

Dated:

# **Victorian Building Authority Research Grant Program Funding Agreement**

**VICTORIAN BUILDING AUTHORITY**

and

**THE ENTITY NAMED IN ITEM 3 OF SCHEDULE 1**

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# RGP Funding Agreement

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DATED

BETWEEN

**VICTORIAN BUILDING AUTHORITY** (ABN 78 790 711 883) being a body corporate established under the *Building Act 1993* (Vic) of 733 Bourke Street, Docklands Victoria 3008

(VBA)

AND

THE ENTITY NAMED IN SCHEDULE 1

(Grantee)

RECITALS

- A. The VBA is the statutory authority responsible for administering legislation, including the *Building Act 1993* (Vic) and the *Building and Construction Industry Security of Payment Act 2002* (Vic).
- B. The VBA has agreed to grant or arrange the granting of the Funding to the Grantee for the Purpose subject to the terms and conditions set out in this Agreement.

THIS AGREEMENT WITNESSES

## 1. DEFINITIONS

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In this Agreement, unless expressed or implied to the contrary:

**Adjustment** has the same meaning given to that term in the GST Act;

**Adjustment Note** has the same meaning given to that term in the GST Act;

**Agreement** means this Agreement between the VBA and the Grantee (including the Schedules) executed as an Agreement;

**Application** means the Grantee's application to the VBA, if any, for the Funding and attached as Schedule 4;

**Background IP** has the meaning given to that term in clause 9.1.1;

**Business Day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

**Commencement Date** means the commencement date of this Agreement specified in Item 1 of Schedule 1;

**Conflict Direction** has the meaning given to that term in clause 10.3.2;

**Conflict Notice** has the meaning given to that term in clause 10.3.1;

**Conflict of Interest** means an actual or potential conflict of interest, or a conflict of interest that could reasonably be perceived to exist, between the Grantee and the VBA in relation to the performance of the Grantee's obligations under this Agreement;

**Consideration** means consideration payable under this Agreement in return for a Taxable Supply, but does not include any amount on account of GST;

**Dispute** has the meaning given to that term in clause 16.1;

**Document** means all material stored by any means and produced or used by the Grantee which is relevant to the application of the Funding for the Purpose including drawings, specifications, sketches, plans, designs, estimates, calculations, reports, models, computer source codes, articles, equipment, information, files and data, and any direction or agreement recorded in writing modifying or clarifying any matter relating to this Agreement;

**Form of Acknowledgement** means the form in which the Grantee must acknowledge the VBA in all research publications, in accordance with clause 3.5.1, if and as set out in Schedule 3;

**Funded IP** has the meaning given to that term in clause 9.1.2;

**Funding** means the funding to be granted by the VBA to the Grantee in accordance with clause 3.1 and otherwise on the terms and conditions of this Agreement;

**Grantee's Associate** means any member, director, officer, employee, contractor, consultant or agent of the Grantee, who is associated with the subject matter of this Agreement;

**GST** has the same meaning given to that term in the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended);

**GST Amount** has the meaning given to that term in clause 4.2;

**Input Tax Credit** has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act;

**Intellectual Property** or **IP** means all copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks) and registered designs, trade secrets and know how, and all other intellectual or intangible property connected with this Agreement;

**Moral Right** has the meaning given to that term in the *Copyright Act 1968* (Cth) as amended from time to time, and includes a right of a similar nature anywhere in the world;

**Purpose** has the meaning given to that term in Item 5 of Schedule 1 and additional purposes which can reasonably be discerned from the Application in Schedule 4;

**Recipient** has the same meaning given to that term in the GST Act;

**Relevant Expense** has the meaning given to that term in clause 4.4;

**Relevant Legislation** means:

- (a) any Act, regulation, rule, ordinance, proclamation, by-law or similar statutory instrument, whether Commonwealth, State, local or other duly constituted authority; and
- (b) the lawful requirements of public, municipal and other competent authorities in any way affecting or applicable to this Agreement;

**Report** has the meaning given to that term in clause 7.1;

**Resources** has the meaning given to that term in clause 8.1;

**Supply** has the same meaning given to that term in the GST Act;

**Supplier** means the entity making a Supply to the Recipient;

**Suspension Notice** has the meaning given to that term in clause 12.1;

**Tax Invoice** has the same meaning given to that term in the GST Act;

**Taxable Supply** has the same meaning given to that term in the GST Act; and

**Term** means the period specified as the term of this Agreement in Item 4 of Schedule 1 or such lesser period if this Agreement is terminated earlier in accordance with clause 13.

**VBA's Representative** has the meaning given to that term in clause 5.1.1.

## **2. TERM OF AGREEMENT**

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This Agreement commences on the Commencement Date and continues for the Term.

## **3. FUNDING**

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### **3.1 Time and place for Funding**

Subject to the Grantee complying with the terms of this Agreement, the VBA grants and will pay the Funding to the Grantee at the times and in the manner specified in Schedule 2 (including payments on delivery or completion of the milestones specified, if any, to the reasonable satisfaction of the VBA) and on the conditions in this Agreement.

### **3.2 Expenditure of funds**

The Grantee must only apply the Funding strictly for the Purpose and no other purpose or mixed purposes.

### **3.3 Accuracy of information**

3.3.1 The Funding is subject to the condition that the information contained in the Application is accurate and not misleading.

3.3.2 For the purpose of clause 3.3.1 fictitious track records, inflating funds obtained from other sources and false claims as to the publication of any material will be deemed to be inaccurate and misleading.

3.3.3 The VBA may terminate this Agreement under clause 13.1 where the VBA reasonably anticipates that information contained in the Application is not accurate or is misleading (whether intentionally or recklessly so).

### **3.4 Grantee's acknowledgments**

The Grantee acknowledges and agrees that:

3.4.1 the Funding does not constitute a gift from the VBA to the Grantee but is a grant and accommodation being provided by the VBA to the Grantee on the terms and conditions of this Agreement;

3.4.2 the VBA has made no commitment to grant any further funding, additional to the Funding, to the Grantee; and

3.4.3 any expenditure incurred by the Grantee additional to the Funding is the responsibility of the Grantee and the VBA will not reimburse the Grantee for any such expenditure in any circumstances.

### **3.5 Publication of research**

3.5.1 The Grantee must acknowledge the VBA in all research publications produced in connection with the Funding by displaying the VBA's Form of Acknowledgement set out in Schedule 3. If no Form of Acknowledgement is set out, then the Grantee must, at a minimum, state in a prominent way in each publication that funding was provided by the VBA for that research.

3.5.2 The Grantee must notify the VBA of any intention to publish a research publication produced in connection with the Funding, along with relevant details including the intended date of publication, and submit to the VBA a copy of the proposed publication at least 25 Business Days prior to the intended publication date.

3.5.3 On receiving the Grantee's notice and a copy of the proposed research publication under clause 3.5.2, the VBA may review and make any comments, and may otherwise at any time prior to the intended publication date provide its consent to the Grantee to publish the publication.

3.5.4 If the VBA fails to provide its consent under clause 3.5.3 by the intended publication date, it will be deemed to have provided its consent.

3.5.5 For the avoidance of doubt, the VBA is not taken to have waived and is not precluded from exercising any of its powers or rights under this Agreement, including but not limited to those with respect to confidentiality, if it provides its consent under clause 3.5.3 or is deemed to have provided its consent under clause 3.5.4.

3.5.6 The VBA may publicise its Funding, including the amount or value of or any part of the Funding, as well as of any research publications produced in connection with the Funding and this Agreement.

### **3.6 Promotion of Funding**

The Grantee must promote the use of the Funding in accordance with Schedule 3 and must not promote it in any other way unless the VBA has given prior written consent to that form of promotion and related materials, representations or statements.

### **3.7 In-kind support**

VBA will use all reasonable endeavours to provide in-kind support to the Grantee as set out in Schedule 3.

## **4. GST**

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### **4.1 GST inclusive**

All Consideration payable under this Agreement in relation to any Supply, is inclusive of GST, whether or not the Funding or the in-kind amount is a Supply.

### **4.2 Increase in Consideration**

To the extent that any Supply under this Agreement constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will not be increased by the applicable amount of GST (**GST Amount**) and the Consideration will be deemed and be adjusted to include the GST Amount.

### **4.3 Payment of GST**

Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).

### **4.4 Reimbursements**

If this Agreement requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier (**Relevant Expense**), the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled in respect of the Relevant Expense, together with any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

#### **4.5 Tax Invoice**

To the extent that an amount to be paid under this agreement is consideration for a Taxable Supply, the Supplier must provide to the Recipient a valid Tax Invoice at or prior to the time of payment of any GST Amount.

#### **4.6 Adjustments and Adjustment Notes**

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within 5 Business Days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within 5 Business Days after the date of receipt of the Adjustment Note.

### **5. VBA'S REPRESENTATIVE**

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#### **5.1 Appointment**

5.1.1 The VBA may appoint a representative (**VBA's Representative**) to exercise the duties, discretions and powers vested in the VBA arising out of or in any way connected with this Agreement. The VBA may nominate in Item 6 of Schedule 1 who will be the VBA's Representative.

5.1.2 The appointment of a VBA's Representative will not prevent the exercise of any duty, discretion or power by the VBA and the VBA may, at any time, cancel the appointment and nominate another person as the VBA's Representative by written notice to the Grantee.

#### **5.2 Functions of VBA's Representative**

5.2.1 The VBA's Representative will carry out its functions as an agent of the VBA.

5.2.2 Except where this Agreement otherwise provides, the VBA's Representative may give a direction orally but the VBA's Representative must as soon as practicable confirm it in writing.

### **6. NATURE OF RELATIONSHIP**

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#### **6.1 No employment relationship between parties**

The parties expressly acknowledge and agree that:

6.1.1 no relationship of employment or partnership is created between them; and

6.1.2 it is the express intention of the parties that any relationship of partnership or employment between them is denied.

## **6.2 No deemed employment for any purpose**

The Grantee acknowledges and agrees that:

- 6.2.1 the VBA is not and will not at any time be construed as the employer of the Grantee or any Grantee's Associate for the purposes of any Relevant Legislation;
- 6.2.2 the Grantee alone is responsible and liable for the making of any payments in respect of superannuation, payroll or any other tax, WorkCover levy or any similar payments in relation to its staff; and
- 6.2.3 under no circumstances will the obligations contained in clauses 6.2.1 and 6.2.2 be with the VBA, and the Grantee agrees to indemnify and keep indemnified the VBA in respect of any such obligations and payments.

## **7. REPORTING, RECORDS AND AUDITING**

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### **7.1 Grantee's reporting requirements**

The Grantee must submit reports to the VBA's Representative, in a format to the satisfaction of the VBA's Representative, at the intervals set out in Item 7 of Schedule 1, accounting for the Grantee's use of the Funding to the date of the report and demonstrating that the Funding has been used for the Purpose (**Report**).

### **7.2 Financial reporting**

Without limiting the general nature of clause 7.1, each Report must contain a statement of cash receipts and payments pertaining to the Funding that is certified by:

- 7.2.1 the Grantee (where the Grantee is a natural person);
- 7.2.2 an officer of the Grantee (where the Grantee is a body corporate); or
- 7.2.3 a partner of the Grantee (where the Grantee is a partnership).

### **7.3 Records**

The Grantee must for the purposes of this Agreement implement and maintain proper books of account and operating records necessary to afford a correct and complete record and explanation of all expenditure by the Grantee of the Funding including without limitation, proper books of account, time charge sheets, disbursement records and such records must be maintained in a format to the reasonable satisfaction of the VBA's Representative from time to time and generally, in a format and consistent with generally-accepted accounting principles and standards that will reasonably permit the books and records to be audited by the VBA.

### **7.4 Inspection of records**

The Grantee must give the VBA's Representative or a third party nominated by the VBA's Representative access to any information maintained by the Grantee pursuant to clause 7.3 or any other clause of this Agreement to enable the VBA's Representative or the third party to:

- 7.4.1 determine the level of the Grantee's compliance with all of its obligations under this Agreement; and
- 7.4.2 report to the VBA any other matters reasonably determined by the VBA's Representative or the third party to be relevant to the performance of the Grantee's obligations under this Agreement.

## **8. THE VBA'S RESOURCES**

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### **8.1 Access to resources**

The Grantee must not use, access or seek to gain access to any of the VBA's personnel, technology, technological systems, data or materials (**Resources**), except with the prior written consent of the VBA's Representative (which may contain conditions). If the VBA's Representative provides the Grantee with consent to access any Resources, the Grantee must only access such Resources for the purposes approved in writing by the VBA.

### **8.2 Computer virus**

The Grantee must take all reasonable steps, using commercially available anti-virus software, to ensure that they do not introduce any software or other material which may contain a computer virus into the VBA's technological systems.

## **9. INTELLECTUAL PROPERTY AND DOCUMENTS**

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### **9.1 Ownership**

- 9.1.1 The Intellectual Property of each party, which exists at the date of this Agreement, remains the property of that party (the **Background IP**).
- 9.1.2 The Grantee will own all Intellectual Property resulting from the use of the funding for the Purpose (the **Funded IP**).
- 9.1.3 The Grantee grants the VBA an irrevocable, world-wide, royalty free, non-exclusive, non-transferable and perpetual licence:
  - 9.1.3.1 to use, reproduce and adapt the Funded IP for its own internal purposes; and
  - 9.1.3.2 to publish this Funded IP on the VBA's intranet, public website or media channels and as otherwise agreed with the Grantee from time to time.
- 9.1.4 Each party grants the other party an irrevocable, world-wide, royalty free, non-exclusive and non-transferable licence to use its Background IP for the Purpose.

- 9.1.5 To the extent that a party's Background IP is incorporated in Funded IP or is otherwise necessary for the other party to use the Funded IP, that party grants the other party an irrevocable, world-wide, royalty-free, non-exclusive, non-transferable and perpetual licence to use such Background IP for the purpose of utilising and obtaining the full benefit of the Funded IP in accordance with this Agreement.
- 9.1.6 The parties each represent that, to the best of its knowledge, use of its Background IP by the other party in accordance with the terms of this Agreement will not infringe the Intellectual Property or Moral Rights of any person.

## **10. CONFLICT OF INTEREST**

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### **10.1 Grantee's warranty**

The Grantee warrants to the VBA that at the time of entering into this Agreement no Conflict of Interest exists, is likely to arise or could reasonably be perceived to exist.

### **10.2 Grantee to use best endeavours**

The Grantee must use its best endeavours to ensure that no actual or potential Conflict of Interest arises or could reasonably be perceived to arise during the Term, this includes attempting, offering or giving any gifts or benefits that are inconsistent with the impartiality, accountability and integrity policies and requirements in the VBA's gifts, benefits and hospitality policy (as published from time to time).

### **10.3 Grantee to notify**

10.3.1 The Grantee must immediately notify the VBA's Representative of any matter which may give rise to a Conflict of Interest (**Conflict Notice**).

10.3.2 Upon receipt of a Conflict Notice, or whenever the VBA's Representative considers that a Conflict of Interest has arisen or is likely to arise, the VBA's Representative may direct the Grantee to resolve the Conflict of Interest to the satisfaction of the VBA's Representative within 10 Business Days (**Conflict Direction**).

10.3.3 Where the VBA's Representative determines that the Grantee has not resolved to Conflict of Interest to the sole and unfettered satisfaction of the VBA's Representative within 10 Business Days after issuing the Conflict Direction, the VBA may terminate this Agreement under clause 13.

## **11. INSURANCE**

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### **11.1 Responsibility of Grantee**

The Grantee is responsible for obtaining and maintaining all prudent insurance coverage for risks, such as personal, accident and disability insurance, products, professional indemnity insurance and public liability insurance, to adequately cover itself, the goods and services it provides and the Grantee's Associates.

## **12. SUSPENSION OF FUNDING**

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### **12.1 Suspension Notice**

If the VBA's Representative forms the reasonable view that one or more grounds for suspending the Funding exists, the VBA's Representative may issue the Grantee with a written notice advising it that the VBA intends to suspend the Funding on and from the specified date (**Suspension Notice**).

### **12.2 Requirements of the Suspension Notice**

A Suspension Notice issued under clause 12.1 must:

- 12.2.1 specify the VBA's grounds for suspending the Funding;
- 12.2.2 state the date on and from which the suspension will start; and
- 12.2.3 require the Grantee to take all reasonable steps to rectify the grounds for suspending the Funding.

### **12.3 Grounds for suspension**

Grounds for suspending the Funding include:

- 12.3.1 the Grantee applying the Funding for purposes other than the Purpose or failing to promote the use of the Funding in accordance with Schedule 3;
- 12.3.2 the Grantee failing to provide Reports in accordance with clause 7.1; or
- 12.3.3 a dispute or difference exists between any of the parties;
- 12.3.4 the Grantee fails, or is not ready, willing or able, to achieve a milestone set out in Schedule 2;
- 12.3.5 the Grantee misuses any of the Resources or any premises of the VBA; or
- 12.3.6 the Grantee is otherwise in breach of this Agreement.

### **12.4 Rights of the VBA to suspend**

If within 10 Business Days after issuing the Suspension Notice (or such other period of time as may be specified in the Suspension Notice) the Grantee fails to satisfy the VBA's Representative that the Funding should not be suspended, the VBA's Representative may suspend the Funding.

### **12.5 Recommencement of Funding**

The VBA's Representative must recommence the Funding within a reasonable time after becoming aware that grounds for suspending the Funding under clause 12.3 no longer exist (whether or not any current or continuing grounds were specified in the Suspension Notice).

## **13. TERMINATION**

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### **13.1 Immediate termination**

The VBA's Representative may terminate this Agreement immediately if:

- 13.1.1 the Grantee or Grantee's Associate engages in any conduct that causes or may cause imminent or serious risk to the health or safety of a person;
- 13.1.2 the Grantee or Grantee's Associate engages in any conduct that causes or which the VBA's reasonably anticipates may cause or may be perceived to cause detriment to the VBA interests, regulatory function or reputation;
- 13.1.3 a Grantee's Associate is declared bankrupt;
- 13.1.4 the Grantee commits an act of insolvency or enters into a scheme of arrangement or composition with creditors or a liquidator, receiver or receiver and manager, administrator or controller of the Grantee or any of its assets is appointed;
- 13.1.5 the Grantee or a Grantee's Associate is found guilty of any criminal offence, other than an offence which in the opinion of the VBA's Representative does not affect the Grantee's ability to properly carry out its obligations under this Agreement;
- 13.1.6 the VBA reasonably believes that the Grantee or a Grantee's Associate engages in or commits any act of serious misconduct or any other serious or persistent breach of any of the terms of this Agreement; or
- 13.1.7 any other clause of this Agreement entitles the VBA's Representative or the VBA to terminate this Agreement.

### **13.2 Termination by the VBA for convenience**

- 13.2.1 In addition to the VBA's rights under clause 13.1, the VBA's Representative may terminate this Agreement at any time before the end of the Term for any reason by giving the Grantee 10 Business Days' notice in writing of its intention to terminate this Agreement at the end of those 10 Business Days. The VBA may give reasons for terminating the Agreement.
- 13.2.2 In the event VBA terminates this Agreement for any reason under clause 13.2, on and from the date of termination, the VBA will not be obligated to pay any further amounts of the Funding nor provide nor make available any part of the in-kind support.

## **14. CONSEQUENCES OF TERMINATION**

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### **14.1 Termination for breach**

If the VBA's Representative terminates this Agreement pursuant to clause 13.1:

- 14.1.1 the VBA will cease the Funding;
- 14.1.2 the Grantee must take all action necessary to minimise further expenditure of the Funding that was paid prior to the date of termination; and
- 14.1.3 the Grantee must repay to the VBA all monies that have not been expended under the Funding.

### **14.2 Termination for convenience**

If the VBA's Representative terminates this Agreement pursuant to clause 13.2:

- 14.2.1 the VBA may cease the Funding;
- 14.2.2 the Grantee must take all action necessary to minimise further expenditure of the Funding that was paid prior to the date of termination;
- 14.2.3 subject to the Grantee providing documentary evidence to the satisfaction of the VBA's Representative that it has incurred additional costs as a result of the termination, the VBA will reimburse the Grantee for such costs provided that in no case will the VBA's liability exceed 5% of the total Funding.

### **14.3 Limited liability and appeal after termination**

The parties acknowledge that in terminating this Agreement under clause 13.2 the VBA is under no obligation, to the full extent permitted by law, to comply with the principles of natural justice or fairness and that, subject to clause 14.2, the VBA will not be liable to the Grantee for any costs, losses, damages or expenses the Grantee incurs arising out of or in any way connected with the termination of this Agreement.

## **15. CONFIDENTIALITY**

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### **15.1 Return of documents**

Upon the termination or expiry of this Agreement, the Grantee must return to the VBA's Representative all manuals, drawings, computer programs and other documents supplied by the VBA or the VBA's Representative to the Grantee (if any) and other property belonging to the VBA (if any). Subject to clause 9.1.2 the Grantee must not retain copies of any documents that it is returning.

## **15.2 Use of information**

The Grantee must not, whether during or after the Term, make any improper use of:

- 15.2.1 any trade secrets and any financial, accounting, marketing and technical information, customer and supply lists, pricing information, ideas, inventions, techniques, systems, concepts, formulae, know how, technology, operating procedures, processes, knowledge and other information belonging to, used by or relating to the VBA in the conduct of its business or gained as a result of the Grantee's involvement with the VBA at any time;
- 15.2.2 the position of the VBA on any confidential matter; or
- 15.2.3 any other information which may be detrimental to the interests of the VBA or any other person who has provided information to the VBA on a confidential basis, unless the Grantee is required to disclose the information by law.

## **15.3 Non-disclosure**

- 15.3.1 The Grantee must not disclose to any third party or use any material or information referred to in clause 15.2 without the prior written consent of the VBA's Representative, except that:
  - 15.3.1.1 the Grantee may disclose the VBA's confidential information to its employees, students, professional advisors and sub-contractors on a need-to-know basis, solely to assist in the performance of the Grantee's obligations under this Agreement and on the condition that such persons do not disclose the confidential information to any other person or use the confidential information other than in accordance with this Agreement; and
  - 15.3.1.2 subject to clause 15.3.2, the Grantee may disclose the VBA's confidential information if it is required to do so by law or court order.
- 15.3.2 Unless it is not practicable to do so, the Grantee must notify the VBA if it is required to disclose the VBA's confidential information by law or court order.
- 15.3.3 The Grantee must take or cause to take all necessary precautions to maintain the secrecy and confidentiality of any material or information referred to in clause 15.2, including using their best endeavours to prevent improper publication or disclosure by a third party.

## **16. DISPUTE RESOLUTION**

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### **16.1 Parties to meet**

If any dispute or difference arises under or in connection with this Agreement (a **Dispute**) which is not able to be resolved between the VBA's Representative and a representative nominated by the Grantee within 10 Business Days of such Dispute being notified, the nominated senior executive officer (or equivalent) of each of the parties must promptly meet and discuss in good faith with a view to resolving such Dispute.

### **16.2 Failure to resolve Dispute**

If any Dispute is unable to be resolved in accordance with clause 16.1 within 10 Business Days, either party may submit the Dispute for resolution to the non-exclusive jurisdiction of the courts of Victoria, Australia.

### **16.3 Performance during dispute resolution**

The parties to a Dispute must continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this clause 16.

### **16.4 Interlocutory relief**

Nothing in this clause 16 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such Dispute.

### **16.5 Clause does not merge**

This clause 16 survives and will not merge on termination.

## **17. GENERAL**

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### **17.1 Amendment**

This Agreement, including the Schedules, may only be varied or replaced by a document duly signed by the parties.

### **17.2 Entire understanding**

This Agreement contains the entire understanding between the parties with regard to its subject matter. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

### **17.3 Assignment by the VBA**

The VBA may assign its rights and obligations under this Agreement, without the consent of the Grantee.

#### **17.4 Assignment by the Grantee**

The Grantee must not assign any right or obligation under this Agreement to any person without the prior written consent of the VBA's Representative which can be given or withheld in the VBA's Representative's sole and unfettered discretion.

#### **17.5 Time of the essence**

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

### **18. INTERPRETATION**

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- 18.1 This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.
- 18.2 In this Agreement, a reference to:
- 18.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
  - 18.2.2 a person includes the legal personal representatives, successors and assigns of that person; and
  - 18.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.
- 18.3 If a party consists of more than one person, this Agreement binds them jointly and each of them severally.
- 18.4 In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.
- 18.5 In this Agreement:
- 18.5.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
  - 18.5.2 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Agreement;
  - 18.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form; and
  - 18.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

- 18.6 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 18.7 If it is not possible to read down a provision as required in clause 18.6, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.
- 18.8 This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- 18.9 In this Agreement, a reference to "\$" or "dollars" is a reference to Australian dollars.
- 18.10 If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.
- 18.11 In this Agreement, a reference to:
- 18.11.1 the singular includes the plural and vice versa; and
  - 18.11.2 a gender includes the other genders.

**EXECUTED** by the parties as an agreement

**SIGNED** for and on behalf of the **Victorian Building Authority** a body corporate established under the *Building Act 1993* (Vic) by its duly authorised representative in the presence of:

.....

Signature of witness

.....

Name of witness

Date:

.....

Signature of authorised representative

.....

Name of authorised representative

Date:

**SIGNED** for and on behalf of **[insert details]** by its duly authorised representative in the presence of:

.....

Signature of witness

.....

Name of witness

Date:

.....

Signature of authorised representative

.....

Name of authorised representative

Date:

# Schedule 1

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## DETAILS

The details of this Agreement are:

1. **Commencement Date:**  
(refer clause 2)
  
2. **Victorian Building Authority**  
**ABN:**  
**Registered office:**  
**Place of business:**  
**Phone:**
  
3. **Grantee name:**  
**ABN:**  
**Registered office:**  
**Place of business:**  
**Phone:**
  
4. **Term:**  
(refer clause 2)
  
5. **Purpose:**  
(refer clause 3.2)
  
6. **VBA's Representative:**  
(refer clause 5.1)
  
7. **Periods of time or dates for submitting Reports:**  
(refer clause 7.1)

## Schedule 2

### FUNDING STRUCTURE (clause 3.1)

The VBA will grant the Funding to the Grantee in accordance with clause 3.1 on the following basis:

[Complete the details in the applicable payment option and delete which ever option will not apply to this Agreement.]

#### Option 1: Lump sum funding

\$ [insert]

This amount is payable when the VBA certifies that the deliverables have been completed to the satisfaction of the VBA in accordance with the requirements of this Agreement.

#### Option 2: Milestone funding

The sum of \$ [insert] payable by reference to the following milestones:

[insert]

<i>Milestone description</i>	<i>Due date for delivery or completion of milestone</i>	<i>Milestone payment for delivery or completion of milestone by the due date</i>
1.		\$
2.		\$
3.		\$
	<b>Total milestone payments</b>	<b>\$</b>

## Schedule 3

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### VBA IN-KIND SUPPORT (clause 3.7)

In addition to the Funding, the VBA will provide in-kind support to the Grantee of the following kind:

*[Insert the amount, frequency, nature, location of the in-kind support that the VBA will provide to the Grantee.]*

### VBA FORM OF ACKNOWLEDGEMENT (clause 3.5.1)

The Grantee must display the following words in each research publication:

*[Insert – if nothing is inserted here, clause 3.5.1 provides for a basic 'default' acknowledgement the Grantee must use.]*

### PROMOTION BY GRANTEE (clause 3.6)

The Grantee must promote the use of the Funding in the following way:

1. Name and branding

2. Promotion and advertising

## Schedule 4

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### GRANTEE'S APPLICATION FOR FUNDING (clause 3.3)

[Attach or insert Application.]

REFERENCE ONLY