

Terms of Participation in Grant Program

*This document should be read in conjunction with the guidelines, application form, Frequently Asked Questions and any other documentation produced for the relevant grant program (**Guidelines**). This document sets out additional terms and conditions that apply to all applicants and auspice applicants that may apply for funding under the relevant grant program (**Program**). Unless otherwise defined in this document, terms defined in the Guidelines have the same meaning when used in this document.*

Representations and warranties

Sustainability Victoria (**SV**) does not make any representations or provide any undertakings to applicants other than to invite them to submit an application form for the Program.

SV does not warrant the accuracy of the content of the Guidelines or this document and SV shall not be liable for any error or omission or any inaccurate or misleading information provided by SV during the Program's application process.

The information in the Guidelines and this document has been compiled by SV for the purpose of inviting applications and must not be relied on for any other purpose.

The Guidelines and this document do not contain all the information that applicants may require in reaching decisions in relation to submitting an application. Applicants should form their own views as to what information is relevant to such decisions, and make their own independent investigations in relation to any such information.

No representation made by or on behalf of SV in relation to the Guidelines, the subject matter of the Guidelines or this document, including in connection with any workshops, information sessions or meetings conducted, shall be binding on SV unless that representation is in writing and is incorporated into the funding agreement entered into by and the relevant successful applicant (**Funding Agreement**).

Confidentiality and privacy

SV will not disclose the confidential information of applicants without prior written consent, except in limited circumstances such as to the extent required by law or as is necessary to conduct the application process. Applicants agree that SV may disclose their application, along with any other information disclosed by the applicant to SV during the application process to the Victorian Government, its management, its consultants and its advisers or otherwise and if required by law to do so or for assessment, reporting, advice, comment or discussions regarding alternative or collaborative grant funding opportunities.

Applicants must specify any content of their applications that they consider constitute confidential information, in order that SV may treat that information as confidential.

However, SV reserves the right, in its absolute discretion, to disregard an applicant's claim that information is confidential.

Any personal information which SV collects as part of the application process will be handled in accordance with the *Information Privacy Act 2000* (Vic).

SV is subject to the *Freedom of Information Act 1982* and that if a Freedom of Information request is made, SV will consult with the applicant before any decision is made to release the application or supporting documentation

Ownership

All documents submitted by applicants in connection with the application process become the property of SV on submission.

The Guidelines, this document and any other supporting material provided by or on behalf of SV is, and shall remain, the property of SV.

Intellectual Property

SV does not seek any ownership rights in the intellectual property owned or developed by applicants during the application process or in the course of undertaking the project, the subject of the application (**Project**) (if successful).

Applicants grant SV a license (including the right to sub-license) to reproduce, adapt or modify the whole or any portion of their application for the purpose of the application process and, whether the applicant is successful or unsuccessful, for non-commercial use. SV's licence to use such information does not extend to the confidential information of applicants.

Communications

Applicants must not make any public statements or communications, or publish any media releases, in relation to this application process, without first providing a copy of the statement, communication or media release to SV and obtaining the prior written approval of SV.

Conflict of interest and collusion

An applicant must declare if they have any independent business relationship with another applicant or a target community. Where a conflict of interest arises, it must be assessed and be resolved in favour of the public interest and to SV's satisfaction. If a conflict of interest cannot be resolved to SV's satisfaction, SV may exclude an applicant from applying for funding in its absolute discretion.

Subject to any collaboration that is notified to SV, each applicant warrants and agrees that it is in all respects independent and that no collusion has taken place or will take place between the applicant and any other applicant or entity in connection with the application process.

Termination or alteration of application process

SV may terminate the application process or the Program, alter the application process or the scope of the Program or extend the closing time of the Program in its absolute discretion.

SV does not bind itself, and each applicant agrees that SV is not bound to accept any application for funding under the Program.

For the avoidance of doubt, references to the 'application process' in the Guidelines and this document means the process for seeking and assessing applications as described in the Guidelines and this document, and includes selecting each successful applicant and concludes upon the execution of a Funding Agreement by each successful applicant.

No legal relationship

No contract (including any process contract) for the provision of funding is formed between SV and any person by reason of the Guidelines, this document, an application for funding or any part of the application process.

A legally binding contractual relationship for provision of funding will only arise when the successful applicant and SV enter into a Funding Agreement. A template of the Funding Agreement is available on the SV website.

The Victorian Industry Participation Policy (VIPP)

The [Victorian Industry Participation Policy \(VIPP\)](#) seeks to maximise opportunities for Australian, New Zealand and Victorian suppliers to compete for government business on the basis of best value for money over the life of the goods or services. The VIPP is implemented by Victorian Government departments and agencies to help drive local industry development.

The VIPP will apply if the total cost of the project meets or exceeds either:

- \$1 million in regional Victoria/statewide; or
- \$3 million in metropolitan Melbourne.

If the VIPP does apply Sustainability Victoria will register the grant with ICN (Industry Capability Network). The grant recipient will then be required to comply with the requirements of the VIPP, including preparing a VIPP Plan and providing annual project reports.

Funding Agreement and implementation of Project

The Funding Agreement will include clauses covering performance, measurement against milestones and objectives, payment arrangements, intellectual property ownership, confidentiality, audit processes, breach of contract, reporting and other relevant matters.

The Funding Agreement must be signed prior to funding being provided.

These Terms of Participation, together with the Guidelines and any other documents so declared by SV form part of the Funding Agreement.

Funding must be spent on the Project as described in the application and as outlined in the

Funding Agreement. Failure to do so may result in a request by SV to repay funding.

Successful applicants must provide financial and/or in-kind contributions as provided in applications.

Funding will be provided to successful applicants in milestone payments. Before payments will be made, all milestone deliverables must be satisfactorily completed by the successful applicant within agreed timeframes and supported by appropriate evidence.

Projects will not be funded retrospectively nor will funding be granted to Projects that have commenced prior to signing of the Funding Agreement.

Projects must be completed within the agreed timeframes, following the Funding Agreement being signed.

Successful applicants will be required to provide SV with satisfactory reports as specified in the Funding Agreement.

Projects must acknowledge the support of SV, the Victorian Government and the Program in all Project communications, which must be approved by SV prior to public release.

Successful applicants must provide Project information to SV for program evaluation purposes and case studies that may be used by SV in future communications.

Projects must be covered for insurance as specified in the Guidelines. Successful applicants must provide evidence of adequate insurance coverage prior to entering into the Funding Agreement.

Application documents

The applicant must ensure its application form (including attachments) contains the documents, information and details required under the Guidelines, this document and any documents necessary to make the application form (including attachments) complete and enable assessment by SV.

Applicants must provide any additional information requested by SV for the purposes of assessing and evaluating the application form (including attachments) within such reasonable time period as may be specified by SV.

If an applicant's application for funding does not conform to the form required, does not respond to each component of the application form or is incomplete in any way, SV may, in its absolute discretion, exclude the applicant's application or any part of the application for funding from consideration.

SV may, in its absolute discretion, require or allow an applicant to amend, alter or otherwise change its funding application at any time during the application process.

Method of lodgment

Applicants must submit their completed application form (including any attachments) in the manner and by the closing time specified in the Guidelines.

Late applications

Applicants are urged to submit their grant application well in advance of the published submission deadline. It is the applicant's responsibility to adhere to all application instructions, including submission dates and times included in the grant application guidelines.

In order to be fair to all applicants, submission deadline extensions will only be considered in exceptional circumstances and must be received within one (1) working day of the grant closing date. Requests received after that time will not be considered. The applicant must submit the request in writing to grants.applications@sustainability.vic.gov.au.

While the reasons for late submission are sometimes personal in nature, specific information about the timing and cause of the delay should be provided so an informed, objective decision can be made.

Examples of exceptional circumstances that may be considered are:

- natural disaster (e.g. floods, fire etc.). Severe weather closures may be considered if they occur on the day of the submission deadline
- a validated disruption of service in a specific area (e.g. widespread power and/or internet service outage)
- a validated technical issue on the side of Sustainability Victoria which prevented applicants from applying by the published deadline (e.g. an internet, email outage or malfunction)
- sudden acute severe illness or death.

Examples of reasons that are NOT acceptable are:

- heavy administrative responsibilities/busy work schedule
- limited internal resources
- ongoing or non-serve health problems (e.g. common cold)
- personal events (e.g. planned leave)
- multiple extensions
- localised technical issues (applicant's email is out of service).

An extension can only be considered if:

- there is no advantage to the late applicant
- the circumstances of the late receipt are exceptional, as above
- the integrity of the process is maintained
- the merit assessment has not yet commenced; and
- to do otherwise would compromise the effectiveness of the grant program and be contrary to efficient government.

Each request for an extension will be assessed on its merits in consideration of the above criteria and probity principles. All factors will be weighed to ensure that probity principles are followed. Where there is uncertainty, the decision will be made in favour of fairness to all applicants and the integrity of the grant process. Sustainability Victoria's decision is final and no correspondence will be entered into.

Costs

SV is not liable for any costs, expenses, losses, claims or damages that may be incurred by applicants in connection with the application process, execution of the Funding Agreement

or participation in the Program, including in preparing or submitting an application form, providing further information to SV or persons engaged by SV, or participating in discussion or negotiations (if any) with SV.

Change in circumstance

The applicant must inform SV promptly in writing of any material change to any of the information contained in its application form (including attachments), and any material change in circumstances that may affect the truth, completeness or accuracy of any of the information provided in, or in connection with such documentation.

Questions

Any questions or requests for further information or clarification of the Guidelines, this document or any other document issued in connection with the application process must be submitted to SV in writing, by email to the address specified in the Guidelines.

Any communication by an applicant to SV will be effective upon receipt by SV (provided such communication is in the required format).

SV may restrict the period during which it will accept questions or requests for further information or for clarification and reserves the right not to respond to any question or request, irrespective of when such question or request is received.

Except where SV is of the opinion that issues raised apply only to an individual applicant, questions submitted and answers provided will be made available to all potential applicants by posting on the SV website without identifying the person or organisation having submitted the question. In all other cases, SV may deliver any written notification or response to an applicant by leaving or delivering it to the address of the applicant (as notified to SV).

An applicant may, by notifying SV in writing, withdraw a question submitted in accordance with this section (**Questions**) in circumstances where the applicant does not wish SV to provide its response to the question to all potential applicants.

Clarifications

SV may at any time during the application process, request additional information concerning any part of an application and request clarifications of an application.

SV reserves the right, in its absolute discretion, to enter into any discussion or written communications with any applicant to seek clarifications and obtain additional information to enable evaluation of an application or negotiate with any applicant without undertaking similar discussions or written communications with any other applicant.

Applicants must provide any additional information within such reasonable time period as may be specified by SV.

SV may contact other clients of applicants or any other relevant person to obtain any additional information.

Financial and regulatory compliance checks

Successful applicants may be required to undertake an independent third party financial viability check and must provide financial information requested by SV or its contractor for this purpose. SV may undertake checks with EPA, WorkSafe Victoria or other regulators about the applicant's environmental, OH&S, safety or other regulatory performance.

GST

Project costs disclosed in the application form should be stated as exclusive of any input tax credits to which the applicant is entitled in respect of those costs.

Grants paid may be subject to GST, however this will depend on whether the applicant is registered (or required to be registered) for GST.

For successful applicants who are registered for GST, the amount payable by the Victorian Government will be increased on account of GST, provided that the successful applicant provides SV with a valid tax invoice.

Successful applicants who are not registered for GST must provide SV with a tax invoice stating their ABN and confirming no GST is payable on the amount of the grant.

Successful applicants who are not registered for GST should also consider whether the acceptance of the grant will cause them to exceed the registration turnover threshold for GST (which is currently \$150,000 for not-for-profit entities), in which case they may need to register for GST.

Governing law

The Guidelines and this document shall be governed by the laws of the State of Victoria. The applicant irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria, Australia.