeavours to minimise any disruption to the Activities caused by any audit or access and will comply with the Recipient's reasonable workplace policies.
- 16.4 The rights of ARENA under this clause 16 apply equally to the Auditor-General or an Information Officer (or any nominee) for the purpose of performing the Auditor-General's or Information Officer's statutory functions or powers.
- 16.5 The rights of ARENA under this Agreement are in addition to, and do not limit, any other function, power, right or entitlement of the Auditor-General or an Information Officer.

16.6 Where an audit under this clause 16 identifies, in ARENA's opinion, that the Recipient is in breach of this Agreement then ARENA may recover from the Recipient the costs incurred in conducting that audit. The Recipient acknowledges and accepts that it is not permitted to use funds included in the Budget to meet any such costs.

17 Acknowledgement, disclaimer and publicity

17.1 The Recipient must (and must ensure that any Activity Participants) acknowledge the financial and other support received from ARENA 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, and, if required by ARENA, at the place where the Activity is undertaken. The form of acknowledgement must be as specified in item 19 of the Activity Details or otherwise approved by ARENA prior to their use.

17.2 ARENA reserves the right to publicise and report on the awarding of the ARENA Funding, and may include: the name of the Recipient, Recipient's shareholders (if applicable) and Activity Participants, the amount of the ARENA Funding and a brief description of the Activity.

17.3 Unless otherwise agreed by ARENA, the Recipient must procure, and provide to ARENA as soon as practicable, artists' impressions or renders which demonstrate the anticipated appearance of any works constructed or goods developed in connection with the Activity upon completion.

17.4 The Recipient must (and must ensure that any Activity Participants) ensure:

- (a) that all published material relating to the Activity include a disclaimer as specified in item 20 of the Activity Details or otherwise approved by ARENA prior to their use; and
- (b) before making a public announcement in connection with this Agreement or any transaction contemplated by it, obtain ARENA's written agreement to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange), in which case ARENA should be notified of any such requirement as soon as practicable.

18 Confidentiality

18.1 Without limiting clause 3 and subject to clause 18.2, ARENA must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to another person.

18.2 Despite anything else in this Agreement, ARENA may disclose Recipient Confidential Information and information of the type specified in clause 3.3(b):

- (a) as specified or as contemplated in 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, an 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 AEMO; or
- (g) where required by Law, including under a Senate Order.

18.3 The Recipient must not, without the prior written consent of ARENA, disclose any ARENA Confidential Information to another person.

18.4 Without limiting any other provision of this Agreement, where the Recipient discloses ARENA Confidential Information to a third party pursuant to clause 18.3, the Recipient must:

- (a) give notice to the receiving party in writing that the information is Confidential Information; and
- (b) only provide the Confidential Information if the receiving party agrees to keep the information confidential as if it were bound by the obligations of confidentiality imposed under this Agreement.

18.5 The Recipient acknowledges that Recipient Confidential Information provided to ARENA may be provided to a contractor for data handling and analysis services or incorporated into databases or other IT systems, and aggregated into documents or other media for public release, provided that arrangements are in place to maintain confidentiality of Recipient Confidential Information and meet any conditions in the Knowledge Sharing Plan.

19 Force Majeure

19.1 A party (**Affected Party**) is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances (other than, in respect of the Recipient only, lack of funds or any strike, lockout or labour dispute) which:

- (a) are beyond its reasonable control, including natural disasters, acts of war, riots and strikes outside the Affected Party's organisation; 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.

19.2 When the circumstances described in clause 19.1 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 and must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Agreement.

19.3 ARENA is not obliged to pay to the Recipient any funding for so long as circumstances described in clause 19.1 prevent the Recipient from performing its obligations under this Agreement. For clarity, this clause 19 does not affect the Recipient's entitlement to payment of instalments due to be paid prior to a notice given under clause 19.2.

19.4 If non-performance or diminished performance by the Recipient due to the circumstances under clause 19.1 continues for a period of more than 30 consecutive days, ARENA may terminate this Agreement immediately by giving the Recipient written notice.

19.5 If this Agreement is terminated by ARENA under clause 19.4:

- (a) ARENA is liable only for:
 - (i) payments due in accordance with this Agreement before the effective date of termination, but only to the extent that those monies have been spent or Legally Committed by the Recipient in accordance with this Agreement at the time the Recipient receives the notice of termination (written evidence of which must be provided by the Recipient to ARENA); and
 - (ii) where the Recipient has undertaken work on but not completed a Milestone at the time the Recipient receives the notice of termination, payment of ARENA Funding in accordance with this Agreement to the extent that those monies have been spent or Legally Committed by the Recipient in accordance with this Agreement on that Milestone at the time the Recipient receives the notice of termination (written evidence of which must be provided by the Recipient to ARENA); and
- (b) each party will otherwise bear its own costs and neither party will incur further liability to the other.

20 Suspension of ARENA Funding

20.1 Without limiting its other rights, ARENA may:

- (a) upon giving the Recipient at least 10 Business Days' prior notice, suspend payment of the ARENA Funding in whole or in part; and/or
 - (b) immediately upon giving the Recipient notice, direct the Recipient not to spend the ARENA Funding in whole or in part;
- if:
- (c) in ARENA's reasonable opinion, the Recipient has not undertaken the Activity as required under this Agreement or has not spent the ARENA Funding in accordance with this Agreement;
 - (d) there is a Material Breach of this Agreement that has continued for a period of 5 Business Days; or
 - (e) the Recipient has received, or requested to receive, other funds from the Commonwealth for the Activity.

20.2 The Recipient must not spend any ARENA Funding after it receives notice from ARENA under clause 20.1(b) unless and until ARENA notifies the Recipient otherwise.

20.3 ARENA's right to suspend payment under clause 20.1(a) will cease upon ARENA determining that the cause of the suspension has been remedied.

20.4 Regardless of whether ARENA exercises its right to suspend payment under this clause 20, the Recipient will not be entitled to payment of the ARENA Funding unless the Payment Criteria have been satisfied.

20.5 Despite any suspension to payment or direction not to spend the ARENA Funding, the Recipient must continue to comply with its obligations under this Agreement, and unless otherwise notified by ARENA, continue carrying out the Activity.

21 Reduction

21.1 Without limiting its other rights, ARENA may, at its discretion:

- (a) reduce the amount of any Instalment or Milestone payment payable under this Agreement if such payment would result in the Recipient holding more than the amount identified in item 13 of the Activity Details; or
- (b) reduce the amount of any ARENA Funding payable under this Agreement by the amount of ARENA Funding held by the Recipient in excess of the amount identified in item 13 of the Activity Details,

to the extent that the amounts have not been Legally Committed or spent.

22 Change in Commonwealth government policy

22.1 Without limiting any other rights or remedies

ARENA may have arising out of or in connection with this Agreement, if there has been a change in Commonwealth government policy with respect to ARENA or funding provided by ARENA that relates to ARENA's obligations under this Agreement:

- (a) ARENA may by notice terminate this Agreement or reduce the scope of the Activity, effective from the time specified in the notice;
- (b) the parties will work cooperatively to facilitate the orderly cessation of the Activity or reduction in its scope; and
- (c) the Recipient will be entitled to payment in accordance with clause 24.1 but will not be entitled to claim any other amount from ARENA.

23 Termination with cause or reduction in scope

23.1 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, terminate this Agreement or reduce the scope of the Activity immediately, or such other timeframe as agreed by ARENA, if:

- (a) the Recipient commits a Material Breach (other than an Insolvency Event) and the Material Breach has not been remedied within 10 Business Days (or such other time as agreed by ARENA) of notice from ARENA;
- (b) the Recipient fails to achieve one or more of the Milestones set out in item 2.2 of Schedule 1;
- (c) there is a Change in Control of the Recipient, and ARENA considers that:
 - (i) the person who controls the Recipient could affect ARENA or the Commonwealth's reputation; or
 - (ii) there is a resulting risk to the successful completion of the Activity; or
- (d) an Insolvency Event occurs in relation to the Recipient.

24 Rights and entitlements upon termination

24.1 If this Agreement is terminated under clause 22, ARENA is liable to the Recipient only for payments due under clause 4.1 in accordance with this Agreement before the effective date of termination, but only to the extent that those monies have been spent or Legally Committed.

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

- (a) subject to clause 24.1, ARENA is not obliged to pay to the Recipient any outstanding amount of funding under this Agreement; and
- (b) ARENA is entitled to exercise any right to recover from the Recipient, including repayment rights under clause 25.

24.3 If the scope of the Activity is reduced under clauses 22.1(a) or 23.1:

- (a) ARENA's liability to pay the funding under this Agreement abates in accordance with the reduction in the Activity; and
- (b) the Recipient must continue to undertake any part of the Activity not affected by the notice (unless the Recipient, acting reasonably, notifies ARENA that it is not commercially viable to do so).

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

25 Repayment of ARENA Funding

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

- (a) (**misspent funds**): the amount of any ARENA Funding which, in ARENA's opinion (acting reasonably) and at any time, has been spent or used other than in accordance with this Agreement;
- (b) (**unspent funds**):
 - (i) the full amount of any ARENA Funding which has not been spent or Legally Committed by the Recipient as at the End Date; or
 - (ii) the amount of any ARENA Funding in excess of the amount identified in item 13 of the Activity Details, which has been paid to the Recipient and not been spent or Legally Committed by the Recipient as at a due date for payment of further ARENA Funding in accordance with this Agreement;
- (c) (**Abandoned Activity**): an amount equal to all ARENA Funding paid to the Recipient if the Recipient Abandons the Activity (whether or not ARENA has terminated this Agreement in accordance with clause 23.1(a)), and does not resume performance within 10 Business Days after receiving notice requiring it to do so or otherwise within that timeframe demonstrate to ARENA's satisfaction (acting reasonably) that

there are reasonable technical grounds for abandoning the Activity;

- (d) **(Recipient Contributions and Other Contributions not used)**: if, as at the End Date, Recipient Contributions or Other Contributions have not been provided and used for the Activity, an amount that represents the same proportion of the ARENA Funding as the Recipient Contributions and Other Contributions which have not been provided and used are of the total Recipient Contributions and Other Contributions;
- (e) **(Material Breach)**: an amount equal to all ARENA Funding paid to the Recipient if the Recipient commits a Material Breach (other than an Insolvency Event) and ARENA terminates this Agreement under clause 23.1(a);
- (f) **(Change in Control)**: an amount equal to all ARENA Funding paid to the Recipient if ARENA terminates this Agreement under clause 23.1(c); or
- (g) **(Insolvency Event)**: an amount equal to all ARENA Funding paid to the Recipient if an Insolvency Event occurs in respect of the Recipient and ARENA has terminated this Agreement in accordance with clause 23.1(d).

25.2 Where ARENA gives the Recipient a repayment notice requiring the Recipient to repay to ARENA an amount which ARENA is entitled to recover under clause 25.1, 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 25.4) specified in the repayment notice.

25.3 ARENA can elect to require repayment of a lesser amount of ARENA Funding than otherwise required under clause 25.1. ARENA can exercise this right in its absolute discretion and is not required to exercise this discretion for the Recipient's benefit.

25.4 The Recipient must pay interest to ARENA in connection with any amount notified as owing to ARENA under clause 25.1. 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 25.2 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.

25.5 The Recipient acknowledges that the amounts to be paid by it to ARENA under this clause 25 are a genuine pre-estimate of the losses incurred by ARENA for the defaults described in this clause 25.

25.6 ARENA and the Recipient agree that the amount of any repayments payable to ARENA by the Recipient under this clause 25 shall not exceed the amount of ARENA Funding paid to the Recipient.

25.7 This clause 25 does not limit any other right or remedy of ARENA.

26 Dispute Resolution

26.1 A party must comply with this clause 26 in relation to any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination (**Dispute**), before starting court proceedings except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 26.

26.2 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**).

26.3 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.

26.4 If the Dispute is not resolved within 10 Business Days under clause 26.3, the Dispute shall be referred to a mediator upon either party's request. If the parties cannot agree on a mediator within seven days after the request, the chair of Resolution Institute or the chair's nominee will appoint a mediator.

26.5 Unless agreed by the mediator and parties, the mediation must be held within 21 days after the request for mediation in clause 26.4. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

26.6 Any information or documents disclosed by a party under this clause 26 must be kept confidential and may only be used to attempt to resolve the Dispute.

26.7 Each party must pay its own costs of complying with this clause 26. The parties must equally pay the costs of any mediator.

26.8 A party may terminate the dispute resolution process by giving notice to the other party after it has complied with clauses 26.1 to 26.5. Clauses 26.6 and 26.7 survive termination of the dispute resolution process.

- 26.9 If a party breaches clauses 26.1 to 26.8, the other party does not have to comply with those clauses in relation to the Dispute.
- 26.10 For the purpose of this clause 26, a Dispute does not include a dispute arising in relation to ARENA suspending payment of funding under clause 20, reducing the amount of an instalment of funding under clause 21, terminating this Agreement or reducing the scope of the Activity under clause 22, or requiring payment under clause 25.

27 Liability and Indemnity

- 27.1 The Recipient will at all times indemnify ARENA and its Personnel (referred to in this clause 27 as "those indemnified") from and against any loss, damage, cost, expense or liability (including legal costs on a solicitor and own client basis) arising out of or as a consequence of:
- (a) the carrying out of works or services, or the supply of goods, in connection with the Project;
 - (b) the Licensed Materials (including the use of the Licensed Materials by ARENA or its Personnel) infringing or allegedly infringing the Intellectual Property Rights or Moral Rights of any person;
 - (c) any breach of this Agreement by the Recipient; or
 - (d) any negligent or wrongful or unlawful act or omission on the part of the Recipient, its Personnel or subcontractors.
- 27.2 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.
- 27.3 Neither party will be liable to the other party for Consequential Loss arising under or in connection with this Agreement.
- 27.4 Neither party will be liable to the other party for Consequential Loss arising under or in connection with this Agreement.

28 GST

- 28.1 In this clause 28:
- (a) unless otherwise stated, words and expressions which are not defined in this Agreement, but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
 - (b) a reference to a party or an entity includes the representative member of any GST group of which the relevant party or entity is a member.

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

28.3 Subject to this clause 28, if ARENA 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 must provide a tax invoice to the GST Recipient in accordance with the GST Law.

28.4 If an adjustment event arises in respect of a taxable supply made by ARENA 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 of ARENA or by ARENA to the GST Recipient as the case requires. ARENA must provide an adjustment note to the GST Recipient in accordance with the GST Law.

28.5 If the GST payable in relation to a supply is less than the amount the GST Recipient has paid ARENA under clause 28.3, 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.

28.6 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.

28.7 This clause 28 will survive the termination of this Agreement by any party.

29 Notices and other communications

- 29.1 Any notice, approval, consent or other communication must be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
 - (b) hand delivered or sent by email to the recipient's address specified in item 23 of the Activity Details (or as updated by written notice from time to time).
- 29.2 Any notice, approval, consent or other communication under clause 29.1 takes effect when it is taken to be received and is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by email, on the day and at the time it is sent (as recorded on the sender's equipment),

unless the sender receives an automated message that the email has not been delivered, or the intended recipient of the notice notifies the sender within 1 Business Day that the email has not been delivered,

but if the delivery or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day in the receiver's locality.

30 Miscellaneous

30.1 Clauses 3 (**Knowledge Sharing**); 4.2 and 4.3 (**ARENA Funding**); 14.1(e) (**WHS Law**); 14.1(g) (**FOI**); 14.1(h) (**Intellectual Property**); 14.1(j) (**Crisis notification**); 14.1(l) (**Insurance**); 14.1(m) (**Books and Records**); 14.1(q) (**Visitations**); 15 (**Evaluation**); 16 (**Audits and access**); 17 (**Acknowledgement, disclaimer and publicity**); 18 (**Confidentiality**); 24, 24.2 and 24.4 (**Rights and entitlements upon termination**); 25 (**Repayment of ARENA Funding**); 26 (**Dispute resolution**); 27 (**Liability and Indemnity**); 28 (**GST**); and 30.14 (**Governing law**) 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.

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

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

30.4 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.

30.5 The Recipient is fully responsible for undertaking the Activity even if it subcontracts any aspect of the Activity and for the performance of all of its obligations under this Agreement. The Recipient will be responsible for its subcontractors' acts and omissions.

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

30.7 The Recipient must pay any taxes and duties payable in respect of this Agreement and the Activity.

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

30.9 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.

30.10 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.

30.11 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.

30.12 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.

30.13 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.

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

31 Definitions

31.1 Except where the contrary intention is expressed, capitalised:

- (a) **Abandoned** means no substantive work or activities have been carried out on the Activity for 60 consecutive days, except where relieved of the obligation to do so under this Agreement;
- (b) **Activity** means the Activity described in item 1.1 of Schedule 1;
- (c) **Activity Completion Date** means the date specified in item 14 of the Activity Details;
- (d) **Activity Details** means the Activity Details at the beginning of this Agreement;
- (e) **Activity Participants** means the entities specified in item 17 of the Activity Details;
- (f) **AEMO** means the Australian Energy Market Operator Limited (ABN 94 072 010 327);
- (g) **Agreement** means this agreement between ARENA and the Recipient (including the Schedules and any attachments), as varied from time to time in accordance with its terms;
- (h) **Agreement Material** means 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 14.1(h);

- (i) **Application** means the expression of interest and application submitted by, for or on behalf of the Recipient for funding under the Commercialisation of R&D Funding Initiative Pilot in relation to the Activity;
- (j) **ARENA** means the Australian Renewable Energy Agency (ABN 35 931 927 899) of 2 Phillip Law St, New Acton, Canberra ACT 2601;
- (k) **ARENA Act** means the *Australian Renewable Energy Agency Act 2011* (Cth);
- (l) **ARENA Confidential Information** means Confidential Information of ARENA;
- (m) **ARENA Funding** means the amount specified in item 2.1 of Schedule 1 (and any interest earned by the Recipient on that amount), as reduced in accordance with this Agreement;
- (n) **Auditor-General** means the Auditor-General of the Commonwealth, as appointed under the Auditor-General Act 1997 (Cth);
- (o) **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;
- (p) **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;
- (q) **Budget** means the total budget (if any) for the Activity set out in item 2.5 of Schedule 1, as varied from time to time in accordance with this Agreement;
- (r) **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;
- (s) **Change in Control** means in relation to an entity, a change in the direct or indirect power or capacity of a person to:
 - (i) determine the outcome of decisions about the financial and operating policies of the entity; or
 - (ii) control the membership of the board of directors of the entity,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the entity or otherwise, but not including a change in control resulting from ordinary course trading on a stock exchange in the shares of the entity;

- (t) **Claim** means a distress, attachment or other execution levied or enforced upon or against the assets of a person, and in the case of legal proceedings or other order or process requiring payment (other than a statutory demand or a bankruptcy notice) which is not withdrawn or dismissed within 10 Business Days;
- (u) **Commencement Date** means the date on which this Agreement is signed by ARENA;
- (v) **Commonwealth** means the Commonwealth of Australia;
- (w) **Confidential Information** means information that is by its nature confidential and which a party knows or ought to know is confidential, but not including information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation;
- (x) **Consequential Loss** means loss of profits, anticipated loss of profit or revenue, loss of production, loss of business opportunity, loss of or damage to goodwill or reputation, loss of use or any other similar loss, but excludes:
 - (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 failure to insure in accordance with 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 14.1(e) or 17.4 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;
- (y) **Controller** has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth);

- (z) **Corresponding WHS Law** has the same meaning as in section 4 of the *Work Health and Safety Act 2011* (Cth);
- (aa) **Crisis** means any time of intense difficulty or danger in relation to the Activity. It includes the inappropriate release of information in relation to the Activity that could affect ARENA's or the Commonwealth's reputation (for example, in breach of confidentiality or security requirements);
- (bb) **Dispute** has the meaning given in clause 26.1;
- (cc) **Eligible Expenditure** means expenditure (inclusive of GST but less related input tax credits the Recipient is entitled to claim) incurred by the Recipient on the Activity:
- (i) after the date of this Agreement that qualifies as eligible expenditure under the Commercialisation of R&D Funding Initiative Pilot Guidelines; or
 - (ii) that ARENA otherwise approves (in its absolute discretion) as eligible expenditure for the purposes of this Agreement;
- (dd) **End Date** means the date on which the Recipient has performed all of its obligations under this Agreement (including provision of all reports to ARENA's satisfaction) or its earlier termination;
- (ee) **External Administrator** means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity;
- (ff) **Final Report** has the meaning given in item 3 of Schedule 1;
- (gg) **Funds Payment Request** means a funds payment request in the form set out in **Error! Reference source not found.**;
- (hh) **General Conditions** means clauses 1 to 32 of this Agreement;
- (ii) **GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (jj) **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;
- (kk) **Insolvency Event** means the occurrence of any of the following events:
- (i) in relation to a corporation, its Liquidation, the appointment of an External Administrator to the corporation or any of its property, it ceasing or threatening to cease carrying on its business; it being deemed to be, or stating that it is, unable to pay its debts as and when they fall due; or it entering into a Scheme;
 - (ii) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth);
 - (iii) in relation to any person, the person is served with a Claim or anything analogous to or having a similar effect to anything described above in this definition under the law of the relevant jurisdiction;
- (ll) **Instalments** means, where applicable, the funding instalments made in the manner set out in item 2.2 of Schedule 1;
- (mm) **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 (i); 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;
- (nn) **Interest Rate** means the ten year Treasury Bond Rate as published in the Australian Financial Review on the date of this Agreement;
- (oo) **Knowledge Sharing Deliverables** means the activities and deliverables to be provided by the Recipient in accordance with item 0 of Schedule 1;
- (pp) **Knowledge Sharing Plan** means the knowledge sharing plan in item 4 of Schedule 1 (including the Knowledge Sharing Deliverables), as varied by agreement in writing between the parties from time to time;
- (qq) **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;

- (rr) **Legally Committed** means, at any time, a present or accrued obligation on the Recipient under contract or at Law to pay money to a third party. It does not include any future obligation to make payment to a third party which is subject to any outstanding condition to payment or other contingency that has not been satisfied at that time or which the Recipient has a right to cancel, suspend or terminate under the contract or under Law;
- (ss) **Licensed Materials** mean:
- (i) Pre-existing Material included, embodied in or attached to the Agreement Material;
 - (ii) Third Party Material; and
 - (iii) Agreement Material;
- (tt) **Liquidation** means a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, deregistration, or steps are taken (including the calling of meetings or the filing of applications), orders are made, or resolutions are passed to give effect to any of the above;
- (uu) **Major Subcontract Work** means any work undertaken for the purpose of the Activity and performed by a subcontractor:
- (i) which has a total contract sum in excess of 20% of the Budget; or
 - (ii) which has, or may potentially have, a material impact on the progress or performance of work on the Project or achievement of Outcomes;
- (vv) **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;
- (ww) **Material Breach** means a material breach of this Agreement and includes, without limitation, a breach or failure to comply with:
- (i) clause 2.1 (Undertaking the Activity);
 - (ii) clause 3.1 (Knowledge Sharing);
 - (iii) clause 7 (Use of ARENA Funding);
 - (iv) clause 8 (Contributions);
 - (v) clause 12 (Reporting and Plans);
 - (vi) clause 13 (Representations and Warranties);
 - (vii) clause 14.1(d) (Laws);
 - (viii) clause 14.1(e) (WHS Law);
 - (ix) clause 14.1(f) (Privacy);
 - (x) clause 14.1(g) (FOI);
 - (xi) clause 14.1(h) (Intellectual Property);
 - (xii) clause 14.1(i) (Moral Rights);
 - (xiii) clause 14.1(p) (Conflicts); and
 - (xiv) clause 18 (Confidentiality);
- (xx) **Milestone Report** (where applicable) has the meaning given in item 3 of Schedule 1;
- (yy) **Milestones** means (where applicable) the milestones set out in item 2.2 of Schedule 1;
- (zz) **Minor Variation** means a variation:
- (i) by way of extension to the dates specified in the Activity Details or Schedule 1;
 - (ii) to the Specified Personnel or the Activity Participants specified in the Activity Details; or
 - (iii) to Schedule 1, including the Knowledge Sharing Plan;
- that does not or is not likely to materially affect the Activity or Outcomes (including the Budget, Milestones and reports) or the extent of the Recipient's obligations or costs in undertaking the Activity;
- (aaa) **Moral Rights** has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute and that exists or comes to exist anywhere in the world;
- (bbb) **Other Contributions** means the financial and in-kind contributions specified in items 2.4 and **Error! Reference source not found.** of Schedule 1;
- (ccc) **Outcomes** means the outcomes for the Activity, as set out in item 1.2 of Schedule 1;
- (ddd) **Overseas Expenditure** means the incurred or paid expenditure of cash (or equivalent) on goods and services procured from a non-Australian entity and overseas travel;
- (eee) **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 or student of the Recipient; and
 - (ii) in the case of ARENA, including staff made available under section 62 of the ARENA Act;

- (fff) **Portfolio Department** means the Department of Environment and Energy or such other Department as determined by an Administrative Arrangements Order;
- (ggg) **Pre-existing Material** means Material owned by a party before execution of this Agreement;
- (hhh) **Recipient** means the party specified in item 4 of the Activity Details;
- (iii) **Recipient Confidential Information** means Confidential Information of the Recipient which is identified in item 21 of the Activity Details for the period of time specified in item 21 of the Activity Details;
- (jjj) **Recipient Contributions** means the financial and in-kind contributions specified in item 2.3 of Schedule 1;
- (kkk) **Resolution Institute** means the dispute resolution association with that name and ABN 69 008 651 232 (or any dispute resolution association which replaces it or which substantially succeeds to its powers or functions) and the following contact details: Level 1, 13-15 Bridge Street, Sydney NSW 2000; email at infoaus@resolution.institute; phone +61 2 9251 3366;
- (lll) **Schedules** means the schedules to this Agreement;
- (mmm) **Scheme** means an arrangement, assignment, composition or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under part 5.3A of the Corporations Act 2001), other than for the purposes of a solvent reconstruction or amalgamation as approved by ARENA;
- (nnn) **Senior Management** means the Chief Executive Officer (or officer with an equivalent title) in the case of the Recipient and the Chief Executive Officer or the Chief Financial Officer (as nominated by ARENA) in the case of ARENA;
- (ooo) **Specified Personnel** means the nominated Personnel of the Recipient who will be carrying out the Project and involved in knowledge sharing, as identified at item 15 of the Activity Details;
- (ppp) **Third Party Material** means Material owned by another person that is:
- (i) included, embodied in or attached to the Agreement Material; or
 - (ii) used in undertaking the Activity;
- (qqq) **WHS Law** means all applicable Laws relating to work health and safety, including the *Work Health and Safety Act 2011* (Cth), the WHS

Regulations, and any applicable Corresponding WHS Law; and

- (rrr) **WHS Regulations** means the *Work Health and Safety Regulations 2011* (Cth).

32 Interpretation

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

- (a) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (b) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (d) 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;
- (e) 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;
- (f) a reference to an obligation includes a warranty or representation and a reference to a failure to comply with, or breach of, an obligation includes a breach of warranty or representation; and
- (g) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

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

- (a) General Conditions;
- (b) Schedule 1;
- (c) Activity Details;
- (d) other Schedules;
- (e) any attachments to the Schedules; and
- (f) documents incorporated by reference in this Agreement.

Schedule 1 - The Activity

1. Activity

1.1 Activity

[insert detailed description of the Activity, including a list of each specific activity to be undertaken as part of the Activity]

1.2 Outcomes

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

- (a) [insert Outcomes - under the Agreement, the Recipient is required to achieve the Outcomes. To the extent that elements of the Activity may not be successful, and this is acceptable / contemplated (e.g. where there is a trial), then the Outcomes should describe what must actually be achieved]

1.3 Preconditions to commencing the Activity

The Recipient must not commence any work under the Activity until the following preconditions have been satisfied:

- (a) the Recipient has developed, implemented and updated a risk management plan, certified by a qualified person who is independent of the day to day administration of the Activity, and has provided copy of such risk management plan to ARENA;
- (b) [insert]

[if a Risk Management Plan, Intellectual Property Management Plan or Community Consultation Plan is required, this may be specified here. If not required, insert 'Not Used'].

2. Funding and Payment

2.1 ARENA Funding

The total amount of funding provided by ARENA under this Agreement will not exceed \$[insert] (excluding GST).

2.2 Milestones and payment of ARENA Funding

The Recipient:

- (a) must achieve the following Milestones, and provide the Milestone Report, including any Milestone deliverables, by the date for completion of the relevant Milestone or such other time as agreed between the parties; and
- (b) subject to clause 5, may request payment of ARENA Funding as follows:

[Drafting note: the Date for Completion should be a Business Day in the ACT and should not be a date that is close to the end of a financial year or calendar year]

| No. | Description of Milestone and Milestone deliverables | Date for completion | Amount of Milestone payment (GST exclusive) |
|-----|--|---------------------|---|
| 1. | <i>[Drafting note: Include this item as a deliverable if a technical report is required to be provided by the Recipient (for each relevant Milestone):</i> [Milestone title] | | |

| No. | Description of Milestone and Milestone deliverables | Date for completion | Amount of Milestone payment (GST exclusive) |
|-----|--|---|--|
| | <p>D1.1 Provision of a Milestone report, in accordance with item 3.1 of Schedule 1.</p> <p>D1.2 Completion of Knowledge Sharing deliverables due in the reporting period.</p> <p>D1.3 Provision of [project specific milestone]</p> <p>(i)</p> | | |
| 2. | <p>[Milestone title]</p> <p>D2.1 Provision of a Milestone report, in accordance with item 3.1 of Schedule 1.</p> <p>D2.2 Completion of Knowledge Sharing deliverables due in the reporting period.</p> <p>D2.3 Provision of [project specific milestone]</p> <p>(i)</p> | | |
| 3. | <p>[Milestone title]</p> <p>D3.1 Provision of a Final report, in accordance with item 3.1 of Schedule 1.</p> <p>D3.2 Completion of Knowledge Sharing deliverables due in the reporting period.</p> <p>D3.3 Provision of [project specific milestone]</p> <p>(i)</p> | | |
| 4. | <p>Final Acquittal</p> <p>D4.1 Provision of a Final acquittal, in accordance with item 3.1 of Schedule 1.</p> <p>D4.2 Completion of Knowledge Sharing deliverables due in the reporting period.</p> | 90 days after completion of the final financial Milestone | <i>[Drafting Note: retention amount is to be included]</i> |

2.3 Recipient Contributions

| | Milestone 1 | Milestone 2 | Milestone 3 | Total |
|--------------------------------|-------------|-------------|-------------|-------|
| Recipient Contributions | | | | |
| (cash) | | | | |
| (in-kind) | | | | |

2.4 Other Contributions (financial)

| | Milestone 1 | Milestone 2 | Milestone 3 | Total |
|----------------------------|-------------|-------------|-------------|-------|
| Other Contributions | | | | |
| (cash) | | | | |
| (in-kind) | | | | |

2.5 Budget

| | Milestone 1 | Milestone 2 | Milestone 3 | Total |
|-----------------------------------|-------------|-------------|-------------|-------|
| Income | | | | |
| ARENA | | | | |
| Recipient (cash) | | | | |
| Recipient (in-kind) | | | | |
| [Project Participant 1] (cash) | | | | |
| [Project Participant 1] (in-kind) | | | | |
| Total income | | | | |
| Expenditure | | | | |
| Salaries | | | | |
| Consultants | | | | |
| Equipment | | | | |
| Materials | | | | |
| Travel | | | | |
| Other | | | | |
| Total expenses | | | | |

3. Reporting

3.1 Specific Reports

The Recipient must provide reports to ARENA as follows:

| Report Type | Date | Requirements |
|------------------|---|---|
| Milestone Report | By the completion date for a Milestone as specified in item 2.2 of this Schedule 1. | <p>Each Milestone Report must include:</p> <ul style="list-style-type: none"> (a) the name of the Recipient and all subcontractors; (b) a contact name, telephone number and email address; (c) the Activity title and number; (d) the Milestone and period to which the report relates; (e) a Budget update (including cost to completion); (f) a statement of the ARENA Funding, Recipient Contributions and Other Contributions provided and spent certified by an authorised officer of the Recipient; (g) the amount remaining in the account referred to in clause 14.1(r); (h) the Milestone deliverables of that Milestone; (i) a technical report of the Milestone activities, including: <ul style="list-style-type: none"> a. a description and analysis of the technical progress of the Activity; b. evidence that the activities within the Milestone have been achieved; c. any major issues or developments which have arisen in the course of achieving the Milestone and the effect they will have on the Activity and implications for the risk management plan (if required under item 1.3 of Schedule 1); d. any proposed changes to the Activity; and e. if a community consultation plan is required under item 1.3 of Schedule 1, an update of community consultations undertaken by the Recipient under the community consultation Plan, and any significant issues that have arisen during these consultations; (j) details of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity; (k) a description of the Knowledge Sharing Deliverables in accordance with item 0 of Schedule 1; (l) a 'lessons learnt' knowledge sharing report (using the template provided by ARENA) for each Knowledge Sharing Deliverable since the previous report; (m) statistics for employment generated by or in connection with the Activity; and (n) a brief update on the progress of the Activity (including achievements and Knowledge Sharing Deliverables) relevant to the Outcomes suitable for public dissemination. |
| Final Report | Within 30 days of ARENA's acceptance of the Milestone Report for Milestone 3 | <p>The Final Report must include:</p> <ul style="list-style-type: none"> (a) the name of the Recipient and all subcontractors; (b) the Activity title and number; |

| Report Type | Date | Requirements |
|--|--|---|
| | | (c) the amount (if any) remaining in the account referred to in clause 14.1(r); (d) a description and analysis of the progress of the Activity, including: <ol style="list-style-type: none"> a. evidence that the Activity has been completed, and the Milestones have been achieved; b. details of the extent to which the Activity achieved the Outcomes; c. any highlights, breakthroughs or difficulties encountered; and d. conclusions or recommendations (if any) arising from the Activity; (e) a description of the Knowledge Sharing Deliverables in accordance with item 0 of Schedule 1; (f) details of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activity; (g) statistics for employment generated by or in connection with the Activity; and (h) a brief overview of completion of the Activity (including achievements and Knowledge Sharing Deliverables) for public dissemination. |
| An acquittals statement certified by the Recipient's Chief Financial Officer (or such other person approved by ARENA). | Within 60 days of ARENA's acceptance of the Final Report | The acquittals statement must certify: <ol style="list-style-type: none"> (a) that all ARENA Funding, Recipient Contributions (cash) and Other Contributions (cash) were spent for the purpose of the Activity in accordance with this Agreement and that the Recipient has complied with this Agreement; and (b) that salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations. |
| A statement certified by the relevant Director or authorised representative of the Recipient, as approved by ARENA | By the completion date for Milestone 2 and Milestone 3 as specified in item 2.2 of this Schedule 1 | A statement of the Recipient Contributions (in-kind) and Other Contributions (in-kind), which must include a definitive statement as to whether this represents the contributions fairly and whether they are reasonable, accounted for to an acceptable standard and have not been charged to any other activity. |

3.2 Reporting on Knowledge Sharing Deliverables

- (a) Each milestone report and/or progress report must include a description of:
 - (i) the Knowledge Sharing Deliverables completed during the period to which the report relates, including a list of any public reports or knowledge sharing reports;
 - (ii) the outcomes of those Knowledge Sharing Deliverables; and
 - (iii) any data or documentation developed from the Activity during the period to which the report relates.
- (b) The Final Report must include details of:
 - (i) all of the Knowledge Sharing Deliverables completed as at the date of the Final Report;
 - (ii) analysis of the effectiveness of each of the Knowledge Sharing Deliverables completed; and

- (iii) for any on-going Knowledge Sharing Deliverables, an update of progress in undertaking each Knowledge Sharing Deliverable.

4. Knowledge Sharing Plan

4.1 Knowledge sharing context

Under the ARENA Act, ARENA's mandate is to promote the sharing of information and knowledge about renewable energy technologies, with the objective of accelerating the development and growth of Australia's renewable energy sector. Knowledge sharing does not include public disclosure of commercial in confidence or IP sensitive information.

4.2 Knowledge Sharing Deliverables

ARENA may make requests from projects (and portfolios of projects) for particular topics to be covered either through lessons learnt reports (where applicable) or ad hoc reports, as required. Where ARENA has not made a specific request, topics are to be relevant and/or topical and have an appreciation for the key audiences. For the avoidance of doubt, business development and marketing material is not considered to be Knowledge Sharing Deliverables.

| <i>Product Number</i> | <i>What?</i> | <i>Why?</i> | <i>Frequency?</i> | <i>When?</i> | <i>Who is it for?</i> | <i>How? (expected content and delivery)</i> |
|-----------------------|--|---|---------------------------|--|--|--|
| 1 | ARENA 10 min Project Survey | Efficient qualitative data gathering | Bi-annually | From Commencement Date to 3 months following the Project Completion Date | ARENA and Knowledge Sharing Agent only | ARENA to provide link to survey at Commencement Date |
| 2 | Public Project Knowledge Sharing Report (max. 5 pages) | This report will be integrated into a program-level document to be published as a booklet (or similar) to share lessons and recommendations from participants to help commercialisation journey of other parties. The report will not contain commercial in confidence information. | Once only | At the time of Project Completion Date | ARENA and public | ARENA to provide template. |
| 3 | Attendance and participation in ARENA webinar or workshop. | Share lessons from the program with other ARENA funded projects and key stakeholders. | Once | As required | ARENA and key external stakeholders | Face to face attendance |
| 4 | Case study (max. 1 page) | Input to ARENA communications at an initiative-wide level, describing the project including the problem it is seeking to solve, how it aims to do this and who will benefit. | Twice | Within 1 month of Project Commencement Date, and update at Project Completion Date | ARENA and public | ARENA to provide guidance on format |
| 5 | ARENA website project page questions | Answer reasonable market requests for information via ARENA's project page | As required | As required | Industry | ARENA and Recipient to agree reasonable response |
| 6 | Ad hoc reports, products and activities | Capture unknown unknowns | No more than one per year | As required | Identified at the time of request | Format and topic to be agreed at the time of request |

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]** by an authorised representative:

Signature of authorised representative



Signature of witness



Name of authorised representative (print)

Name of witness (print)

Date

Appendix – Minor Variations to this Agreement (Clause 10.1)

This Appendix is intended to set out the process for effecting Minor Variations, to record details of Minor Variations and Variations for administrative purposes and to be updated as Minor Variations and Variations are effected.

Minor Variations

A Notice from ARENA directing or agreeing a Minor Variation in accordance with clause 10.2 shall include an updated version of the table below and this Appendix shall be deemed to be have been amended accordingly. If there is any inconsistency between a Minor Variation and this Appendix, then the Minor Variation will prevail to the extent of the inconsistency.

[Drafting Note: ARENA to update the table below and include with the notice to the Recipient directing or agreeing a Minor Variation in accordance with clause 10.2]

| Minor Variation number | Date of Minor Variation | Nature of Minor Variation | Details of Minor Variation |
|------------------------|-------------------------|--|-------------------------------|
| 1. | | <i>[Insert as directed by ARENA / agreed by the parties]</i> | <i>[Insert brief details]</i> |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |