

## GRANT AGREEMENT – LAUNCHVIC LTD

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### PARTIES

**LaunchVic Limited** ACN 611 281 737 of Level 1, 45 Wangaratta Street, Richmond VIC 3121 (**LaunchVic**)

and

**[insert organisation]** ABN **[insert number]** of **[insert registered business address]**  
(**Recipient**)

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### BACKGROUND

- A** LaunchVic is an independent company established by the State Government to support and strengthen Victoria’s entrepreneurial and startup ecosystem.
- B** The Recipient wishes to carry out the Project and has applied for funding from LaunchVic to assist it with the Project.
- C** In consideration of LaunchVic providing the Grant to the Recipient for the purposes of the Project, the Recipient agrees to be bound by the terms of this Agreement.
- D** This Agreement is legally binding upon the Recipient and LaunchVic.

LaunchVic agrees to provide the Grant to the Recipient on the following terms (**Agreement**):

#### 1. Definitions and Interpretation

##### 1.1 Definitions

The following definitions apply to this agreement:

**Bank Account** means the bank account specified by the Recipient in **Item 9 of Schedule 1**;

**Best Industry Practice** means exercising the degree of skill, care, diligence, efficiency, prudence and foresight which would be expected from a skilled and competent organisation experienced in managing projects commensurate to the type, size, value and complexity of the Project;

**Bullying or Harassment Complaint** has the meaning of these terms set out in LaunchVic’s Harassment, Discrimination & Bullying Policy, as made available to the Recipient through LaunchVic’s website [www.launchvic.org](http://www.launchvic.org);

**Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in the place to which the notice, consent or other communication is sent;

**Claim** means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law or in connection with this Agreement;

**Confidential Information** means this Agreement and all information, material and technology disclosed or provided in any form by any party to any other party in connection with this Agreement, save for information that is in or enters the public domain for reasons other than a breach of this Agreement;

**Consequential Loss** means indirect, consequential, incidental, special, punitive or other indirect damages or any loss of revenue, loss of reputation, loss of profits, loss of bargain, loss of actual or anticipated savings, lost opportunities, including opportunities to enter into arrangements with third parties, or loss or corruption of data;

**Dispute** has the meaning given to that term in **clause 15**;

**Due Date** means the dates specified in **Schedule 3**. If a due date falls on a Saturday, Sunday or gazetted public holiday in the state of Victoria, the Due Date for the Milestone will be the next Business Day;

**Final Report** means the final report of the project provided by the Recipient to LaunchVic as set out in **Schedule 2** to be provided by the due date specified in **Schedule 3**;

**Grant Acquittal** means the Report required under **Schedule 4**;

**Grant** means the amount specified in **Item 2 of Schedule 1**, to be provided to the Recipient in accordance with, and subject to, the terms of this Agreement;

**GST** has the meaning given in the GST Law;

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

**Indemnified Parties** means LaunchVic, any Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of LaunchVic and their respective Personnel and **an Indemnified Party** means any of the Indemnified Parties;

**Insolvency Event** means any of the following:

- (a) there is a significant risk that the Recipient is or will be unable to pay its debts when they fall due;
- (b) a significant deterioration in the financial circumstances of the Recipient;
- (c) an order is made by a court of competent jurisdiction for the winding up or dissolution of the Recipient pursuant to the *Corporations Act 2001* (Cth) other than by reason of a bona fide restructure;
- (d) a receiver, receiver and manager, trustee or similar officer is appointed over all or any of the assets or undertakings of the Recipient;
- (e) a mortgagee takes possession either directly or by an agent over all or any of the assets or undertakings of the Recipient; or
- (f) an administrator is appointed, a deed of company arrangement is entered into or the Recipient enters into any other composition or other arrangement with its creditors;

**Instalment** means the relevant Grant instalment amount provided once a Milestone has been received and approved by LaunchVic, set out in **Schedule 3** or part thereof;

**Intellectual Property Rights** means all rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and confidential information, and all and any other results of intellectual activity in any field whether or not registrable, registered or patentable, including rights that may exist in applications to register these rights and all renewals and extensions of these rights;

**Investor** means a third party providing money, assets or in-kind services to invest in companies in Victoria's entrepreneurial and startup ecosystem;

**Key Personnel** means the persons listed in **Item 6 of Schedule 1**;

**Key Performance Indicators (KPIs)** means the project success metrics set out in **Item 4 of Schedule 1**;

**Law** means any law operating in Victoria under common law, equity or statute and including any applicable exchange listing rules, all regulations, by-laws, approvals and relevant requirements of any Commonwealth, State or local authority;

**Liability** means any debt, obligation, claim, action, cost (including legal costs on an indemnity basis, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, loss, compensation, charge or liability of any kind (including fines or penalties), whether it is:

(a) actual, prospective or contingent; or

(b) currently ascertainable or not,

whether incurred or payable under this Agreement or otherwise at law;

**Milestones** means the milestones required to be delivered by the Recipient to LaunchVic, in accordance with **Schedule 3**, in successive order and prior to the release of the corresponding Instalment;

**Participants** means people or organisations, including Startups and Investors, that participate in the Project Activities specified in **Item 3 of Schedule 1** under this Agreement;

**Personnel** means past or present directors, officers, employees, volunteers, agents, contractors, subcontractors or representatives;

**Personal Information** has the meaning given to it under Privacy Laws;

**Privacy Laws** means the laws of the *Privacy Act 1988* (Cth) and *Privacy and Data Protection Act 2014* (Vic) as amended or replaced from time to time and any relevant industry codes or regulations or guidance provided by the administrator of those Acts, and any other applicable laws relating to privacy and data;

**Progress Report** means a report provided by the Recipient to LaunchVic outlining details of the progress made on the Project in accordance with **Schedule 2** to be provided by the Due Dates set out in **Schedule 3**;

**Project** means the project generally described in **Item 1 of Schedule 1** and incorporates the other commitments and obligations of the Recipient under this Agreement;

**Project Activities** means the activities specified in **Item 3 of Schedule 1** that are designed to meet the Key Performance Indicators;

**Project Budget** means the budget of revenue and expenditure for the Project as set out in the Project Plan;

**Project Commencement Date** means the date set out in **Item 7 of Schedule 1**;

**Project Completion Date** means the date specified in **Item 8 of Schedule 1**;

**Project Manager** means the person engaged or employed by the Recipient who is responsible for managing the running of the Project as specified in **Item 5 of Schedule 1** or a replacement person approved by LaunchVic;

**Project Plan** means a detailed description of the plan for the Project, in accordance with **Schedule 2**, to be provided to LaunchVic as part of the first Milestone;

**Recipient Commitments** are set out in **Item 10 of Schedule 1** or as varied in accordance with this Agreement;

**Related Body Corporate** has the meaning given to the term 'related body corporate' in the *Corporations Act 2001* (Cth);

**Reports** means the reports set out in **Schedule 2**;

**Startup** means a business with high impact potential, that uses innovation and/or addresses scalable markets;

**Statutory Declaration** means a Statutory Declaration, in accordance with **Schedule 5**, (or such other form as may be approved in writing by LaunchVic) and declared by a director of the Recipient (or such other person as may be approved in writing by LaunchVic); and

**Tax Invoice** has the same meaning as specified in the GST Law.

## 1.2 Interpretation

In this Agreement unless expressly provided otherwise:

- (a) a reference to this Agreement includes its schedules and any variation, supplement, assignment, novation, substitution or replacement of any of them;
- (b) the singular includes the plural and vice versa;
- (c) includes or including means includes or including without limitation;
- (d) a reference to a corporation includes its successors and permitted assigns;
- (e) a requirement to do anything includes a requirement to cause or procure that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (f) a word that is derived from a defined word has a corresponding meaning;
- (g) a reference to \$, AUD or dollar is to the lawful currency of the Commonwealth of Australia and the Grant will be paid in this currency; and
- (h) headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement.

## 2. Term

- (a) This Agreement will commence on the last date on which this Agreement is executed and continue until the Recipient has completed all its obligations under this Agreement as outlined in the Schedules to the satisfaction of LaunchVic, unless terminated earlier under **clause 14**.
- (b) The Recipient must commence the Project on or before the Project Commencement Date and complete the Project by the Project Completion Date.

## 3. Grant

- (a) LaunchVic will pay the Grant in accordance with this Agreement and subject to:
  - (i) the completion of each Milestone;
  - (ii) the attainment of the related Key Performance Indicators to the satisfaction of LaunchVic; and

- (iii) the Recipient otherwise complying with this Agreement.
- (b) Each Instalment will be paid to the Recipient within 30 days of LaunchVic approving the documentation received for each Milestone.
- (c) Each Instalment will be made to the Bank Account specified by the Recipient. Any request by the Recipient to change the Bank Account must be in provided to LaunchVic in writing by the Recipient's authorised representative/s. LaunchVic will then contact one or more of the Key Personnel using the existing information in **Item 6 of Schedule 1** to confirm the change of banking details.

#### 4. Project

- (a) The Recipient must apply the Grant to the Project as set out in the approved Project Plan and Project Budget, and for no other purpose.
- (b) The Recipient must deliver the Milestones and meet the related KPIs to the reasonable satisfaction of LaunchVic.
- (c) The Recipient must comply with the Recipient Commitments to the reasonable satisfaction of LaunchVic.
- (d) The Recipient is responsible for the running of the Project including all management, decision making and contracting with third parties as required.
- (e) The Recipient is responsible for all matters in regards to its employees and other third parties associated with its operations and activities on this Project.
- (f) The Recipient must advise LaunchVic of any changes to any arrangements to the Project, the Project Plan, or any changes to any of the items outlined in **Schedule 1**. Any changes are subject to the approval of LaunchVic and may require a variation to this Agreement under **clause 18(d)** as determined by LaunchVic.
- (g) The Recipient will carry out its obligations under this Agreement, undertake the Project, carry out all publicity with respect to the Project (including the arrangement of any events or functions) and ensure that its Personnel act at all times:
  - (i) with due care and skill as is consistent with any applicable LaunchVic policies as made available to the Recipient through LaunchVic's website [www.launchvic.org](http://www.launchvic.org); and
  - (ii) in accordance with:
    - (A) the items outlined in **Schedule 1**;
    - (B) the Project Plan;
    - (C) all relevant Laws, regulations and policies;
    - (D) Best Industry Practice; and
    - (E) any reasonable direction given by LaunchVic.

## 5. Key Personnel

- (a) The Recipient will ensure that the Key Personnel and the Project Manager are retained to deliver the Project. The Recipient must:
  - (i) ensure that each of the Key Personnel working on the Project occupy the positions and provide the relevant services as advised to LaunchVic;
  - (ii) notify LaunchVic as soon as reasonably practicable of any proposed change to the Project Manager and any Key Personnel on the Project; and
  - (iii) obtain LaunchVic's approval to any replacement of the Project Manager and Key Personnel.

## 6. Reporting

- (a) The Recipient must provide the Reports (including the Grant Acquittal) and such other information in relation to the Project and the expenditure of the Grant as LaunchVic requests, acting reasonably.
- (b) The Recipient hereby grants to LaunchVic a non-exclusive, royalty free, worldwide, paid up licence to reproduce, publish or otherwise use for non-commercial purposes, the Reports and any documents and other materials provided by the Recipient to LaunchVic under this Agreement.

## 7. Accounts and Audit

- (a) The Recipient must keep full and proper records to demonstrate compliance with all aspects of this Agreement. The Recipient must keep LaunchVic fully informed of all aspects of the progress of the Project on request, and will co-operate with LaunchVic and provide it with all information reasonably requested by LaunchVic or any third party engaged by LaunchVic to conduct any audit or inspection.
- (b) The Recipient must keep accounting records relating to the Grant and must account for the Grant expenditure separately from other funds and in accordance with generally accepted accounting principles. The accounts for the Grant should, at a minimum, itemise the Recipient's expenditure of the Grant and, in relation to each item, describe the nature of expenditure, the amount and the connection to the approved budget for the Project Plan. The Recipient must keep valid Tax Invoices in respect of all items of expenditure of the Grant.
- (c) Upon request, the Recipient must permit LaunchVic or an auditor appointed by LaunchVic access to accounting records relating to the Project and Grant and where relevant to inspect any Project works, the Project site or any equipment relating to the Project.
- (d) At any time before the Project Completion Date, LaunchVic may inspect or audit all or any of the Recipient's processes for the purposes of monitoring the standard and quality of, and progress in relation to, the Project. If any Milestone is unsatisfactory to LaunchVic, acting reasonably, LaunchVic has the discretion to ask the Recipient to rectify any such Milestone to LaunchVic's satisfaction.
- (e) The Recipient must be provided with at least 1 week notice in writing of any audit or inspection requested by LaunchVic under this **clause 7**.

## 8. GST

- (a) Each payment under this Agreement will be increased by an amount equal to any GST payable with respect to the Taxable Supply for which the payment is made provided that with each relevant claim for payment, the Recipient submits a valid Tax Invoice. The total amount of monies paid under this Agreement will be increased to include the total amount of GST payable.
- (b) If required by GST Law, the Recipient must register for GST.
- (c) For the purposes of this Agreement, "Taxable Supply" means the obligations of the Recipient under the terms of this Agreement.

## 9. Warranties

The Recipient warrants that:

- (a) it will not, and will ensure that its Personnel will not, do anything or engage in any conduct which affects the goodwill or reputation of the Project, the Recipient, LaunchVic or other stakeholders in the Project, including the Government of Victoria;
- (b) other than any matters previously notified to LaunchVic, it has not received any Bullying or Harrassment Complaints in the previous 12 month period; and
- (c) during the term of this Agreement, the Recipient will ensure that:
  - (i) if any Bullying or Harrassment Complaints are received by the Recipient during the term of this Agreement, it will immediately notify LaunchVic in which case LaunchVic may elect to enact its rights under **clause 14** of this Agreement;
  - (ii) its operations are carried out in accordance with the purpose of the Project and no changes are made to any arrangements for the Project, or to the description or purpose of the Project without the prior written approval of LaunchVic;
  - (iii) no amendments are made to the Recipient's constitution which conflict with or diminish the Recipient's capacity to comply with the purpose of the Project and its obligations under this Agreement; and
  - (iv) it will not alter its constitution without the prior written approval of LaunchVic.

## 10. Marketing and Communications Requirements

- (a) LaunchVic reserves announcement rights in connection to the Grant unless otherwise agreed between the parties. LaunchVic may assign or delegate this right to the Victorian Government and any relevant Minister.
- (b) LaunchVic reserves the right to publicise the Project participants involvement via its digital channels and the media.
- (c) The Recipient will provide to LaunchVic appropriate consents and permissions from Key Personnel featured in any publicity.
- (d) The Recipient agrees to acknowledge LaunchVic's support in material published (digital or hard copy) in connection to the Grant and Project and will comply with

LaunchVic's Marketing and Communication Guidelines for text attribution, LaunchVic's logo and other marketing requirements.

- (e) The Recipient agrees to acknowledge LaunchVic's support on the Recipient's website in connection to the Grant and Project with the appropriate use of LaunchVic's logo as defined in LaunchVic's Marketing and Communication Guidelines.
- (f) The Recipient must acknowledge LaunchVic in public announcements or promotional activities undertaken in relation to the Grant and Project.

## **11. Intellectual Property**

- (a) All Intellectual Property Rights created by the Recipient in the course of undertaking the Project shall remain the sole and exclusive property of the Recipient or its licensors.
- (b) The Recipient warrants that any Intellectual Property Rights used by it in connection with the Project or the Reports and any documents, and other materials provided by the Recipient to LaunchVic for the purposes of the Project, are the sole property of the Recipient and the Recipient is legally entitled to use those Intellectual Property Rights at its discretion. To the extent that the Intellectual Property Rights are not the sole property of the Recipient, the Recipient warrants that it has received all necessary consents from the relevant third parties to use those Intellectual Property Rights.

## **12. Liability & Indemnity**

- (a) The Recipient indemnifies and holds harmless the Indemnified Parties against all Liability arising from or incidental to:
  - (i) any advertisements, promotional material or signage produced or supplied by or on behalf of the Recipient;
  - (ii) any negligent or wilful act or omission by the Recipient or any of its Personnel;
  - (iii) any breach by the Recipient or its Personnel of the provisions of this Agreement (including any of the warranties) or any law or other regulatory requirement; and
  - (iv) any injury to, or death of, a natural person and any loss of or damage to, the real or personal property of an Indemnified Party or a third party caused or contributed to by the Recipient, or its Personnel,

except to the extent that any Liability is caused or contributed to by the act or omission of an Indemnified Party.

- (b) Neither party is liable to the other party for any Consequential Loss arising out of or in connection with this Agreement irrespective of whether the liability for the loss or damage arises in or under contract (including for liability under any indemnity), statute, tort (including negligence), equity or otherwise at law.
- (c) Notwithstanding any other clause in this Agreement, the maximum aggregate liability of either Party for all losses, damages, costs, expenses and claims arising out of, or in connection with, this Agreement, whether arising in or under contract, statute, tort (including negligence), equity or otherwise at law, is limited to the total amount of the Grant payable by LaunchVic to the Recipient under this Agreement.



### 13. Insurance

- (a) The Recipient must effect and maintain, at its own cost, all insurances as would be required by a prudent person responsible for the Project Activities including insurance against liability for injury to employees, contractors, volunteers, participants, supporters and the public and damage to property.
- (b) The Recipient must, at LaunchVic's request, provide LaunchVic with copies of any insurance policies obtained in accordance with **clause 13(a)**.
- (c) The Recipient must observe, perform and comply with all warranties and conditions in all insurance policies that the Recipient obtains in accordance with **clause 13(a)**, and ensure that all premiums are paid when due. LaunchVic may request evidence that premiums are paid at any point during the term of the Agreement.

### 14. Termination or withholding of payment

If:

- (a) the Recipient breaches this Agreement and the Recipient does not remedy the breach within 10 Business Days of being requested to so by LaunchVic; or
- (b) the Recipient suffers an Insolvency Event; or
- (c) LaunchVic is of the reasonable opinion that the Project is not proceeding in accordance with this Agreement or a Milestone is not satisfactory; or
- (d) the Recipient has engaged in any conduct that affects the goodwill or reputation of the Recipient, the Project, LaunchVic or other stakeholders in the Project;

then LaunchVic may in its absolute discretion:

- (e) withhold, suspend or terminate any payment due to be made under this Agreement or advance part payment as it deems appropriate by written notice to the Recipient;
- (f) to the extent it is lawful to do so, require repayment by the Recipient to LaunchVic of no more than the most recent Instalment paid by LaunchVic in accordance with the Milestones; and/or
- (g) terminate this Agreement immediately by written notice.

### 15. Dispute Resolution

#### 15.1 No litigation

The parties must not enter into litigation in relation to any dispute that arises out of or in connection with this Agreement or the Project (except proceedings seeking interlocutory relief) (**Dispute**) without first attempting to resolve the Dispute in accordance with this **clause 15**. For the avoidance of doubt, LaunchVic may exercise its rights under **clause 14** without first undertaking any dispute resolution process.

### 15.2 Attempt to resolve Dispute

- (a) After either party notifies the other of a Dispute, the parties must, without delay and in good faith, meet to attempt to resolve the Dispute.
- (b) If a Dispute cannot be resolved within 14 days, the Dispute will be referred to LaunchVic's CEO (or delegated authority) and the Recipient's equivalent (**CEO**) for resolution.

### 15.3 Consideration of Dispute by CEOs

- (a) The CEOs (or delegates) must use all reasonable endeavours to resolve any Dispute, promptly and in good faith.
- (b) If the CEOs (or delegates) cannot resolve a Dispute within 7 days of that dispute being referred to them, a party may submit the Dispute to mediation.

### 15.4 Referral of Dispute to mediation

- (a) The mediator will be appointed by mutual agreement of the parties.
- (b) If the parties fail to agree on the appointment of a mediator within 7 days of submission of the Dispute under **clause 15.3(b)**, a party may apply to the Law Institute of Victoria or other appropriate industry body to appoint a mediator.
- (c) The parties must comply with the directions of the mediator as to the conduct of the mediation.
- (d) The costs of the mediation of any Dispute will be borne equally by the parties.
- (e) If the Dispute is not resolved within 30 days of the conclusion of the mediation (or such longer period as the parties may agree), either party may seek alternative dispute resolution options.

## 16. Confidentiality

A party must not disclose or permit the disclosure of any of the other party's Confidential Information without written permission from that other party, except:

- (a) where required under this Agreement including to a party's legal and financial advisers on a confidential basis;
- (b) where the information disclosed is already in the public domain other than due to a breach of this Agreement; or
- (c) where the disclosure is required by Law.

## 17. Privacy

The Recipient will:

- (a) comply with all Privacy Laws, the Australian Privacy Principles under the *Privacy Act 1988* (Cth) and any reasonable and applicable LaunchVic policies as made available to the Recipient through LaunchVic's website [www.launchvic.org](http://www.launchvic.org), even if it is not otherwise bound by them, including taking all necessary steps to protect personal information as defined under the *Privacy Act 1988* (Cth) in the Recipient's possession against misuse or loss; and

- (b) not collect, use or disclose any Personal Information (as defined under *the Privacy Act 1988* (Cth)) for any purpose other than to discharge its obligations under this Agreement.

## 18. General

- (a) (**Entire agreement**) This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.
- (b) (**Severance**) Each provision of this Agreement will be read as a separate provision so that if any provision is void or otherwise unenforceable for any reason, that provision will be separated and the remainder read as if the separated provision had never existed.
- (c) (**Waiver**) A waiver by one party of a breach of this Agreement does not constitute a waiver in respect of any other breach of this Agreement, and a party's failure to enforce a provision of this Agreement must not be interpreted to mean that the party no longer regards that provision as binding. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- (d) (**Variation**) Any variations to this Agreement must be in writing and signed by both parties.
- (e) (**Assignment and subcontracting**) The Recipient must not subcontract, transfer or assign the Recipient's rights or novate its obligations under this Agreement without the prior written consent of LaunchVic, such consent not to be unreasonably withheld or delayed. LaunchVic may subcontract, transfer or assign its rights or novate its obligations under this Agreement at its discretion.
- (f) (**Counterparts**) This Agreement including any variations may be executed in counterparts. All counterparts together will constitute one instrument.
- (g) (**Negation of employment, partnership & agency**) The Recipient must not represent itself, and must ensure that its employees, partners, agents or subcontractors do not represent themselves, as being LaunchVic's employees, partners or agents.
- (h) (**No further funding**) Nothing contained in this Agreement is to be construed as creating any obligation, commitment or undertaking by LaunchVic to provide additional or further funding or assistance to the Recipient in relation to the Project, beyond that provided in this Agreement.
- (i) (**Survival**) Each of clauses 6, 7, 10, 12, 15, 16 and 17 will survive the expiration or earlier termination of this Agreement.
- (j) (**Governing Law**) The laws of the State of Victoria will govern this Agreement and the parties submit themselves to the jurisdiction of the courts in the State of Victoria.
- (k) (**Good Faith**) The Recipient must act in good faith and use its best endeavours to comply with the spirit and intention of this Agreement.
- (l) (**Non-disparagement**) The Recipient must not disparage LaunchVic or make any statement or public announcement, whether oral or in writing, or do anything else, which is likely to bring LaunchVic or the Victorian Government into disrepute or ridicule or otherwise adversely affect their reputation.

The parties agree to be bound by the above terms and conditions.

**Executed by LAUNCHVIC LIMITED  
(ACN 611 281 737) by its  
authorised representative:**

.....  
Signature of Witness

.....  
Signature of Authorised Representative

.....  
Name of Witness

.....  
Name of Authorised Representative

.....  
Date Signed

**Executed by [NAME] (ABN XXX  
XXX XXX) by its authorised  
representative:**

.....  
Signature of Witness

.....  
Signature of Authorised Representative

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Name of Witness

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Name of Authorised Representative

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Date Signed