

Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



## STANDARD FORM LICENCE AGREEMENT

(THIS

AGREEMENT CONSISTS OF THIS COVER SHEET, THE ATTACHED PROVISIONS AND ANY ATTACHED SCHEDULE OR ANNEXURE. ON THIS COVER SHEET A CHOICE PRINTED IN **BLOCK CAPITALS** APPLIES UNLESS A DIFFERENT CHOICE IS MARKED.)

TERM	MEANING OF TERM	
<b>Snowy Hydro</b>	<b>Snowy Hydro Limited</b> ABN 17 090 574 431	
<b>Address for Service – Snowy Hydro</b>	Attention: Andrew Nolan Email: <a href="mailto:Andrew.Nolan@snowyhydro.com.au">Andrew.Nolan@snowyhydro.com.au</a>	Address: Monaro Highway Cooma NSW 2630 Facsimile No. 02 6453 2052
<b>Snowy Hydro Responsible Officer</b>	Attention: Andrew Nolan Snowy Hydro Responsible Officer Email: <a href="mailto:Andrew.Nolan@snowyhydro.com.au">Andrew.Nolan@snowyhydro.com.au</a> Phone: 02 6453 2421	
<b>Licensee</b>	<b>Snowy Valleys Council</b> ABN 53 558 891 887	
<b>Address for Service – Licensee</b>	Attention: <b>Paul Holton</b> Email: <a href="mailto:pholton@svc.nsw.gov.au">pholton@svc.nsw.gov.au</a>	Address: <b>76 Capper Street</b> <b>TUMUT NSW 2720</b> Facsimile No: 02 6941 2678
<b>Licensee Responsible Officer</b>	Attention: <b>Paul Holton</b> Email: <a href="mailto:pholton@svc.gov.au">pholton@svc.gov.au</a> Phone: <b>0448 450 770</b>	
<b>Commencement Date</b>	To Be advised	
<b>Expiration Date</b>	The date before the 20th anniversary of the commencement of this agreement	
<b>Licensed Area</b>	Means the 3 meter wide bike and pedestrian corridor which runs through Lot 10, 2, 1, 53 in Deposited Plan 850852, 237155, 23581 & 1096317 as shown on the plan set out in Annexure A. DP850852 Lot 10 includes decommissioned pump station shed which will be utilised as a storage shed with the addition of a skills park/pump track within this DP.	
<b>Annual Licence Fee</b>	None Applies	
<b>Permitted Use</b>	To carry out works to create Bike and Pedestrian Paths and subsequently maintain the bike and pedestrian paths which are to be used by any and all members of the public.	
<b>Is Public Liability Insurance Required?</b>	\$10 MILLION	
<b>Date of this Agreement (being the date that this Agreement is last executed by a Party)</b>		

CLAUSE	APPLICATION OF CLAUSE
--------	-----------------------

**Contract Standard Form Licence Agreement (No Licence Fee) – Part B**  
**Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53**  
**in DP 850852, 237155, 23581 & 1096317**



Does Clause 2 (Condition Precedent to the taking effect of this Agreement) apply?	No, Licenced are not within KNP
---	---------------------------------

**EXECUTED** as an Agreement

**SIGNED by SNOWY HYDRO LIMITED** )  
 ABN 17 090 574 431 by its authorised )  
 representative: )

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Authorised Representative

\_\_\_\_\_  
 Name of Witness  
 (BLOCK LETTERS)

\_\_\_\_\_  
 Name of Authorised Representative  
 (BLOCK LETTERS)

**SIGNED by [LICENSEE'S NAME]** )  
 ABN [INSERT ABN OF LICENSEE] by its authorised )  
 representative: )

\_\_\_\_\_  
 Witness

\_\_\_\_\_  
 Authorised Representative

\_\_\_\_\_  
 Name of Witness  
 (BLOCK LETTERS)

\_\_\_\_\_  
 Name of Authorised Representative  
 (BLOCK LETTERS)

Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



### Talbingo mountain bike trail

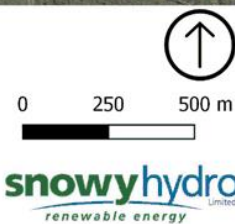
This map is for general use only and Snowy Hydro Limited gives no warranty or representation regarding the map's accuracy, completeness, reliability or suitability for any particular purpose.

Snowy Hydro Limited excludes all liability to any person for loss or damage of any kind (however caused, including but not limited to by negligence) arising whether directly or indirectly from or relating in any way to the content of this map and use of that content, whether in whole or in part.

Map created by SHL Environment 05/03/2020

Data sources:  
 Imagery - Spatial Services NSW  
 Roads, Cadastre - NSW LPI

- Town trail
- excavated section
- Cadastre



Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



## TABLE OF CONTENTS

	Page
1. DEFINITIONS AND INTERPRETATION.....	4
2. CONDITION PRECEDENT TO THE TAKING EFFECT OF THIS AGREEMENT .....	6
3. GRANT OF LICENCE .....	6
4. SNOWY HYDRO'S COVENANTS .....	7
5. PERMITTED USE .....	7
6. RESTRICTIONS ON USE AND LICENSEE COMPLIANCE .....	7
7. MAINTENANCE AND REPAIR .....	8
8. SAFETY OF LICENSED AREA .....	8
9. VARIATION OF LICENSED AREA .....	8
10. GOODS AND SERVICES TAX .....	9
11. DEFAULT AND TERMINATION .....	9
12. HOLDING OVER .....	10
13. LICENSEE TO YIELD UP .....	10
14. INDEMNITY AND RELEASE .....	11
15. DISPUTE RESOLUTION .....	11
16. INSURANCE .....	12
17. MISCELLANEOUS .....	12

Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



## IT IS AGREED

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, the terms defined in Part A form part of these definitions and:

- 1) **"Bike and Pedestrian Paths"** means the proposed bike and pedestrian paths on the Licensed Area along the routes indicated in the diagram contained in Annexure A.
- 2) **"Business Day"** means a day that is not a Saturday, Sunday or any other day that is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made;
- 3) **"Claim"** means any claim, action, cause of action, demand, proceeding or suit (including without limitation any claim resulting from any damage, loss, expense, death or injury);
- 4) **"Confidential Information"**, in relation to Snowy Hydro, means information of every kind that is marked "confidential", is by its nature confidential, or the Licensee knows or ought to know is confidential, that in any way relates to:
  - a) the Licensed Area; or
  - b) Snowy Hydro or any of its Related Entities, whether in oral, documentary, visual or any other form that:
  - c) is disclosed by Snowy Hydro or by any person on behalf of Snowy Hydro to the Licensee or any Representative of the Licensee, by any means; or
  - d) comes to the knowledge of the Licensee or a Representative of the Licensee by any means in relation to the occupation and use of the Licensed Area;
- 5) **"Control"** means the possession, either directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity whether through voting shares, securities, control of the board of directors or otherwise;
- 6) **"Cost"** means reasonable cost and may include any cost, charge, expense, outgoing, payment or other expenditure of any nature whatsoever, including where appropriate all reasonable and proper legal fees;
- 7) **"DECC"** means the Department of Environment and Climate Change established as a department under the Public Sector Employment and Management (Environment and Conservation) Act 2002;
- 8) **"Dispute"** includes any difference, dispute, matter, question, controversy or claim;
- 9) **"Government Agency"** includes a department of a State or Territory, statutory or public authority, instrumentality, corporation, body or person whether Commonwealth, State, territorial or local;
- 10) **"Government Approval"** means any licence, permit, authority, consent or approval issued or provided by a Government Agency or Minister;
- 11) **"Insolvency Event"** means:
  - a) an order is made or an application is made to a court for an order that a party be wound up;
  - b) an application is made to a court for an order appointing a liquidator or provisional liquidator or a liquidator or a provisional liquidator is appointed in respect of a party;
  - c) a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any classes of its creditors, or it proposes a re-organisation, moratorium or other administration involving any of them;
  - d) a party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party or is otherwise wound up or dissolved;
  - e) a party is or states that it is unable to pay its debts when they fall due;
  - f) a party takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a party; or
  - g) anything analogous or having a substantially similar direct effect to any of the events specified in clause 1.1(11)(a) up to and including clause 1.1(11)(f) under the Law of any applicable jurisdiction;
- 12) **"KNP"** means the area of land permanently reserved or dedicated under the NPW Act as the Kosciuszko National Park in New South Wales Australia;
- 13) **"Law"** means any statute, regulation, rule, common law, proclamation, order, ordinance, or by-law or any code of practice, practice notes, guidelines, rules, membership rules or standard issued by relevant regulators or industry bodies, whether present or future and whether Commonwealth, State, territorial or local that in any way directly or indirectly relates to this Agreement;
- 14) **"Licence"** has the meaning given to it in clause 3.1(1);
- 15) **"Licensee's Fittings"** means fittings brought onto the Licensed Area by the Licensee and equipment of the Licensee on the Licensed Area;
- 16) **"Licensee's Fixtures"** means fixtures brought onto the Licensed Area by the Licensee;
- 17) **"Licensee's Fixtures and Fittings"** means both of Licensee's Fittings and Licensee's Fixtures;
- 18) **"Minister"** means the New South Wales parliamentary minister for DECC who is responsible for administering the NPW Act;



Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



- 19) **"Month"** means calendar month;
- 20) **"NPW Act"** means the National Parks and Wildlife Act 1974 (NSW);
- 21) **"Related Entity"** means:
  - a) **in relation to a body corporate:** a related body corporate as that term is defined in the Corporations Act 2001 (Cth); and
  - b) **in relation to a Government Agency:** the Government that Controls that Government Agency and any other Government Agency or body corporate Controlled by that Government;
- 22) **"Representative"** means any officer, employee, agent, contractor or subcontractor of a party but in the case of Snowy Hydro, does not include the Licensee or the Licensee's subcontractors;
- 23) **"Requirement"** means any statutory requirement, notice, order or direction received from or given by any Government Agency; and
- 24) **"Term"** means the period from the Commencement Date up to and including the Expiration Date.

## 1.2 Interpretation

In this Agreement,

1. a reference to:
  - a) the singular includes the plural and the plural includes the singular;
  - b) a person includes a firm, an unincorporated association, a Government Agency or body corporate;
  - c) a party includes:
    - 1) in the case of a body corporate, its successors, assigns and substitutes (including persons taking by novation); and
    - 2) in the case of a natural person, the person's executors, administrators, assigns and substitutes (including persons taking by novation);
      - d) a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes any amendment or replacement;
      - e) a Government Agency includes a Government Agency to which the functions of a former Government Agency are or have been allotted or assumed; and
      - f) a monetary amount is to Australian dollars, unless otherwise stated;
2. if a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly;
3. an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly;
4. a party that is a trustee is bound both personally and in its capacity as a trustee;
5. "including" and similar expressions are not words of limitation;
6. headings are for convenience only and do not form part of this Agreement or affect its interpretation;
7. a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and
8. If an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day.

## 1.3 Inconsistency

Despite any other provision of this Agreement, if there is any inconsistency between:

1. the front cover sheet of **Part A**;
2. the special conditions in **Part A**;
3. this **Part B**; or
4. the Schedules in **Part A**,

Whether wholly or in part, then to the extent of any such inconsistency, the relevant sections of this Agreement will prevail in the order set out above.

Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



## 2. CONDITION PRECEDENT TO THE TAKING EFFECT OF THIS AGREEMENT

- 1) This **clause 2** applies only if on the cover sheet of this Agreement, it is indicated that this **clause 2** applies.
- 2) Despite and other provision of this Agreement, it is a condition precedent to the taking effect of this Agreement that the Minister consents in writing to the grant of the licence under this Agreement.

## 3. GRANT OF LICENCE

### 3.1 Grant of Licence

- (1) On and subject to the terms of this Agreement, Snowy Hydro grants to the Licensee a non-exclusive right to occupy, develop, maintain and otherwise use the Licensed Area for the Permitted Use ("Licence") from the Commencement Date until:

- (a) the Expiration Date;
- (b) the date that this Agreement is terminated in accordance with **clauses 11 or 13** whichever occurs first.

- (2) The Licence granted under clause 3.1(1) confers on the Licensee a personal right only and does not confer on the Licensee any estate or interest in the whole or any part of the Licensed Area.

### 3.2 Acknowledgment of long-term investment by the Licensee and consideration given by the Licensee

- (1) The parties acknowledge that:
  - a) the Licensee is making a long term, substantial investment in the infrastructure of the Licensed Area for the benefit of the public; and
  - b) Snowy Hydro is not requiring the Licensee to pay a licence fee in consideration for Snowy Hydro granting the Licensee the Licence.
- (2) In consideration for Snowy Hydro granting the Licensee the Licence, the Licensee gives the undertakings, indemnities and releases in this Agreement and agrees to the other terms contained in this Agreement.

### 3.3 Licensee Occupies and Uses Licensed Area At Its Own Risk

Despite any other clause in this Agreement, the Licensee:

- (1) occupies, develops, maintains and otherwise uses the Licensed Area and the Licensee's Fixtures and Fittings, at its own risk; and
- (2) acknowledges that Snowy Hydro operates the Snowy Mountains Hydro-Electric Scheme and agrees that Snowy Hydro will not be liable for any losses, liabilities, Costs or Claims incurred in connection with this Agreement including any impact that the operation of the Snowy Mountains Hydro-Electric Scheme (including high lake levels or flooding) may have on the permitted Use of the Licensed Area including any works carried out by the Licensee or the Licensee's Fixtures and Fittings.

### 3.4 Snowy Hydro May Grant Further Licences

- (1) Snowy Hydro may, from time to time, grant to third parties:
  - (a) a non-exclusive right to occupy the Licensed Area; or
  - (b) other non-exclusive rights in respect of the Licensed Area,
 provided that such grant to third parties does not interfere with the Licence.
- (2) Except as permitted by **clause 3.4(3)**, the Licensee must not interfere with the non-exclusive occupation or other use of the Licensed Area by a third party to whom Snowy Hydro has granted rights in respect of the Licensed Area.
- (3) The Licensee may prevent third parties from interfering with or encroaching on the Bike and Pedestrian Paths during the construction and maintenance of the Bike and Pedestrian Paths to ensure the safety of third parties and any contractors, agents or representatives of the Licensee engaged by the Licensee to construct or maintain the Bike and Pedestrian Paths.

### 3.5 Responsible Officer

For the purposes of this Agreement, the key contact for each party is the Snowy Hydro Responsible Officer set out on the front cover sheet of **Part A** and the Licensee Responsible Officer set out on the front cover sheet of **Part A**.

## 4 SNOWY HYDRO'S COVENANTS

Snowy Hydro covenants with the Licensee that the Licensee may have non-exclusive occupation of the Licensed Area and use the Licensed Area for the carrying on of the permitted Use for the Term of this Agreement without interruption or disturbance from Snowy Hydro, except where otherwise allowed by this Agreement.

**Contract Standard Form Licence Agreement (No Licence Fee) – Part B**  
**Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53**  
**in DP 850852, 237155, 23581 & 1096317**



## **5 PERMITTED USE**

### **5.1 Permitted Use**

The Licensee must not and must procure that its Representatives do not:

- (1) use the Licensed Area; or
- (2) allow the Licensed Area to be used, for any purpose other than the permitted Use.

### **5.2 No Warranty as to Use**

- (1) The Licensee acknowledges and agrees that it has fully satisfied itself that, as at the Commencement Date, the Licensed Area is suitable and satisfactory for the carrying out by it of the permitted Use.
- (2) Snowy Hydro neither warrants (expressly or impliedly) nor represents that the Licensed Area is fit, suitable or adequate for the permitted Use and all warranties (if any) as to the suitability, fitness and adequacy of the Licensed Area for the permitted Use implied by Law are excluded (to the extent that it is lawful to do so).

## **6 RESTRICTIONS ON USE AND LICENSEE COMPLIANCE**

### **6.1 Licensee to comply with All Laws and Requirements**

- (1) A reference in this **clause 6.1** to Requirements includes a Requirement whether or not it is addressed to, or required to be complied with by, any or all of Snowy Hydro, the Licensee and any other person in relation to the Licensed Area.
- (2) The Licensee must at all times and at its own cost comply with all Laws and Requirements that relate to:
  - (a) the Licence;
  - (b) the keeping of hazardous substances on the Licensed Area by the Licensee;
  - (c) any Licensee's Fixtures and Fittings on the Licensed Area; and
  - (d) the Licensed Area in so far as they confer duties upon occupiers with respect to the care and control of land, including the responsibilities of an occupier under section 64 of the *Rural Fires Act 1997* (NSW);
- (3) If any Requirement with respect to the Licence is notified to or served upon the Licensee, the Licensee must give Snowy Hydro a copy of the Requirement as soon as practicable after the Requirement is notified to or served upon the Licensee.

### **6.2 Licensee to Obtain Government Approvals**

The Licensee must, at its own cost, obtain and comply with any and all Government Approvals that may be required by the Licensee in connection with:

- (1) the Licence; or
- (2) any of the Licensee's Fixtures and Fittings on the Licensed Area.

### **6.3 Licensee Not to Commit Nuisance**

The Licensee must not:

- (1) carry on or allow to be carried on any noxious, nuisance or offensive trade or business on the Licensed Area;
- (2) bring onto or keep on the Licensed Area any hazardous substance not required or used in connection with the permitted Use (and only then if it is used and stored in compliance with all Laws and Requirements) without the prior written consent of Snowy Hydro, which consent will not be unreasonably withheld;
- (3) do or allow to be done any act, matter or thing on the Licensed Area that results in nuisance, damage or disturbance to any or all of Snowy Hydro, other persons lawfully occupying the Licensed Area and owners or occupiers of adjoining or neighbouring lands or buildings; or
- (4) use the Licensed Area for any unlawful activity.

### **6.4 Works, Fittings and Fixtures**

- (1) The Licensee must not carry out any works or erect or place any Licensee's Fixtures and Fittings on the Licensed Area (other than for the purposes of carrying out works in respect of the permitted Use) without the prior consent in writing of Snowy Hydro, which may be withheld by Snowy Hydro in its sole and absolute discretion; and
- (2) If Snowy Hydro provides its consent under clause 6.4(1), the Licensee must ensure that any works on the Licensed Area are carried out in a proper and workmanlike manner including by developing and implementing appropriate systems and procedures to take all reasonable steps to protect safety, the environment and property.
- (3) For the avoidance of doubt, the Licensee agrees with Snowy Hydro that:
  - (a) the Licensee is responsible management and control of all work undertaken within the Licensed Area by the Licensee;
  - (b) Snowy Hydro has appointed the Licensee the "Principal Contractor" for the Licensed Area in accordance with the Work Health and Safety Act 2011 (NSW); and



**Contract Standard Form Licence Agreement (No Licence Fee) – Part B**  
**Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53**  
**in DP 850852, 237155, 23581 & 1096317**



(c) Snowy Hydro has given the Licensee sufficient authority and control over the Licensed Area to fulfil the responsibilities of the "Principal Contractor" under the Work Health and Safety Act 2011 (NSW).

**6.5 No Interference with Snowy Hydro's Operations or Equipment**

- (1) For the avoidance of doubt, **clause 6.5(2)** does not limit **clause 3.3**.
- (2) Other than for the purposes of carrying out works in respect of the permitted Use, the Licensee must not do any act or carry on any activity on the Licensed Area that:
  - (a) impacts on or causes any interference whatsoever with Snowy Hydro's operations in or around the Licensed Area; or
  - (b) has the effect of impairing, interfering with or stopping in any way the proper functioning of Snowy Hydro's equipment on the Licensed Area.

**6.6 Outgoings**

The Licensee is responsible for the payment to the relevant authority:

- 1) For all services, including electricity, gas, water usage, trade waste and telephone, directly supplied to the Licensed Area and separately metered or assessed; and
- 2) All rates, taxes, charges, assessments, levies and fees payable to any Government Agency and separately assessed in respect of the Licensed Area (excluding capital gains, land and income taxes payable by Snowy Hydro).

**7. MAINTENANCE AND REPAIR**

**7.1 Licensee to keep Licensed Area in Good Condition and Repair**

The Licensee must at all times and to the reasonable satisfaction of Snowy Hydro, keep the Licensed Area and any of the Licensee's Fixtures and Fittings in good condition and repair in all respects, fair wear and tear excepted.

**7.2 Damage**

The Licensee must immediately and at its own cost make good or reinstate any breakage, defect or damage:

- 1) to the Licensed Area;
- 2) to any adjoining premises;
- 3) to any of the Licensee's Fixtures and Fittings; or
- 4) to any fixture or equipment of Snowy Hydro,

occasioned by want of care, misuse or abuse on the part of the Licensee or otherwise occasioned by any breach or default of the Licensee of its obligations under this Agreement.

**8. SAFETY OF LICENSED AREA**

**8.1 Licensee to Erect Warning Signs, Fences and Barricades**

- 1) If either party becomes aware that the Licensed Area or any part of the Licensed Area is unsafe, hazardous, or dangerous, then such party must immediately notify the other party in writing.
- 2) Within 24 hours of receipt or giving of a notice given to it under **clause 8.1(1)** the Licensee must erect such warning signs, fences and barricades as may be reasonably required by Law, until the Licensed Area is rendered safe.
- 3) Apart from operational or safety signs required by Law, the Licensee must not display any sign on the Licensed Area without first obtaining the written consent of Snowy Hydro.

**8.2 Licensee to Give Snowy Hydro Notice of Accidents** The Licensee must give to Snowy Hydro notice in writing of any injury to persons or damage to property at or on the Licensed Area involving the Licensee, any Representative of the Licensee or any third party on the Licensed Area within two (2) Business Days of the injury or damage occurring.

**9.1**

**9. VARIATION OF LICENSED AREA**

**9.1 Snowy Hydro May Vary Licensed Area**

- (1) Subject to first obtaining written consent from the Minister (if required), the parties agree that the Licensed Area may only be varied by the prior written agreement of Snowy Hydro and the Licensee
- (2) If either or both of Snowy Hydro and the Licensee want to vary the Licensed Area but cannot reach an agreement on the extent of the variation, then the parties must proceed with the Dispute Resolution Procedure in **clause 15.2** of this Agreement.

**GOODS AND SERVICES TAX**

**10.1 Interpretation**

In this **clause 10**:

- (1) "**GST Law**" has the meaning given to that expression in the A New Tax System (Goods and

**Contract Standard Form Licence Agreement (No Licence Fee) – Part B**  
**Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53**  
**in DP 850852, 237155, 23581 & 1096317**



Services Tax) Act 1999; and

(2) except for defined terms, capitalised expressions have the same meaning as in the GST Law.

#### **10.2 Payment of GST**

- (1) Unless otherwise expressly stated, any amounts payable or any form of consideration to be provided for a Supply made under this Agreement are exclusive of GST ("**GST Exclusive Amount**").
- (2) If GST is payable by any party making a Taxable Supply ("Supplier") under this Agreement, the
- (3) Recipient must, subject to the prior receipt of a Tax Invoice, pay to the Supplier an amount equal to the GST payable on the Taxable Supply in addition to the GST Exclusive Amount or other consideration otherwise payable for the Supply.

#### **10.3 Tax Invoice**

The Supplier must issue a Tax Invoice to the Recipient in respect of any Taxable Supply made under this Agreement before the Consideration for the Supply is due.

#### **10.4 Adjustments**

- (1) If at any time an Adjustment Event arises in respect of a Taxable Supply made by the Supplier under this Agreement, the Supplier must provide the Recipient with an Adjustment Note for the Adjustment immediately upon becoming aware of the Adjustment.
- (2) Where an Adjustment Event requires that a payment be made by the Supplier to the Recipient, or the Recipient to the Supplier, as the case may be, the payment must be made within 10 calendar
- (3) days from the date of issue of the Adjustment Note.

#### **10.5 Reimbursements**

Where a party is required under this Agreement to pay for or reimburse a cost, expense or outgoing of another party, the amount to be paid by the first party is the sum of:

- (1) the amount of the cost, expense or outgoing less any Input Tax Credits in respect of the cost, expense or outgoing to which the other party (or the Representative Member of a GST Group of which the other party is a Member) is entitled; and
- (2) if the payment by the first party is consideration for a Taxable Supply: an amount equal to the GST payable by the other party in respect of that Consideration.

#### **10.6 Supplier's Obligations**

The Supplier is responsible for determining the GST treatment of any Supply made under this Agreement, or any Adjustment Event in relation to any Supply made under this Agreement, in accordance with the GST Law applicable at the time.

#### **10.7 Commissioner's Assessment, Ruling or Determination**

If the Commissioner makes an assessment, ruling or determination which results in a GST outcome in respect of any Supply or Adjustment Event in relation to a Supply made under this Agreement which differs from the determination of the Supplier under clause 10.6, the Supplier and the Recipient must respectively make the necessary refunds and payments to correctly reflect the Commissioner's assessment ruling or determination.

### **1) DEFAULT AND TERMINATION**

#### **11.1 Termination for Convenience**

- (1) Snowy Hydro may terminate this Agreement for convenience only after 10 years since the Commencement Date has elapsed by providing 40 Business Days written notice to the Licensee.
- (2) The Licensee may terminate this Agreement for convenience only after 10 years since the Commencement Date has elapsed by providing 40 Business Days written notice to Snowy Hydro.
- (3) Termination of this Agreement under **clause 11.1(1) and 11.1(2)**, takes effect on the date identified in the notice provided under that clause.

#### **11.2 Event of Default**

An event of default ("**Event of Default**") occurs if:

- 1) any money payable by the Licensee remains unpaid for 10 Business Days after the date appointed for payment;
- 2) a party ("**Defaulting Party**");
  - a) breaches or fails to perform any of the obligations in this Agreement on the part of the party to be performed (unless the non-performance has been waived by the other party); and
  - b) after the giving of a notice to the Defaulting Party by the other party ("**Other Party**") that particularises the breach or failure, the Defaulting Party fails to:

Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



- a. where the breach or failure is capable of being remedied or rectified: remedy or rectify, or procure the remediation or rectification of, the breach or failure; or
  - b. where the breach or failure is not capable of being remedied or rectified: pay to the Other Party reasonable compensation for the breach or failure, within the period specified in the notice (such period to be reasonable and to be not less than 20 Business Days). If clause 11.2(2)(b)(ii) applies, the notice given under this clause must specify the reasonable compensation payable to the Other Party; or
- 3) an Insolvency Event occurs with respect to the Licensee.

#### 11.3 Termination for Default

- 1) Subject to giving any prior demand or notice required by Law and without prejudice to any other Claim that the party not in default ("Other Party") has or may have against the party in default ("Defaulting Party") or any other person with respect to default, if an Event of Default occurs the Other Party may terminate this Agreement by written notice.
- 2) Termination of this Agreement takes effect on the date of receipt by the Defaulting Party of a notice given under **clause 11.3(1)**.

#### 11.4 Consequences of Termination Only

- 1) Despite any other provision in this Agreement, if this Agreement is terminated under **clause 11.2**, the Other Party reserves the right to take action against the Defaulting Party to recover any loss it has suffered as a result of or in connection with, whether directly or indirectly, the termination of this Agreement.
- 2) Subject to **clause 11.4(1)**, the Licensee is not entitled to payment for any direct or indirect costs, losses or damages arising out of or in connection with the termination of this Agreement.
- 3) Termination by a party is without prejudice to any accrued rights or remedies of that party.

#### 12. HOLDING OVER

- 1) If, after the Expiration Date, the Licensee continues to occupy the Licensed Area with the prior written approval of Snowy Hydro, the Licensee occupies the Licensed Area under a Monthly licence.
- 2) The Monthly licence is on the same terms as this Agreement.
- 3) Either party may terminate the Monthly licence by giving the other party not less than one Month's prior written notice, which notice can end at any time.

#### 13. LICENSEE TO YIELD UP

##### 13.1 Licensee to Remove Licensee's Fixtures and Fittings from Licensed Area

On or prior to the earlier of:

- 1) the Expiration Date;
- 2) the termination of this Agreement; or
- 3) if the Licensee continues to occupy the Licensed Area under **clause 13**, the termination of the Monthly licence under **clause 13**, the Licensee must at its own cost:
- 4) remove from the Licensed Area the Licensee's Fixtures and Fittings and all other property of the Licensee (if any);
- 5) return or give to Snowy Hydro any security keys used to obtain access to the Licensed Area (if any); and
- 6) vacate and leave the Licensed Area in a condition consistent with the Licensee's obligations under this Agreement

##### 13.2 Licensee to Avoid Damage and Make Good

The Licensee must, in removing the Licensee's Fixtures and Fittings and all other property of the Licensee (if any) under **clause 13.1**:

- 1) use its best endeavours to avoid damage to the Licensed Area and any area adjoining the Licensed Area and the equipment or fixtures of Snowy Hydro or any third party;
- 2) repair and make good (but not reinstate) any damage caused to the Licensed Area and the equipment or fixtures of Snowy Hydro or any third party; and
- 3) disconnect and make safe any services connected to the Licensed Area that are being removed.

##### 13.3 Failure to Remove

If the Licensee fails to remove the Licensee's Fixtures and Fittings or any other property in accordance with **clause 13.1**:

- 1) Snowy Hydro may remove such fittings, equipment and property ("Remaining Property") and either:
  - a) deliver the Remaining Property to a location nominated by the Licensee; or
  - b) store the Remaining Property at a location determined by Snowy Hydro;
- 2) if Snowy Hydro stores the Remaining Property under **clause 13.3(1)(b)**:

**Contract Standard Form Licence Agreement (No Licence Fee) – Part B**  
**Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53**  
**in DP 850852, 237155, 23581 & 1096317**



- a) Snowy Hydro must:
    - (i) notify the Licensee of the location of the Remaining Property; and
    - (ii) permit the Licensee to collect the Remaining Property from that location; and
  - (b) the Licensee must collect the Remaining Property from that location within ten (10) Business Days after being notified of the location;
- 3) the Licensee must pay to Snowy Hydro within ten (10) Business Days after receiving a written demand from Snowy Hydro all Costs incurred by Snowy Hydro in removing, delivering or storing the Remaining Property under this **clause 13.3** and such Costs constitute a debt due to Snowy Hydro by the Licensee on and from the making of that demand; and
- 4) any of the Licensee's Fixtures and Fittings or any other property of the Licensee still held in store by Snowy Hydro (or remaining on the Licensed Area) on the date that is two months after the date this Agreement is terminated will become the property of Snowy Hydro.

#### **13.4 Licensee May Enter Licensed Areas on Termination**

- 1) At any time up to the date ten Business Days after the date this Agreement is terminated the Licensee is granted the right to come onto the Licensed Area at all reasonable times and on reasonable notice for the purpose of complying with its obligations under **clauses 13.1 and 13.2**.
- 2) On and from receiving access to the Licensed Area under this **clause 13.4** the Licensee:
  - a) must repair and make good any damage caused by the Licensee to all or any of the Licensed Area or other property of Snowy Hydro or any third party; and
  - b) must not disrupt the use of the Licensed Area by Snowy Hydro or any third party.

#### **14. INDEMNITY AND RELEASE**

##### **14.1 Licensee to Indemnify and Release Snowy Hydro**

To the full extent permitted by Law, the Licensee indemnifies on demand and releases Snowy Hydro, its Related Entities and Representatives, from:

- 1) all losses suffered by it;
- 2) all liabilities and Costs incurred by it; and
- 3) all Claims against it, arising directly or indirectly as a result of or in connection with any or all of:
  - 4) the Licence;
  - 5) the existence of or use of the Licensee's Fixtures and Fittings on the Licensed Area;
  - 6) any breach or non-performance of the obligations of the Licensee whether express or implied under this Agreement; or
  - 7) any injury to persons, any loss or damage to Snowy Hydro's or a third party's real or personal property, or any harm to or pollution of the environment caused by any act or omission of the Licensee.

#### **14.2 Obligation to Pay Under Indemnity**

It is not necessary for Snowy Hydro or any of its Related Entities or Representatives to incur an expense or make a payment before enforcing a right of indemnity given under this Agreement.

#### **14.3 Contribution**

Any amount claimed by Snowy Hydro pursuant to the indemnity in **clause 14.1** will be reduced proportionally by any amount attributable to any loss, damage, liability, claim or expense that is directly caused, or contributed to, by the negligence of Snowy Hydro.

#### **14.4 Benefit**

Snowy Hydro's Representatives and each Related Entity have the benefit of the indemnity in **clause 14.1** as if the indemnity applied directly to its Representatives and each Related Entity. Snowy Hydro, to the extent of **clause 14.1** enters into this Agreement not only on its own behalf but also as agent or trustee for each of its Representatives and each of its Related Entities.

#### **15 DISPUTE RESOLUTION**

##### **15.1 Parties May Not Commence Court Proceedings**

Except where a party seeks urgent interlocutory relief, a party may not commence any Court proceedings relating to Disputes unless it has first complied with **clause 15.2**.

##### **15.2 Dispute Resolution Procedures**

- 1) Each Dispute must be dealt with as follows:
  - a) **step one:** the party claiming that there is a Dispute must send to the other party a notice setting



**Contract Standard Form Licence Agreement (No Licence Fee) – Part B**  
**Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53**  
**in DP 850852, 237155, 23581 & 1096317**



- out the particulars of the Dispute;
- b) **step two**: the parties must use their best endeavours to try to resolve the dispute by direct negotiation, and
- c) **step three**: if the Dispute is not resolved by the parties within 14 days of a party giving notice to the other under **clause 15.2.1(a)** the Dispute must be referred to a mediator agreed between the parties or appointed by the President of the Law Society of New South Wales.
- d) If the steps above do not result in settlement of the Dispute, either party may elect to refer the Dispute to expert determination. If neither party elects to refer the Dispute to expert determination within 14 days of completion of the mediation, commenced in accordance with **clause 15.2.1(c)** the condition precedent in clause 15.1 will be deemed to have been satisfied.

**15.3 Parties Must Continue to Comply With Agreement**

Despite the existence of a Dispute, both parties must continue to perform their obligations under this Agreement.

**16. INSURANCE**

- 1) The Licensee must, throughout the Term and at its own cost, maintain comprehensive insurance policies for the performance of its obligations under this Agreement, including the Public Liability Insurance.
- 2) If requested by Snowy Hydro at any time, the Licensee must provide Snowy Hydro with written evidence (in the form of a certificate of currency), of its insurance arrangements including the Public Liability Insurance.

**17 MISCELLANEOUS**

**17.1 Relationship**

Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between Snowy Hydro and the Licensee.

**17.2 Notices**

- 1) In order to have legal effect, a notice or other communication ("Notice") sent by a party must be in writing and received by the other party.
- 2) A Notice is deemed to be received by a party on:
  - a) the third Business Day after posting if sent by registered post, postage prepaid, to the address for service of the addressee, if the address is in Australia and the Notice is being sent from within Australia;
  - b) the fifth Business Day after posting if sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is being sent from outside Australia and taken as received five Business Days after posting;
  - c) the next Business Day after sending if sent by facsimile to the facsimile number of the addressee; or
  - d) the day of delivery if otherwise delivered at the Address for Service of the addressee set out on the front cover sheet of **Part A**.
- 3) The address and facsimile number of each party is the Address for Service set out in the front cover sheet of **Part A**, or such other address or facsimile number notified for the purposes of **clause 17.2(1)** up to and including **clause 17.2(3)** from time to time.
- 4) A certificate signed by a Representative of a party giving a Notice stating the date on which that Notice was sent or delivered under this **clause 17.2** is prima facie evidence of the date on which that Notice was sent or delivered.
- 5) Despite **clause 17.2(2)**, a facsimile is treated as not given or received unless a transmission report produced by the machine from which the facsimile was sent indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.
- 6) A Notice sent or delivered in a manner provided by **clause 17.2(1)** must be treated as validly given to and received by the party to which it is addressed even if the:
  - a) addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
  - b) Notice is returned unclaimed.

**17.3 Amendment**

This Agreement may only be varied or replaced as agreed in writing by the parties.

**17.4 Costs and Outlays**

- 1) Each party to this Agreement will bear its own costs relating to the negotiation, preparation and execution of this Agreement.

**17.5 Party May Not Assign Without Consent**

- 1) Subject to **clauses 17.5(2)** and **17.5(3)**, a party must not assign, transfer, novate, encumber or

Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
 Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
 in DP 850852, 237155, 23581 & 1096317



otherwise deal with ("Assignment") all or part of its rights or obligations under this Agreement without the other party's prior written consent. A party is not required to give consent or justify the withholding of consent.

- 2) Subject to **clause 17.5(3)**, any change in the persons who beneficially own or Control a party will constitute an Assignment for the purposes of **clause 17.5(1)**.
- 3) **Clause 17.5(2)** will not apply:
  - a) if at the time of the change in persons who beneficially own or Control the party, the party is a body corporate whose voting shares are listed on a recognised stock exchange;
  - b) if at least 80% of the voting shares issued in the party are owned by another body corporate whose voting shares are so listed; or
  - c) in the case of a transfer of shares in Snowy Hydro from a person who beneficially owns shares on behalf of the Commonwealth, the State of New South Wales or the State of Victoria.

#### 17.6 Waiver and Exercise of Rights

- 1) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right. A party's failure or delay to exercise a right does not operate as a waiver of that right.
- 2) A waiver is not effective unless it is in writing and signed by the party. A waiver of a right is effective only in respect of the specific instance to which it relates and for the specific purposes for which it is given.

#### 17.7 Sublicensing

The Licensee must not grant a sublicense in respect of the Licensed Area.

#### 17.8 Time to be of the Essence

Time is of the essence where any provision of this Agreement specifies a time within which a party must undertake or do any act or thing.

#### 17.9 Survival of Obligations

**Clauses 5, 6, 7, 10, 11, 14, 15, and 16** survive termination and expiration of this Agreement.

#### 17.10 Severability

- 1) All the provisions of this Agreement will so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect.
- 2) Despite **clause 17.10(1)**, if any provision of this Agreement on its true interpretation is illegal, invalid or unenforceable, that provision will as far as possible be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character. If any provision of this Agreement or any part of it cannot be so read down, that provision or part will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired.

#### 17.11 Cumulative Rights

The rights arising out of this Agreement do not exclude any other rights of either party.

#### 17.12 Confidentiality and Public Announcements

The Licensee:

- 1) must maintain and take all reasonable steps to maintain Snowy Hydro's Confidential Information in strictest confidence and use that Confidential Information solely in relation to the permitted Use;
- 2) acknowledges that the Confidential Information is confidential and is at all times the property of Snowy Hydro; and
- 3) if requested in writing by Snowy Hydro to do so, agrees to securely return to Snowy Hydro all Confidential Information within 10 Business Days of being requested to do so by Snowy Hydro.
- 4) unless required by Law, must not make any announcement, circular or other public disclosures of the contents of this Agreement without the prior written approval of Snowy Hydro.

#### 17.13 Counterparts

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Agreement.

#### 17.14 Entire Understanding

This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this document. All previous negotiations, explanations, understandings, representations,

Contract Standard Form Licence Agreement (No Licence Fee) – Part B  
Licence Area: Bike and Pedestrian corridor which runs through Lot 10, 2, 1 & 53  
in DP 850852, 237155, 23581 & 1096317



warranties, memoranda, commitments or information provided in relation, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and will be of no force or effect whatsoever and no party will be liable to any other party in respect of those matters.

**17.15 Governing Law and Jurisdiction**

This Agreement is governed by and is to be construed in accordance with the Laws in force in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.