

CleanBC Industry Fund: Innovation Accelerator Funding Agreement Template 2022

<p>1. Recipient:</p>	<p>Legal Name: <Insert Legal Name as Shown in BC Online Search, including “Corp.”, “Ltd.”, “Limited” as indicated on BC Online. For Limited Partnerships, insert name of General Partner, followed by “as general partner for the firm of” and then insert name of Limited Partnership. E.G. “XYZ Corp. as general partner for the firm of ABC Limited Partnership.”></p>
<p>2. Recipient Contact:</p>	<p>Name: Title: Address: Phone: Email: <The Recipient Contact is the primary contact during the term of the agreement. This person may be a different than the Recipient’s Agreement signatory (If the Recipient is going to receive cheques, this address needs to match the address associated with the legal name and GST number for the recipient.></p>
<p>3. Province Contact:</p>	<p>Title: Director, Clean Investment, Climate Action Secretariat, B.C. Ministry of Environment and Climate Change Strategy: Address: 3rd Floor, 525 Superior Street Victoria, British Columbia Phone: 778-698-3702 Email: CleanBCIndustryFund@gov.bc.ca</p>
<p>4. Funding Agreement Identification Number:</p>	
<p>5. Eligible Expense Start Date:</p>	<p><Insert date when the Recipient can start incurring Eligible Expenses. This is the date the Recipient is notified in writing it is a Successful Proponent. Note: The Province will not pay for any expenses incurred by a Proponent if an executed Funding Agreement is not reached between the Recipient and the Province ></p>
<p>6. Project End Date:</p>	<p><Insert last date during which, subject to an extension, expenses can be incurred and submitted to Province.></p>
<p>7. Province’s Share</p>	<p><Insert percentage equal to the Province’s maximum share of funding proposed by Recipient in Proposal. Amount must not exceed 75%.> [•]%</p>

8. Maximum Funding Amount:	\$_____ (subject to adjustment as provided herein)
9. Project Name:	
10. Project Facility:	<Insert the name of the reporting operation <u>and</u> , if linear facility operation, the facility at which the project will occur, use names reported under <i>GGIRCA</i> .>
11. BCGHGID #	Insert the BCGHGID # of the reporting operations at which the Project takes place. The BCGHGID can be found on the emission report for the reporting operation.
12. The following Schedules are attached to and incorporated into the Funding Agreement:	<ul style="list-style-type: none"> A. Project Description B. Budget C. Invoices and Payment Procedures D. Milestones E. Key Metrics F. Insurance G. Project Summary Report Requirements H. In-Kind Contributions

FOR ADMINISTRATIVE PURPOSES ONLY	
Proposal Reference Number:	Insert reference number of Proposal.

Between:

Her Majesty the Queen in Right of British Columbia, as represented by the Minister of Environment and Climate Change Strategy, (the “Province”)

And:

<Insert full legal name of Recipient if Recipient is a Corporation or Individual. This must be as shown on Corporate Search and include “Limited”, “Corp.” “Inc.” as applicable. If Recipient is a Partnership enter name of General Partner followed by “as general partner for the firm of <insert name of Partnership, including “Limited Partnership” if applicable”> (the “Recipient”)

RECITALS

- A. The Province has established a target of reducing greenhouse gas emissions to 40% below 2007 levels by 2030, 60% below 2007 levels by 2040 and 80% below 2007 levels by 2050;
- B. The Province has established a broad-based carbon tax with an effective price on greenhouse gas emissions;
- C. The Province has established the CleanBC Industry Fund to support BC industry in remaining competitive and transitioning to cleaner operations;
- D. The Recipient is the Operator of an industrial operation;
- E. The Recipient wants to demonstrate the viability of an innovative technology or process to reduce emissions;
- F. The Province wants to assist the Recipient in achieving that goal.

Wherefore, in consideration of the premises and mutual covenants and agreements herein, and the sum of \$1.00 paid by each of the Parties hereto (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows:

**ARTICLE 1
INTERPRETATION**

- 1.1 Definitions. In this Agreement, where the terms defined below are capitalized (other than capitalization required by punctuation) they have the meaning ascribed below:
- (a) “Abandon” means a decision by the Recipient not to proceed with the Project or a material element of the Project, or delay proceeding, such that it is reasonable to conclude that one or more Milestones will not be Substantially Completed by the Milestone Dates, provided that, if the Recipient has proposed an amended Schedule D in accordance with section 5.6, and the Recipient is making reasonable efforts to continue with the Project and Milestone, the decision will not be considered an abandonment unless the Province denies the request;
 - (b) “Adjusted Budget” means the Budget with any adjustments made in accordance with section 2.11;

- (c) “Advanced Milestone” means the Milestone identified as the Advanced Milestone in Schedule D;
- (d) “Administrative and Overhead Expenses” means operating expenses such as rent, overhead, administration, payroll and accounting, supervision of employees other than where supervision is incidental to management of the Project, insurance, office supplies, printing, mailing, utilities, membership dues, subscriptions, or accounting activities, but does not include such expenses included in Eligible Contractor/Professional Expenses where incorporated into hourly rates or management fees;
- (e) “Affiliates” includes an affiliate as defined in section 2 of the *Business Corporations Act*, S.B.C. 2002, c. 57 or any partner of the Recipient or party to a joint venture agreement related to the Project or the Project Facility;
- (f) “Agreement” means this agreement, including all Schedules hereto;
- (g) “Budget” means the Budget attached as Part 1 of Schedule B;
- (h) “Budget Item” means a category of Eligible Expenses identified in the Budget or Adjusted Budget, but does not include subtotals or totals of such categories;
- (i) “Budgeted Eligible Expenses” means
 - (i) in respect of a Budget Item, Eligible Expenses that do not exceed the amounts set out in the Budget or Adjusted Budget for that Budget Item, and
 - (ii) in respect of the Project, means the total of amounts referred to in subparagraph (i) for the Project;
- (j) “CleanBC Industry Fund” means the Province’s program to invest some of the revenue from incremental carbon taxes paid by industry directly into industrial emission reduction projects;
- (k) “Communications Protocol and Strategy” means a Communications Protocol and Strategy under s. 11.1;
- (l) “Contract Start Date” means the date on which the Parties execute the Agreement;
- (m) “Cover Sheet” means the cover sheet to this Agreement;
- (n) “Deliverables” includes the Expense Claim, reports submitted under Article 6 [*Reporting*], and any other reports or records that are required to be submitted to the Province by the Recipient under this Agreement;
- (o) “Eligible Contractor/Professional Expense” means an expense under section 3.4;
- (p) “Eligible Employment Expense” means an expense under section 3.3;

- (q) “Eligible Expense” means an expense under section 3.1;
- (r) “Eligible Expense Start Date” means the date referred to in row 5 of the Cover Sheet;
- (s) “Eligible Incidental Expense” means an expense under section 3.6;
- (t) “Eligible In-Kind Contributions” means a contribution under section 3.7;
- (u) “Eligible Material” means material under section 3.5;
- (v) “Eligible Service” means a service under section 3.2;
- (w) “Event of Default” means an event of default under section 15.1;
- (x) “Expense Claim” means an expense claim under section 2.6;
- (y) “Fiscal Year” means the period from April 1 of one calendar year to March 31 of the following calendar year;
- (z) “Funding Agreement Identification Number” means the number referred to in row 4 of the Cover Sheet;
- (aa) “GGIRCA” means the *Greenhouse Gas Industrial Reporting and Control Act*, S.B.C. 2014, c. 29;
- (bb) “Global Warming Potential” means the global warming potential set out in in column 4 of the Schedule to the *Carbon Neutral Government Regulation*, B.C. Reg 392/2008;
- (cc) “Government Authority” means the Province and any federal, municipal, regional or other provincial government, or an agency of the Province or another government, including without limitation, the British Columbia Hydro and Power Authority;
- (dd) “Group II Employees” means Group II employees under Treasury Board Order #88, as amended;
- (ee) “GST” means the Goods and Services Tax imposed under the *Excise Tax Act*, R.S.C. 1985, c. E-15;
- (ff) “Ineligible Expense” means an expense under section 3.8;
- (gg) “Interest” means interest at the rate of interest under section 4 of the *Interest on Overdue Accounts Receivable Regulation*, B.C. Reg. 303/92;
- (hh) “Maximum Milestone Amount”, relation to a Milestone, means the amount set out in Column 3 of Schedule D opposite the Milestone.
- (ii) “Maximum Funding Amount” means the amount referred to in row 8 of the Cover Sheet;

- (jj) “Milestone” means Substantial Completion of a phase of the Project or an element of the Project described in Column 1 of Schedule D;
- (kk) “Milestone Date”, in relation to a Milestone, means the date in Column 4 of Schedule D opposite the Milestone;
- (ll) “Milestone Payment”, in relation to a Milestone, means a payment calculated in accordance with section 2.4 or 2.5, as applicable;
- (mm) “Milestone Report”, in relation to a Milestone, means a report prepared by the Recipient in accordance with section 6.3;
- (nn) “Operator” means an operator as defined under GGIRCA;
- (oo) “Other Funding” means Other Government Funding, Utility Funding, and any other grants either received by or payable to the Recipient or its Affiliates, for or related to the Project or any element of the Project from non-Affiliate entities;
- (pp) “Other Government Funding” means funding either received by or payable to the Recipient or its Affiliates, for or related to the Project or any element of the Project from the Province under a different agreement or arrangement or from any Government Authority;
- (qq) “Parties” means, collectively, the Province and the Recipient and “Party” means any one of them;
- (rr) “Program” means the CleanBC Industry Fund Program;
- (ss) “Project” means the capital expenditures, facility improvements or software improvements that, based on calculations made in accordance with the Emission Reduction Quantification Guidelines, will lead to a reduction in the quantity, measured in tCO₂e, of GHG emissions, as described in Schedule A and any activities necessary and incidental to that;
- (tt) “Project End Date” means the date referred to in row 6 of the Cover Sheet or as amended in accordance with s. 5.6(d);
- (uu) “Project Facility” means the facilities referred to in row 10 of the Cover Sheet;
- (vv) “Project Summary Report” means the report prepared by the Recipient in accordance with section 6.4;
- (ww) “Project Summary Report Milestone” means the Milestone identified as the Project Summary Report Milestone in Schedule D;
- (xx) “Proof of Payment” means evidence of payment confirming the Eligible Expenses were incurred and paid by the Recipient in respect of the Project, including processed cheques, cheques and accompanying bank statements reflective of amounts paid, credit card statements reflective of the charged amount and date, payroll logs, or

other methods of proof of payment approved by the Province prior to the submission of an Expense Claim, including purchase orders and evidence of pre-payment prior to receipt of goods or services;

- (yy) “Proposal” means the proposal submitted by the Recipient to the Province in response to CleanBC Industry Fund Request for Proposal Issue Date: March 14, 2022;
- (zz) “Province Contact” means the person referred to in row 3 of the Cover Sheet, or as otherwise specified under section 19.2;
- (aaa) “Province’s Share” means the percentage indicated in row 7 of the Cover Sheet;
- (bbb) “PST” means tax imposed under the *Provincial Sales Tax Act*, S.B.C. 2012, c. 35;
- (ccc) “Recipient” means the person referred to in row 1 of the Cover Sheet;
- (ddd) “Recipient Contact” means the person referred to in row 2 of the Cover Sheet or as otherwise specified under section 19.2;
- (eee) “Reporting Milestone” means a Milestone identified as a Reporting Milestone in Schedule D;
- (fff) “Schedule” means a schedule to this Agreement;
- (ggg) “Substantial Completion”, in relation to a Milestone, means the point at which
 - (i) the element of the Project or phase of the Project described in Schedule D is ready for use or is being used for the purpose intended, and
 - (ii) the remaining work to complete the phase or element is not more than 2% of the total cost of all work and materials associated with the Milestone;
- (hhh) “tCO₂e” means the mass of carbon dioxide (in tonnes) that would produce the same global warming impact as a given mass of another greenhouse gas, as determined using the Global Warming Potential;
- (iii) “Term” has the meaning given to it in section 16.1;
- (jjj) “Timesheets” means an itemized accounting that identifies employee, contractor or professional hours worked, with a sufficient description of the work done to identify the applicable Budget Item and to document the need for the work in relation to the completion of the Project; and
- (kkk) “Utility Funding” means funding either received by or payable to the Recipient or its Affiliates, for or related to the Project or any element of the Project from FortisBC Inc. or any Affiliate thereof under a different agreement or arrangement.

1.2 Interpretation. In this Agreement,

- (a) wherever this Agreement provides that an action may be taken, a consent or approval must be obtained, a determination must be made or another discretion may be exercised (collectively a “Discretion”) then the Party exercising such Discretion must act reasonably in exercising such Discretion, except where this Agreement states that a Party has sole discretion to exercise that Discretion;
- (b) where if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person (including a Party) includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust, governmental authority or agency and includes that person’s successors and permitted assigns;
- (d) a reference to an agreement or document (including a reference to this Agreement) includes the agreement or document as amended, varied, supplemented, novated or replaced from time to time;
- (e) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, legislation or a provision of legislation substituted for it, and any regulation, code, ordinance, by-law, statutory instrument, protocol or guideline issued or designated under it and having the force of law, as amended or replaced from time to time;
- (f) a reference to an article, section, paragraph, schedule or exhibit is a reference to an article, section, paragraph, schedule of or exhibit to this Agreement;
- (g) if any date specified in this Agreement as a date for taking action falls on a day that is not a business day, that action may be taken on the next business day;
- (h) section headings (underlined), article headings and italicized material in square brackets are for convenience only and do not form part of this Agreement or affect its interpretation;
- (i) the words “**include**”, “**includes**” and “**including**” are to be read as if followed by the words “without limitation”; and
- (j) the singular includes the plural and the plural includes the singular.

1.3 Inconsistency between terms. If there is an inconsistency between one provision of this Agreement or the Proposal and another provision of this Agreement or the Proposal, the following rules apply:

- (a) If there is an inconsistency within the body of this Agreement, within the Schedules, or within the Proposal, a specific provision takes precedence over a general provision.
- (b) If there is an inconsistency between a provision in the main body of this Agreement and a provision in the Schedules or in the Proposal, the provision in the main body of this Agreement takes precedence.

- (c) If there is an inconsistency between a provision in the Schedules and a provision in the Proposal, the provision in the Schedules takes precedence.

ARTICLE 2
Payments by Province for Project

- 2.1 Provincial Payment Obligation. Subject to the terms and conditions of this Agreement, the Province will pay to the Recipient an amount up to the lesser of (a) the sum of the Milestone Payments calculated in accordance with sections 2.4 and 2.5 or (b) the Maximum Funding Amount.
- 2.2 Maximum Liability. Despite any other provision of this Agreement, the Province shall not be required to pay, or otherwise be liable for, in total under or in connection with this Agreement, more than the Maximum Funding Amount.
- 2.3 Reduction for Excess Other Funding. If the Recipient directly or indirectly receives or has payable to it Other Funding such that the total of Other Funding and amounts payable under this Agreement exceeds or will exceed 75% of Eligible Expenses incurred by the Project End Date, the Province may reduce the amounts paid under this Agreement by the excess, or if the arrangement under which Other Funding is paid also provides for a reduction in funding, by a pro rata amount.
- 2.4 Payment for the Advanced Milestone. If the Recipient submits a Milestone Report in accordance with section 6.3 for the Advanced Milestone then, subject to any requests for additional information or any adjustments, corrections or set offs made in accordance with this Agreement or section 38 of the *Financial Administration Act*, the Province will pay to the Recipient the Maximum Milestone Amount for the Advanced Milestone.
- 2.5 Payment for the Project Summary Report Milestone.

- (a) If the Recipient submits the Milestone Report and Project Summary Report in accordance with section 6.4 and an Expense Claim in accordance with section 2.6 then, subject to any requests for additional information or any adjustments, corrections or set offs made in accordance with this Agreement or section 38 of the *Financial Administration Act*, the Province will pay to the Recipient a Milestone Payment equal to the following:

$$\text{Milestone Payment} = \text{MMA} - \text{R}$$

where

MMA = the Maximum Milestone Amount for the Project Summary Report Milestone;

R = any additional reductions made under section 2.3 or section 2.6, for which deductions have not previously been made.

- (b) If the Recipient submits the Milestone Report in accordance with section 6.4 and a partial Project Summary Report then, subject to any requests for additional information or any adjustments, corrections or set offs made in accordance with this

Agreement or section 38 of the *Financial Administration Act*, the Province will pay to the Recipient a Milestone Payment equal to the following:

$$\text{Milestone Payment} = (\text{MMA} \times \text{P}) - \text{R}$$

where

MMA = the Maximum Milestone Amount for the Project Summary Report Milestone;

P = the percentage of the Project Summary Report requirements set out in Schedule G that the Recipient has included in its partial Project Summary Report, as determined by the Province in its sole discretion;

R = any additional reductions made under section 2.3 or section 2.6, for which deductions have not previously been made.

- (c) For certainty, if the number calculated under (a) or (b) is less than zero, then the Milestone Payment for the Project Summary Report Milestone is zero.

- 2.6 Expense Claim. The Expense Claim must be prepared in accordance with section 6.1 and submitted with the reports under section 6.4. If the Province's Share of the Budgeted Eligible Expenses included in the Recipient's Expense Claim does not equal or exceed the Maximum Funding Amount, then the difference between the Maximum Funding Amount and the Province's Share of the Budgeted Eligible Expenses included in the Recipient's Expense Claim will be reduced from the Milestone Payment calculated under section 2.5.
- 2.7 Additional Information to Support the Expense Claim. If the Recipient submits the Expense Claim in accordance with section 2.6, the Province may, within 90 days, request additional information from the Recipient to support the Expense Claim. The Recipient must provide the requested information within 30 days of such a request. If the Recipient fails to provide such additional information, then the amount in the Expense Claim that was the subject of the Province's request for additional information will not be included in the calculation of the Budgeted Eligible Expenses included in the Recipient's Expense Claim under section 2.6.
- 2.8 Additional Information to Support the Advanced Milestone Report. If the Recipient submits a Milestone Report in accordance with section 6.3 for the Advanced Milestone, the Province may, within 30 days, request additional information from the Recipient to support the Milestone Report. The Recipient must provide the requested information within 30 days of such a request. If the Recipient fails to provide such additional information, the Province has no obligation to pay the Milestone Payment under section 2.4 for that Milestone.
- 2.9 Additional Information to Support the Reports Submitted for the Project Summary Report Milestone. If the Recipient submits the Milestone Report and Project Summary Report under section 6.4, the Province may, within 90 days, request additional information from the Recipient to support the reports. The Recipient must provide the requested information within 30 days of such a request. If the Recipient fails to provide such information, the Province has no obligation to pay the Milestone Payment under section 2.5.
- 2.10 Timing of Payment. Subject to section 2.16, the Province will pay the Recipient:

- (a) the Milestone Payment determined under section 2.4 within 60 days of receipt of the Milestone Report, if the Province does not require additional information under section 2.8;
- (b) the Milestone Payment determined under section 2.4 within 60 days of receipt of additional information required under section 2.8, if the Province requires additional information under section 2.8;
- (c) the Milestone Payment determined under section 2.5 within 90 days of receipt of the reports required under section 6.4 and the Expense Claim under section 2.6, if the Province does not require additional information under sections 2.7 or 2.9; and
- (d) the Milestone Payment determined under section 2.5 within 90 days of receipt of additional information required under sections 2.7 or 2.9, if the Province requires additional information under sections 2.7 or 2.9.

The Recipient will pay the Province any amounts it is required to pay under this Article within 60 days of receipt of a statement or invoice from the Province requiring such payment.

2.11 Allowable Adjustments to the Budget. The Budget may be adjusted as follows:

- (a) in a Milestone Report, the Recipient may reallocate an amount budgeted in the Budget for one Budget Item to another Budget Item, if the total amount reallocated to or from a Budget Item does not exceed 20% of the originally budgeted amount;
- (b) by written approval by the Province; or
- (c) by amendment to this Agreement, made in accordance with section 19.14.

2.12 Process for Reallocation. In order to reallocate an Eligible Expense within the Budget under section 2.11(a), the Recipient must submit an Adjusted Budget at the time of submission of a Milestone Report that requires the reallocation clearly marking the changes from both the Budget and the most recent Adjusted Budget.

2.13 Refunds of Taxes. The Recipient will use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Recipient in carrying out the Project which is an Eligible Expense for which the Recipient will submit an Expense Claim, and immediately on receiving, or being credited with, any refund, credit, rebate or remission remit to the Province the portion of that amount paid by the Province under this Agreement.

2.14 Appropriation. The Province's obligation to pay money to the Recipient is subject to the *Financial Administration Act*, R.S.B.C. 1996, c. 138, which makes that obligation subject to an appropriation being available in the Fiscal Year of the Province during which payment becomes due.

2.15 No Payment before Milestone Date. Despite section 2.10, the Province will not pay a Milestone Payment prior to the Milestone Date for that Milestone.

ARTICLE 3
Eligible Expenses

3.1 Eligible Expenses. Eligible Expenses means expenses that are

- (a) incurred by the Recipient between the Eligible Expense Start Date and the Project End Date;
- (b) incurred for the sole purpose of the completion of the Project;
- (c) for Eligible Employment Expenses under section 3.3, incurred in relation to time an employee spends carrying out work solely for the purpose of completing the Project;
- (d) reasonably necessary to carry out the Project, in the opinion of the Province;
- (e) within one of the following classes of expenses:
 - (i) Eligible Contractor/Professional Expenses under section 3.4 or Eligible Employment Expenses under section 3.3 that are expended for an Eligible Service under section 3.2,
 - (ii) Eligible Material Expenses under section 3.5,
 - (iii) Eligible Incidental Expenses under section 3.6, or
 - (iv) Eligible In-Kind Contributions under section 3.7; and
- (f) are not Ineligible Expenses under section 3.8.

3.2 Eligible Services. Eligible Services are

- (a) engineering and design costs for the Project;
- (b) management/supervision of the Project;
- (c) construction, installation, or implementation of the Project;
- (d) preparation of reports required in this Agreement; and
- (e) other services the Province agrees in its sole discretion and in writing are necessary for the successful implementation of the Project.

3.3 Eligible Employment Expenses. Eligible Employment Expenses are compensation payments made by the Recipient to employees providing an Eligible Service, limited to a pro rata share of the cost of compensation based on time spent providing the Eligible Service as compared to total time employed, as follows:

- (a) employees' base salary or hourly pay rate (excluding any commissions, overtime, bonuses or pay for performance component); and

- (b) the Recipient's cost of providing employer EI and CPP contributions, medical and health benefits and vacation pay, up to a maximum of 20% of the amount referred to in (a),

provided that

- (c) the number of hours devoted to the Eligible Service reflect the number of hours that would be required to accomplish the same work by an appropriately qualified and experienced individual working reasonably and efficiently;
- (d) the expenses are evidenced by Timesheets and Proof of Payment; and
- (e) the Recipient can reasonably demonstrate that the use of employees to provide the Eligible Service is cost effective and any compensation provided to the employee is consistent with compensation provided for similarly situated employees providing like services.

3.4 Eligible Contractor/Professional Expenses. Eligible Contractor/Professional Expenses are payments paid to contractors of the Recipient or professionals retained by the Recipient to provide Eligible Services provided that

- (a) the expenses relate solely to the provision of an Eligible Service that is essential for the completion of the Project;
- (b) the professional or contractor is retained in accordance with section 4.1 [*Fair Market Value*]; and
- (c) the expenses are evidenced by Timesheets, invoices and Proof of Payment.

3.5 Eligible Material Expenses. Eligible Material Expenses are expenses for materials, equipment, software and supplies purchased or leased by the Recipient or its contractors, subcontractors and professionals (and payable by the Recipient under contract) for the sole purpose of completion of the Project, provided that

- (a) the expenses are supported by an invoice from the material supplier and Proof of Payment; and
- (b) the materials, equipment or supplies were procured in accordance with section 4.1 [*Fair Market Value*].

3.6 Eligible Incidental Expenses. Eligible Incidental Expenses are expenses for accommodation, transportation and meal services incurred by or for employees, contractors, subcontractors or professionals of the Recipient while providing Eligible Services, provided that the expenses

- (a) are incurred by an employee, contractor, subcontractor or professional that was solely providing Eligible Services;
- (b) are payable by the Recipient under terms of employment or contract with a contractor or professional;

- (c) are in relation to travel for more than 32 kilometres from a contractor's, subcontractor's or professional's normal place of business, and, in the case of an employee, the employee's normal place of work; and
- (d) do not exceed the amounts paid by the Province to its Group II Employees while on travel status.

3.7 Eligible In-Kind Contributions. Eligible In-Kind Contributions are the provision of assets already owned by the Recipient for the completion of the Project, provided that such contributions are

- (a) described in section 1 of Schedule H; and
- (b) calculated in accordance with the methods described in section 2 of Schedule H.

3.8 Ineligible Expenses. The following expenses are not Eligible Expenses:

- (a) Administrative and Overhead Expenses;
- (b) costs of purchasing land, an interest in land, or licence to land, and real estate fees;
- (c) costs of purchasing equipment used for construction or installation of the Project, unless the Recipient can demonstrate that the purchase was more cost effective than rental of equipment;
- (d) in-kind contributions not described in section 3.7;
- (e) GST and/or PST on or included in any Eligible Expense, or any other tax or government levy for which the Recipient is eligible for a refund or credit;
- (f) interest or financing charges;
- (g) costs incurred if the Project or element of the Project is Abandoned;
- (h) other than as provided in clause 3.3 (b), deductions and withholdings, including any taxes, union dues, employee Canada Pension Plan contributions, or employee employment insurance contributions;
- (i) legal fees;
- (j) expenses associated with submitting the Proposal or negotiating this Agreement;
- (k) fees paid to Governmental Authorities;
- (l) expenses related to meeting with or the lobbying of any Governmental Authority, except meetings between the Contract Start Date and Project End Date that are specifically focussed on this Project;
- (m) expenses associated with the use or purchase of computers or personal devices (e.g. costs relating to mobile or landline phones, costs of desktop or laptop computers or

internet service provider fees, etc.) except where the computer is an integral part of the Project;

- (n) expenses of meals, travel or lodging that are not in compliance with section 3.6;
- (o) expenses incurred that are not evidenced by Proof of Payment; and
- (p) expenses that exceed the amounts budgeted for a Budget Item and any expenses that, in the Province's view, materially deviate from the Proposal unless pre-approved by the Province in writing.

ARTICLE 4 Fair Market Value

- 4.1 Fair Market Value. If the Recipient procures goods or services having an aggregate value equal to or greater than \$25,000 (excluding PST and GST) in order to carry out the Project, the Recipient must have sufficient documentation to support the claim that the goods or services procured were procured at fair market value and present this information to the Province upon request.

ARTICLE 5 Recipient Covenants

- 5.1 Standard of Care. Unless otherwise specified in this Agreement, when undertaking the Project, the Recipient must implement and cause all external and internal resources to implement the Project to a standard of care, skill and diligence maintained by persons implementing similar projects on a commercial basis.
- 5.2 Training and Competence of Internal and External Resources. The Recipient must ensure that all persons employed or retained to provide services in relation to the Project are qualified and competent to perform those services and are properly trained, instructed and supervised.
- 5.3 Compliance with Laws. The Recipient must comply with all applicable laws in relation to the Project.
- 5.4 Reimbursement on Abandonment. Unless the Province otherwise agrees, in its sole discretion and in writing, if the Recipient Abandons the Project or an element of the Project, the Recipient must
- (a) within ten business days of the decision, notify the Province of the decision to Abandon; and
 - (b) within 40 business days of the decision,
 - (i) provide the Province with an accounting of all funds received under this Agreement in relation to the Project, and

- (ii) pay the Province an amount equal to the amount under section 5.5, including Interest accruing from the date of receipt of funds from the Province.

5.5 Suspension of Payments and Reimbursement on Failure to Substantially Complete Milestones. Subject to section 5.6 and Article 17, if the Recipient fails to Substantially Complete a Milestone by the Milestone Date, the Province will suspend payment of all outstanding and future Milestone Payments and the Recipient must, within 30 days, repay to the Province all amounts paid to the Recipient under this Agreement, less any amounts previously reimbursed by the Recipient and Interest accruing from the applicable Milestone Date.

5.6 Amendment of Milestone Dates. If the Recipient fails or anticipates that it will fail to Substantially Complete a Milestone by the Milestone Date, the Recipient may submit an amended Schedule D and any further information as required by the Province in support of the amended Schedule D. If the Province agrees, in its sole discretion and in writing, to the amendment, then

- (a) the amended Schedule D will replace Schedule D and will form part of this Agreement;
- (b) the Province will make payment of outstanding and future Milestone Payments, in accordance with the terms of this Agreement;
- (c) the Recipient will not be required to reimburse the Province under section 5.5 for the Recipient's failure to Substantially Complete a Milestone by the Milestone Date that was specified in Schedule D prior to the amendment under section 5.6(a); and
- (d) if the amended Schedule D will affect the Project End Date, then that date will be amended accordingly.

In exercising its discretion under this provision, the Province will consider whether the delay experienced by the Recipient is within the control of the Recipient, the impact of the Recipient's delay in Substantially Completing the Milestone by the Milestone Date on the Recipient's future successful implementation of the Project, and the effect of the delay on the magnitude and timing of reductions in carbon intensity.

5.7 Reimbursement for Excess Other Funding. If the Recipient has received under this Agreement or through Other Funding, whether such funds are received before, during or after the Term of this Agreement, an amount that exceeds 75% of Budgeted Eligible Expenses incurred by the Project End Date, the Recipient must, within 30 days, repay to the Province all excess amounts paid to the Recipient under this Agreement (or if the arrangement under which Other Funding is paid also provides for a reduction in funding, by a pro rata amount), less any amounts previously reimbursed by the Recipient and Interest accruing from the date of Receipt of the Excess Amount.

5.8 Reimbursement if Total Milestone Payments exceed Province's Share. If, after the Project Summary Report Milestone Payment is calculated under section 2.5, the total of all Milestone Payments exceeds the Province's Share of the Budgeted Eligible Expenses included in the Recipient's Expense Claim under section 2.6, then the Recipient must, within 30 days of the submission of the Expense Claim, repay to the Province that excess amount over the Province's Share.

- 5.9 Offset Units. The Recipient covenants that it will not attempt to generate or have credited to it or any Affiliate or business partner offset units, as defined by *GGIRCA* or any other similar offset unit under a voluntary or mandatory offset standard. If, under *GGIRCA*, the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12 or any provincial or federal law, a standard for emissions per unit of production is established that is applicable to the facility or industrial operation where the Project takes place, and the Recipient is eligible to receive credits, allowances, tax rebates or incentives for exceeding that standard, nothing in this section prohibits receipt of such credits, allowances, tax rebates or incentives.

ARTICLE 6

Expense Claims, Requests and Reporting

- 6.1 Expense Claim. The Expense Claim must include the following:
- (a) information required under Part 1 of Schedule C; and
 - (b) a sworn statement of a duly authorized representative of the Recipient, in accordance with Part 2 of Schedule C, certifying that the duly authorized representative has examined the Expense Claim and the underlying expenses, and believes that the amounts claimed in the Expense Claim are Eligible Expenses under this Agreement.
- 6.2 Reporting of Other Funding. Within ten business days of receiving any commitment for Other Funding, the Recipient will provide notice to the Province of the commitment, including copies of any relevant agreements, and provide the Province with an Adjusted Budget that reflects the Other Funding.
- 6.3 Milestone Reporting. Within 30 days of Substantially Completing a Milestone the Recipient will provide a Milestone Report to the Province on the Substantial Completion of the Milestone, using a template provided by the Province and including the following information:
- (a) identification of the Milestone;
 - (b) photographic or other evidence of Substantial Completion of the Milestone;
 - (c) sworn statement of a representative of the Recipient who has the qualifications specified in Schedule D for the Milestone, certifying that the Milestone has been Substantially Completed;
 - (d) any other certifications identified as part of the Milestone;
 - (e) an analysis by the Recipient discussing whether the Budget or Adjusted Budget, as applicable, remains an accurate estimate of the amount of the Eligible Expenses that the Recipient will incur;
 - (f) if applicable, a reallocation of the Budget or Adjusted Budget under section 2.11(a); and

- (g) the total of Other Funding becoming due to the Recipient or received by the Recipient since the last Milestone Report was submitted to the Province.

6.4 Reporting on Project Summary. Within 60 days of the Project Summary Report Milestone Date, the Recipient must submit the following reports to the Province

- (a) the Milestone Report for the Project Summary Report Milestone in accordance with section 6.3, with the following additional information:
 - (i) a summary of the Budgeted Eligible Expenses included in the Expense Claim submitted with the Milestone Report; and
 - (ii) the Recipient's calculation of the Milestone Payment for the Project Summary Report Milestone, in accordance with section 2.5; and
- (b) the Project Summary Report, which must include the information required in Schedule G.

6.5 Reporting on Recipient Contact Information. The Recipient must immediately report to the Province any changes to the Recipient Contact information.

ARTICLE 7

Representations and Warranties

7.1 Representations and Warranties as of Execution. As of the Contract Start Date, the Recipient represents and warrants to the Province as follows:

- (a) The Recipient is the Operator and, except as identified in writing to the Province, owner of the Project Facility;
- (b) Except to the extent the Recipient has previously disclosed otherwise in writing to the Province prior to the Contract Start Date, all information, statements, documents and reports furnished and submitted by the Recipient to the Province in connection with the Proposal or this Agreement are in all material respects true and correct;
- (c) No Event of Default has occurred or is continuing in relation to the Recipient;
- (d) The Recipient has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Recipient;
- (e) This Agreement has been legally and properly executed by, or on behalf of, the Recipient and is legally binding upon and enforceable against the Recipient in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that

equitable remedies may be granted only in the discretion of a court of competent jurisdiction;

- (f) Except as disclosed in the Part 2 of Schedule B, no Other Funding or commitment for Other Funding has been received by the Recipient or its Affiliates;
- (g) The Recipient has disclosed in writing to the Province any attempt known to the Recipient to have the Project recognized for the purpose of generating offset units (“Offsets”), and has disclosed the contents of this Agreement to persons validating plans related to the generation of Offsets from the Project and any persons issuing Offsets related to the Project.

7.2 Representations and Warranties as of Reporting Dates. As of each date the Recipient provides a Deliverable to the Province, the Recipient represents and warrants to the Province that

- (a) all information, statements, documents and reports submitted by the Recipient to the Province together with or as part of that Deliverable is in all material respects true and correct;
- (b) all information, statements, documents and reports previously submitted by the Recipient to the Province in connection with the Proposal or this Agreement continue to be in all material respects true and correct, or in the case of projected future occurrences, payments and expenses are reasonable and fair;
- (c) the Recipient continues to be the Operator of the Project Facility;
- (d) no element of the Project in relation to which an Expense Claim has been submitted has been Abandoned;
- (e) any improvements made to the Recipient’s equipment or facilities and any equipment, materials or supplies for which an Expense Claim has been submitted continues to be used primarily for the purposes of implementing or maintaining the Project;
- (f) except as disclosed in the Budget or Adjusted Budget as applicable, no Other Funding or commitment for Other Funding has been received by the Recipient or its Affiliates; and
- (g) the Recipient has disclosed in writing to the Province any Offsets issued in respect of the Project or resulting from the Project, and has disclosed the contents of this Agreement to any person validating plans related to the generation of Offsets from the Project or issuing Offsets related to the Project.

ARTICLE 8

Confidentiality

8.1 Definitions. In this Article,

- (a) **“Confidential Information”** means all information that has been identified as confidential on its face (or if disclosed orally, in the course of the oral communication) and which is furnished or disclosed by the Disclosing Party and its representatives to the Receiving Party and its representatives in connection with this Agreement, whether before or after the Parties signed this Agreement, including all new information derived at any time from any such confidential information, but excluding
- (i) a general description of the Project, including the technologies used, the source of the emission reductions (e.g. fuel switching/increased energy efficient), the emission reductions anticipated or achieved (in tCO₂e), and key contacts in relation to the Project;
 - (ii) publicly available information, unless made public by the Receiving Party in a manner not permitted by this Agreement;
 - (iii) information that is already known to, or in the possession of, the Receiving Party at the time of its disclosure by the Disclosing Party as evidenced by the Receiving Party's records;
 - (iv) information that is lawfully acquired at any time by the Receiving Party without restrictions from a third party without breach of confidentiality by such third party;
 - (v) information that is independently developed by the Receiving Party, as evidenced by the Receiving Party's records;
 - (vi) information obtained under the reporting or inspection provisions of GGIRCA that is not subject to any prohibition on disclosure under GGIRCA; and
 - (vii) the Project Summary Report.
- (b) **“Disclosing Party”** means the Party disclosing the Confidential Information; and
- (c) **“Receiving Party”** means the Party receiving the Confidential Information.

8.2 Verification of Information Provided. The Recipient acknowledges and agrees that the Province may communicate with the Recipient or a third party in order to verify any information provided in connection with this Agreement, including Expense Claims. The Recipient expressly consents to such communication and disclosure of any relevant information.

8.3 Internal Disclosure. The Recipient acknowledges and agrees that the Province reserves the right to disclose Confidential Information, and any other information the Province has received in connection with this Agreement, to any employees, advisors, auditors, contractors or agencies of the Province that have a need to know the Confidential Information for the purpose of administering or evaluating the Program, performing audits, determining Other Funding amounts, or developing laws, policies or programs related to reduction of greenhouse gases.

- 8.4 Communications with Other Funding Sources. The Recipient consents to the Province contacting any sources of funding identified by the Recipient in this Agreement or in the Deliverables and sharing information relevant to amounts received.
- 8.5 Duty of Confidentiality. Subject to sections 8.2 to 8.4 and except as required to comply with the law, the Receiving Party
- (a) will use the Confidential Information of the Disclosing Party solely in connection with performing its obligations and exercising its rights under this Agreement; and
 - (b) will not publish, reproduce, copy, disseminate or disclose the Confidential Information, or otherwise use the same except in performing its obligations under this Agreement, without the prior written consent of the Disclosing Party.
- 8.6 Security. Subject to sections 8.2 to 8.4, the Receiving Party must maintain the Confidential Information of the Disclosing Party in confidence using at least the same degree of care as it employs in maintaining in confidence its own proprietary and confidential information, but in no event less than a reasonable degree of care.
- 8.7 FOIPPA. The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (“**FOIPPA**”) and that any information provided to the Province in connection with this Agreement is subject to disclosure in accordance with *FOIPPA*. Each Party must comply with all privacy laws applicable to it.

ARTICLE 9

Intellectual Property

- 9.1 Retention of Intellectual Property. Subject to this Article, each Party will retain all rights, title and interest in and to its intellectual property, and neither Party will acquire any right, title or interest in or to any intellectual property of the other Party pursuant this Agreement.
- 9.2 Licence from the Recipient. Subject to section 9.3 and 9.4, the Recipient grants the Province a non-exclusive, perpetual, royalty free, worldwide licence to exercise all the rights set out in the *Copyright Act*, R.S.C. 1985, c. C-42, including the right to use, reproduce, modify, publish and distribute, with respect to the Project Summary Report.
- 9.3 Right to modify. The Province’s right to modify under section 9.2 is limited to non-material modifications.
- 9.4 Redactions to the Project Summary Report. Subject to this section, the Recipient acknowledges that the Province will make the Project Summary Report publicly available. The Recipient may request the following types of redactions to the public version of the Project Summary Report if there is a reasonable risk of financial harm to the Recipient if the redactions are made publicly available:

- (a) temporary redactions (for up to 2 years following the submission of the Project Summary Report) for information related to the implementation and outcomes of the Project; or
- (b) permanent redactions for non-public information related to the Project Facility and for technical information related to the design of the Project technology.

If the Province agrees in writing to such a request,

- (c) the public version of the Project Summary Report will be redacted for the period of time described in (a) or (b) above;
- (d) the Province's licence under section 9.2 will not include information redacted under (b); and
- (e) the Province's licence under section 9.2 for information redacted under (a) will commence when the temporary redaction period ends.

ARTICLE 10

Property, and Responsibility for the Project or Its Performance

- 10.1 Except in relation to security interests required under this Article 12, the Parties agree that the Province will not acquire any responsibility in relation to the implementation of the Project, except as expressly provided in Article 2 or as provided for under Article 12.
- 10.2 The Province disclaims any responsibility for the performance or of the Project and disclaims any representation regarding the suitability of the Project for any purpose. The Recipient acknowledges that it is solely responsible in relation to the performance or suitability of the Project.

ARTICLE 11

Communications

- 11.1 Communications. Subject to any Communications Protocol and Strategy agreed to in writing by the Parties, the Recipient agrees that:
 - (a) if requested by the Province, the Recipient will co-operate in the development of a Communications Protocol and Strategy regarding public communications about the Project;
 - (b) if requested by the Province, the Recipient will display signage in accordance with any reasonable specifications of the Province at one or more prominent public locations around the Project Facility regarding the Project and Province's funding for the Project;

- (c) the Recipient will include in any publications or public communications of the Recipient or arranged by the Recipient that mention the Project, an acknowledgement that funding for the Project has been received from the Province as follows:
 - (i) in a form specified by the Province; or
 - (ii) if the Province does not specify a form within five business days of being requested to specify the form of acknowledgement, in the form of a statement that the Recipient “gratefully acknowledges assistance from the Province of British Columbia;
- (d) the Parties will advise one another at least 15 business days in advance of any planned public statement media release or public event regarding the Project, other than public statements the Recipient is required to make under applicable securities laws, and
 - (i) obtain the Province’s consent prior to such statement, release or event,
 - (ii) cooperate with the Province in planning the statement, release or event, and
 - (iii) provide the Province with a reasonable opportunity to participate in the statement or event, including allowing the Province to supply quotes for the statement and allowing representatives of the Province opportunities to speak at the event;
- (e) if requested by the Province, and with 15 business days notice, the Recipient will participate in at least one media event located at the Project Facility, in a major urban centre close to the Project Facility, or in Victoria or Vancouver, at the option of the Province;
- (f) if requested by the Province and with 10 business days notice, the Recipient will allow the Province to take photographs or videos of the Project Facility, and publish such photographs or videos provided such photographs or videos do not disclose any trade secret; and
- (g) the Recipient will allow the Province to feature the Project in its publications or reports.

ARTICLE 12
Security

12.1 Security. Intentionally Left Blank. <The Province reserves the right to require security terms.>

ARTICLE 13
Indemnity and Insurance

- 13.1 Indemnity. The Recipient must indemnify and save harmless the Province and the Province’s employees and agents from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of the Province’s employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, (each a “Loss”) to the extent the Loss is directly or indirectly caused or contributed to by
- (a) any injury to person (including injuries resulting in death) or loss of or damage to property which may be or is alleged to be caused by or suffered as a result of the carrying out of the Project or any part thereof, except to the extent caused by the negligence or willful misconduct of the Province, its employees or agents;
 - (b) any act or omission by the Recipient or by any of the Recipient’s agents, employees, officers, directors or subcontractors in connection with this Agreement; or
 - (c) any representation or warranty of the Recipient being or becoming untrue or incorrect.
- 13.2 Insurance. The Recipient must comply with the Insurance Schedule attached as Schedule F. Notwithstanding the above, the Province acknowledges that the Recipient may satisfy the insurance requirements set out in this Section 12.2 and Schedule F through the administration of a self-insurance program. To the extent that the Recipient self-insures for any such insurance required under this Agreement, the Recipient shall be deemed to have satisfactorily taken out such insurance without any deemed amendment to the obligation to insure. Application of the self-insurance program shall in no way limit or diminish the rights that the Province may have had as an additional insured under any required insurance policy under this Agreement that was not maintained by the Recipient, as a result of such self-insurance program.
- 13.3 Evidence of Coverage. Within 10 business days of being requested to do so by the Province, the Recipient must provide the Province with evidence of the Recipient’s compliance with section 13.2.

ARTICLE 14

Records Retention and Audit

- 14.1 Records Retention. The Recipient must keep and maintain all records, including, without limitation, all books, Timesheets, communications records, invoices, request for proposal documents, letters, receipts and any documentation related to the Project or this Agreement, as applicable, necessary to support the information contained in and with respect to each of the representations and warranties set out herein and any Deliverables submitted to the Province, for the duration of this Agreement and for a period of seven years thereafter, or such longer period as may be specified by and applicable laws and regulations (the “**Audit Period**”).
- 14.2 Request for Records. The Province, the Auditor General of British Columbia and any independent auditor identified by the Province (in each case, the “**Inspecting Party**”), will be entitled to request copies of, and access to, the Recipient’s records referred to in section 14.1 from time to time

during the Audit Period for audit, verification, or reporting purposes, and may provide all such records and information to its third party advisors or the Province.

- 14.3 Inspection of Premises. The Inspecting Party may, at its own expense, upon reasonable notice to the Recipient, enter upon the Recipient's premises during normal business hours to review the progress of the Project and the Recipient's expenditure of funds and, for these purposes, the Inspecting Party may
- (a) require access to the site or facility premises where Project activities are taking place or have taken place;
 - (b) inspect and copy the records and documents referred to in section 14.1; and
 - (c) conduct an audit or investigation of the Recipient in respect of the expenditure of the funds or completion of Milestones.
- 14.4 Duty of Recipient to Provide Information. To assist in respect of the rights set out in this section, the Recipient must disclose any information reasonably requested by the Inspecting Party, and must do so in a form and within the timelines reasonably requested by the Inspecting Party.
- 14.5 Consent to Disclosure of Information. The Recipient consents to the disclosure of information protected under section 42(2) of *GGIRCA* being disclosed to employees of the Province and its auditors, for the purpose of administering of this Agreement, provided that both parties acknowledge that such consent does not extend to any other purpose and does not otherwise limit the application of section 42(2).
- 14.6 Audit Rights do not Constitute Control. No provision of this Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records or those of its contractors.
- 14.7 Adjustments. If a discrepancy is identified by an audit by the Province, the appropriate adjustments will be made promptly between the Parties.
- 14.8 Overpayment and Cost of Audit. If there has been an overpayment by the Province, the amount of the overpayment will constitute a debt due to the Province and may be so recovered. If such overpayment is greater than 3% of the appropriate funding that was payable under this Agreement and the overpayment was the result of the Recipient's error, omission, or misrepresentation, the costs of such audit must be paid by the Recipient, and such amount will also constitute a debt due to the Province and may be so recovered. Any debt due to the Province herein referred to may, in addition to any other remedies available at law or in equity, also be recovered by the Province by set-off.

ARTICLE 15

Events of Default

- 15.1 Definitions. In this Article,
- (a) **"Event of Default"** means any of the following:

- (i) an Insolvency Event,
 - (ii) the Recipient fails to perform, in a material respect, any of the Recipient's material obligations under this Agreement,
 - (iii) the Recipient fails to achieve a Milestone by the Milestone Date, or
 - (iv) any representation or warranty made by the Recipient in this Agreement is untrue or incorrect in any material respect; and
- (b) **"Insolvency Event"** means any of the following:
- (i) an order is made, a resolution is passed or a petition is filed for the Recipient's liquidation or winding up,
 - (ii) the Recipient commits an act of bankruptcy, makes an assignment for the benefit of the Recipient's creditors or otherwise acknowledges the Recipient's insolvency,
 - (iii) a bankruptcy petition is filed or presented against the Recipient or a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 is made by the Recipient,
 - (iv) a compromise or arrangement is proposed in respect of the Recipient under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,,
 - (v) a receiver or receiver-manager is appointed for any of the Recipient's property, or
 - (vi) the Recipient ceases, in the Province's opinion, to carry on business as a going concern.

15.2 Province's Remedies. On the happening of an Event of Default, or at any time thereafter, the Province may, at its sole discretion, elect to do any one or more of the following:

- (a) by written notice to the Recipient, require that the Event of Default be remedied within a time period specified in the notice;
- (b) suspend or terminate the Province's obligation to pay further amounts in respect of the Project, including amounts due and owing which have not yet been paid;
- (c) require the Recipient to repay any amounts that have been wrongly paid by the Province, or set off such amounts from amounts otherwise payable by the Province;
- (d) if the Recipient has failed to provide a report as required under sections 6.2 to 6.4, require the Recipient to repay any amounts that have been wrongly paid by the Province, as determined by the Province;

- (e) require the Recipient to repay forthwith all funds paid to the Recipient by the Province under this Agreement;
- (f) reduce future grants otherwise payable to the Recipient under the CleanBC Industrial Incentive Program by an amount equal to the amount the Recipient is required to repay to the Province under this Agreement; and
- (g) by written notice to the Recipient, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 15.2(a);

15.3 Delay not a Waiver. No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

ARTICLE 16

Term and Termination

- 16.1 Term. This Agreement commences on the Contract Start Date and expires on the date that is one year after the Project Summary Report Milestone Date, unless terminated earlier by mutual consent of the Parties or pursuant to sections 15.2(g) or 16.3.
- 16.2 Survival. Article 1 [*Interpretation*], section 5.7 [*Reimbursement for Excess Other Funding*], , Article 7 [*Representations and Warranties*], Article 8 [*Confidentiality*], Article 9 [*Intellectual Property*], section 13.1 [*Indemnity*], Article 14 [*Records Retention and Audit*], section 16.2 [*Survival*] and Article 18 [*Dispute Resolution*] survive termination of this Agreement.
- 16.3 Termination by Recipient. If the Recipient determines that the Project should be terminated prior to completion, the Recipient may terminate this Agreement upon paying the Province all funds paid by the Province under this Agreement, together with Interest on such payments accruing from the time of payment.

ARTICLE 17

Force Majeure

17.1 Definitions. In this Article,

- (a) **“Event of Force Majeure”** means one of the following events:
 - (i) a natural disaster, fire, flood, storm, epidemic or power failure,
 - (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
 - (iii) a strike (including illegal work stoppage or slowdown) or lockout,
 - (iv) a freight embargo, or

- (v) an event that the Province agrees, in its sole discretion and in writing, is an Event of Force Majeure,

if the event prevents a Party from performing the Party's obligations in accordance with this Agreement and is beyond the reasonable control of that Party; and

- (b) **"Affected Party"** means a Party prevented from performing the Party's obligations in accordance with this Agreement by an Event of Force Majeure.

17.2 Consequence of Event of Force Majeure. An Affected Party is not liable to the other Party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 17.3.

17.3 Duties of Affected Party. An Affected Party must promptly notify the other Party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

ARTICLE 18

Dispute Resolution

18.1 Dispute resolution process. In the event of a dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:

- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
- (b) if the dispute is not resolved through initial collaborative negotiations, either Party may by notice to the other Party, request collaborative negotiation among senior officials, in which case both Parties must designate a senior official within 5 business days, who will engage in collaborative negotiations;
- (c) if the dispute is not resolved through collaborative negotiation within 20 business days of the notice referred to in paragraph (b), the parties must then attempt to resolve the dispute through mediation under the rules of the Mediate BC Society; and
- (d) if the dispute is not resolved through mediation within 30 business days of the commencement of mediation, the dispute must be referred to and finally resolved by arbitration under the *Arbitration Act*.

18.2 Location of arbitration or mediation. Unless the parties otherwise agree in writing, an arbitration or mediation under section 18.1 will be held in Victoria, British Columbia.

18.3 Costs of mediation or arbitration. Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a mediation or arbitration under section 18.1 other than those costs relating to the production of expert evidence or representation by counsel.

ARTICLE 19

Miscellaneous

19.1 Delivery of notices. To be effective, any notice contemplated by this Agreement must be in writing and delivered as follows:

- (a) by email to the Province Contact or the Recipient Contact, as applicable, in which case notice will be deemed to be received on the date of delivery if it is a business day and the delivery was made prior to 4:00 pm (local time in place of receipt) and otherwise on the next business day;
- (b) by hand or courier to the Province Contact or Recipient Contact, as the case may be, in which case it will be deemed to be received on the day of its delivery; or
- (c) by prepaid post to the Province Contact or Recipient Contact in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth business day after its mailing.

19.2 Change of address. Either party may from time to time give notice to the other party of a substitute address, which from the date such notice is given will supersede for purposes of section 19.1 [*Delivery of Notices*] any previous address or fax number specified for the party giving the notice.

19.3 Assignment. The Recipient must not assign any of the Recipient's rights or obligations under this Agreement without the Province's prior written consent, provided, however, that the Recipient may, without the prior written consent of the Province but with 15 days written notice by Recipient to the Province, assign its rights and obligations under this Agreement to any of its Affiliates or to its successor in interest in connection with a merger or consolidation (or other similar transaction), so long as such Party is the Operator of the Project Facility and agrees to perform this Agreement in the same manner and to the same extent that the Recipient would be required to perform it if no such assignment had taken place. Any other assignment of the rights or obligations under this Agreement by the Recipient requires prior written consent by the Province. Upon providing written notice to the Recipient, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, R.S.B.C. 1996, c.138, any of the Province's obligations under this Agreement.

19.4 Waiver. A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

19.5 Modification. No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

- 19.6 Entire Agreement. This Agreement (including any modification of it) constitutes the entire agreement between the parties as to the Province's payment of funds for the Project.
- 19.7 Schedules. The Schedules (including any appendices or other documents attached to, or incorporated by reference into, those Schedules) are part of this Agreement.
- 19.8 Independence from Province. In relation to the performance of the Project, the Recipient is not a partner or agent of the Province, and must not act or purport to act contrary to this section and must not do anything that would result in personnel hired or used by the Recipient or a subcontractor in relation to the Project being considered employees or agents of the Province.
- 19.9 Time. Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.
- 19.10 Further Assurances. Each of the Parties will from time to time execute and deliver all such further documents and instruments and do all acts and things as another Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or to consummate more effectively the transactions contemplated hereby.
- 19.11 Conflict of Interest. The Recipient must not provide any services to any person in circumstances which, in the Province's reasonable opinion, could give rise to a conflict of interest between the Recipient's duties to that person and the Recipient's duties to the Province under this Agreement.
- 19.12 No Effect on Statutory Duties. This Agreement does not operate as a permit, licence, approval or other statutory authority which the Recipient may be required to obtain from the Province or any of its agencies in order to carry out the Project. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.
- 19.13 Enurement. This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, other legal representatives, successors and permitted assigns of the Parties.
- 19.14 Amendment. This Agreement may only be amended by written agreement duly executed by authorized representatives of the Parties.
- 19.15 Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.
- 19.16 Governing Law and Dispute Forum. This Agreement is governed by and will be construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. For the purpose of all legal proceedings, this Agreement will be deemed to have been performed in the Province of British Columbia and the courts of the Province of British Columbia will have jurisdiction to entertain any action arising under this Agreement. Each of the Parties attorns to the non-exclusive jurisdiction of the courts of the Province of British Columbia.

19.17 Remedies Cumulative. The rights and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

19.18 Independent Legal Advice. The Recipient acknowledges that it has obtained its own independent legal advice with respect to the terms of this Agreement prior to its execution. The Recipient acknowledges that it has been advised that it should obtain independent legal advice as to the terms of this agreement.

19.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

[The remainder of this page left intentionally blank.]

EXECUTED by the Parties as of _____, 2022.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA, as represented
by the Minister of Environment and Climate Change
Strategy**

By: _____
Name:
Title:

NAME OF RECIPIENT

By: _____
Name:
Title:

Schedule A

Project Description

[From Innovation Accelerator RFP (March 14, 2022) – Appendix B: Project Proposal Submission Form section 1 B Project Information]

Schedule B

Budget

Part 1: Budget (Estimated Eligible Expense amounts per General Milestone Report)

[Consistent with RFP Appendix B1: Project Budget Template and Schedule D: Milestones of this Agreement]

Part 2: Details of Other Funding (committed or anticipated)

[From RFP Appendix B: Project Proposal Submission Form]

Schedule C

Invoices and Payment Procedures

Part 1: Expense Claim

In order to be eligible to obtain the Project Summary Report Milestone Payment, the Recipient must submit to the Province an Expense Claim using a template provided by the Province (or pre-approved by the Province), which should contain items including, but not limited to, the following:

- (a) Recipient's legal name and address;
- (b) Funding Agreement Identification Number;
- (c) the Recipient's calculation of
 - (i) for each Budget Item, the amount of Eligible Expenses incurred and included in the Expense Claim;
 - (ii) for each amount referred to in (i), the Budgeted Eligible Expenses and any amounts that were previously included in Expense Claims submitted to the Province,
 - (iii) for each amount referred to in (i), the Province's Share of the Budgeted Eligible Expenses included in the Expense Claim, calculated in accordance with this Agreement, and
 - (iv) the total of amounts claimed under (iii);
- (d) an Expense Claim number for ease of reference;
- (e) any other billing information reasonably requested by the Province; and
- (f) a certification, attached to the Expense Claim, by the Chief Financial Officer or other duly authorized representative of the Recipient responsible for management of finances in the form specified in Part 2 of this Schedule C.

Part 2: Certification for Expense Claim

I, _____, _____ of
Name of duly authorized representative signing certification Title of duly authorized representative

_____ certify that:
Full Legal Name of Recipient

I have reviewed the Expense Claim, _____, attached to this certification and
Expense Claim Number

Based on all appropriate review, investigation and inquiries, I hereby certify that to the best of my knowledge:

- () All information in the Expense Claim is true, accurate and complete;
- (a) All expenses reported in the Expense Claim are Eligible Expenses incurred before the date of the Expense Claim, and, without limitation,
 - (i) All expenses reported in the Expense Claim are supported by Proof of Payment and Timesheets as Appropriate;
 - (ii) All expenses reported in the Expense Claim were incurred for the sole purpose of completion of the Project;
- (b) I have reported to the Province all Other Funding received in relation to the Project.

Schedule D

Milestones

Description of Phase of Project or Element of Project that Must be completed. <i>[Descriptions should be specific such that it will be possible to clearly determine when a milestone is met. E.g. "Recipient Substantially Completes XXX and submits to CAS Certification by Professional Engineer that XXX has been completed. Recommended Milestones include two elements: actual physical step and certification.]</i>	Milestone Type <i>[Three types: Advanced (one only); Reporting; Performance (one only)]</i>	Maximum Milestone Amount <i>[Note that Milestone Payments will be determined in accordance with Article 2.]</i>	Deadline for Substantial Completion	Professional Designation of Representative to Certify Substantial Completion <i>[Typically, a Professional Engineer or Chartered Professional Accountant.]</i>
	Advanced	\$ <i>[Insert the maximum amount the Recipient may receive for this Milestone before deductions]</i>		Professional Engineer or Certified Professional Accountant
	Reporting	Not applicable		Professional Engineer or Certified Professional Accountant
	Project Summary Report	\$ <i>[Insert the maximum amount the Recipient may receive for this Milestone before deductions]</i>		Professional Engineer or Certified Professional Accountant

[From Innovation Accelerator RFP (March 14, 2022) – Appendix B: Section 3.C-2 Project Schedule and Timing]

Schedule E

Key Metrics

The Recipient must use the following key metrics to assess the Project's success:

[From Innovation Accelerator RFP (March 14, 2022) – Appendix B – Section 3. C-1 Project Performance Key Metrics]

Schedule F

Insurance

[The Province reserves the right to require additional insurance coverage to ensure the Project is implemented as proposed and any critical Project Assets are protected, which will be determined on a case-by-case basis in consultation with the successful proponent.]

1. **Required Insurance.** The Recipient must, without limiting the Recipient's obligations or liabilities and at the Recipient's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
 - a. Commercial General Liability in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must
 - i. include the Province as an additional insured,
 - ii. be endorsed to provide the Province with 30 days advance written notice of cancellation or material change, and
 - iii. include a cross liability clause; and
 - b. *[any additional types of insurance such as Professional Liability, Property Risk and Cyber Risk].*
2. **Insurance Terms:** All insurance described in section 1 of this Schedule must:
 - a. be primary; and
 - b. not require the sharing of any loss by any insurer of the Province.
3. **Evidence of Insurance:** The Recipient must provide the Province with evidence of all required insurance as follows:
 - a. within 10 business days of commencement of the Contract Start Date, the Recipient must provide to the Province evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
 - b. if any required insurance policy expires before the end of the Term, the Recipient must provide to the Province within 10 business days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and

- c. despite paragraph (a) or (b) above, if requested by the Province at any time, the Recipient must provide to the Province certified copies of the required insurance policies.
- 4. Additional Insurance. The Recipient must obtain, maintain and pay for any additional insurance which the Recipient is required by law to carry, or which the Recipient considers necessary to cover risks not otherwise covered by insurance specified in this Schedule in the Recipient's sole discretion.

Schedule G

Project Summary Report Requirements

The Recipient must include the following information in the Project Summary Report:

SECTION 1: KEY METRICS FOR MONITORING PROJECT SUCCESS

For each of the metrics identified in Schedule E, the Proponent must present relevant summary statistics which provide an overview of the measured values of these metrics during the Project and the performance of the Project relative to the targeted values or changes in these metrics where applicable. The Proponent is not required to submit the full set of recorded data on each of these metrics to the Province, but must be willing to provide the Province with access to this full set of data if requested, for the purposes of verifying the summary statistics provided by the Proponent.

The Proponent must use the measured values of the metric used to determine the emissions reductions potential of the Project technology or process to repeat the emissions reduction quantifications required in of Appendix B – Project Proposal Submission Form

SECTION 2: PROJECT RISKS

For each of the risks identified in Section 3. A-2 of Appendix B – Project Proposal Submission Form, the Proponent must assess whether the risk was encountered during the Project, what impact it may have had on the Project implementation or outcomes, what mitigative measures were employed to reduce the likelihood or impact of the risk, and what additional measures, if any, could have been taken to further reduce the likelihood or impact of the risk.

The Proponent must identify any unforeseen risks which arose during the Project, what impacts they may have had on the Project implementation or outcomes, what mitigative measures were employed to reduce the impact of the risk, and what additional measures, if any, could have been taken to further reduce the likelihood or impact of the risk.

SECTION 3: LESSONS LEARNED

The Proponent must identify what the key learnings of the Project were. The Proponent should consider what information gleaned from this Project would have been useful to know before undertaking the Project, and what information would be of use to other entities undertaking a similar project.

SECTION 4: CONCLUSION

The Proponent must state whether the Project was successful or unsuccessful in meeting its objectives and provide a rationale for this assessment. This rationale should draw directly from the information provided in Sections 1-3 of the Project Summary Report. The Proponent must describe what the next steps for developing the Project technology or process will be.

Schedule H

In-Kind Contributions

Part 1: Types of In-Kind Contributions

1. The Recipient may claim the following types of In-Kind Contributions as Eligible Expenses:
 - a. *[Consistent with Proposal Appendix B1: Project Budget Template];*
 - b. *[Add as needed].*

Part 2: Valuation methods for In-Kind Contributions

2. The Recipient must use the following valuation methods for the In-Kind Contributions listed in section 1 of this Schedule:
 - a. for section 1(a), *[Consistent with Proposal Appendix B1: Project Budget Template];*
 - b. for section 1(b), *[Add as needed].*