**TERMS AND CONDITIONS**

**FOR LOAN OF LEADBEATER'S POSSUM SURVEY KIT**

* 1. Loan of Leadbeater's Possum Survey Kit (the Survey Kit)
     1. Loan of the Survey Kit
        1. The State agrees to loan the Survey Kit to the Borrower for the specified Loan Period in accordance with these Terms and Conditions.
        2. The Loan Period commences upon the Borrower collecting the Survey Kit from the State's premises and ends when:
           1. the Borrower returns the Survey Kit to the State at the time and location set out in the State's attached Cover Letter; or
           2. the State re-gains possession of the Survey Kit in some other manner,

whichever comes earlier.

* + 1. Collection and inspection of the Survey Kit
       1. The Borrower will collect the Survey Kit from the State's premises at the date and time agreed by the State.
       2. The Borrower must inspect the Survey Kit at the time of collection. If the Borrower finds that any items are missing or defective in the Survey Kit after collection, it must give notice to the State within 1 Business Day of collection. If no notice is given to the State under this clause 1.2(b), the State will assume the Survey Kit is deemed to be in good working order and condition at the time of collection.
    2. Ownership/title in the Survey Kit
       1. The State retains ownership/title in the Survey Kit and the Borrower has no interest of any kind other than as a bailee (a person or party to whom goods are delivered for a purpose without transfer of ownership).
       2. Except with the State's prior written approval, the Borrower is not entitled to offer, transfer, assign, sublet, encumber, charge or otherwise deal with the Survey Kit in any way.
  1. Use of the Survey Kit
     1. Permitted use of Survey Kit

The Borrower must only use the Survey Kit in forested environments within Victoria, for:

* + - 1. the purpose of collecting evidence to support reports about the presence of Leadbeater’s Possum (or incidental sightings of other associated arboreal mammals, or large forest owls) in accordance with the survey standard issued by the State; and
      2. in accordance with the State’s directions issued to the Borrower from time to time.
    1. No prejudicial use permitted

The Borrower must ensure that the Survey Kit is not subject to any treatment or dealing which is prejudicial to the reputation of the State.

* + 1. Persons using the Survey Kit

The Borrower must:

* + - 1. ensure that the Survey Kit is accessed or used only by the Borrower or its authorised Personnel (in case of the Borrower being an organisation);
      2. not allow or authorise any other person or entity to use or have possession of the Survey Kit at any time without prior approval of the State;
      3. take all reasonable precautions to prevent unauthorised access or use of Survey Kit by any other person; and
      4. notify the State immediately and comply with all the State's directions if it becomes aware of any unauthorised access or use of the Survey Kit which is in contravention of the State's directions.
    1. Safety Plan

The Borrower must:

* + - 1. comply with (and ensure that any other person who assesses or uses the Survey Kit complies with) the Safety Plan.
      2. Without derogating any other obligations it may have under the Laws, it must address and act upon any health and safety risks brought to its attention in accordance with the Safety Plan.
    1. Operation of the Survey Kit

The Borrower warrants that it will, at all times:

* + - 1. operate the Survey Kit safely, and strictly in accordance with the Safety Plan, and operating manual and instructions provided by the State;
      2. if requested by the State, attend, or arrange its Personnel to attend (in case of the Borrower being an organisation) the State's training session, and ensure that itself or its Personnel (in case of the Borrower being an organisation), using the Survey Kit are suitably instructed and trained in its safe and proper use;
      3. comply with all the applicable Law (including occupational health and safety and environmental laws) with respect to use, possession and/or storage of the Survey Kit; and
      4. comply with Timber Harvesting Safety Zones created under the *Sustainable Forests (Timber) Act 2004*.
    1. Cleaning and maintenance of the Survey Kit

The Borrower must:

* + - 1. clean and maintain the Survey Kit in good condition and in accordance with the manuals and instructions provided by the State (including manufacturer's manuals) at the Borrower's cost;
      2. not in any way alter, modify, tamper with, damage or repair the Survey Kit and not alter, deface or remove any manuals, notice or safety information from the Survey Kit without the State's written approval;
      3. store the Survey Kit safely and securely, and take reasonable measures to protect it from theft, vandalism, seizure and damage and not expose it to adverse climatic or environmental conditions or any hazardous substance which may damage the Survey Kit; and
      4. return the Survey Kit to the State in the same good and clean condition it was provided in by the State when it was collected by the Borrower (please note that ordinary fair wear and tear associated with the use of such equipment during a Leadbeater's Possum survey will be accepted by the State).
  1. Breakdown or loss of Survey Kit
     1. Breakdown of the Survey Kit

In the event that any part of the Survey Kit breaks down or becomes unsafe to use during the Loan Period, the Borrower must:

* + - 1. immediately stop using the Survey Kit and notify the State;
      2. take all steps necessary to prevent injury occurring to person or property as a result of the condition of the Survey Kit;
      3. not repair or attempt to repair the Survey Kit without the State's prior written approval; and
      4. comply with the State's directions (including immediate return of the Survey Kit to the State).
    1. Lost, stolen or damaged Survey Kit items

The State reserves the right to refer instances involving damage, theft or loss of the equipment to the Victorian Police for further investigation.

If the Leadbeater's Possum Survey Kit is lost, stolen or damaged during the Loan Period, the Borrower must notify the State through the telephone number provided in the State's Cover Letter on the following business day.

Unless otherwise approved by the State in writing, the Borrower must indemnify the State for:

* + - 1. any cost of either repairing the Leadbeater's Possum Survey Kit or replacing Leadbeater's Possum Survey Kit with a new kit as determined by the State in its absolute discretion; and
      2. any other costs arising from or in connection with such loss, theft or damage to Leadbeater's Possum Survey Kit (**Loss**),

to the extent that such Loss is cause by any negligent or wilful act or omission or breach of this Agreement by or on behalf of the Borrower, or the Borrower's Personnel (in case of the Borrower being an organisation).

In the case of items from the Leadbeater's Possum Survey Kit being stolen, the Borrower must register the theft with the Victorian Police and provide the State with a copy of the police report within five business days.

In the case of items from the Leadbeater's Possum Survey Kit being lost, the Borrower must provide the State with a statutory declaration detailing the events surrounding the loss of the equipment within five business days.

* 1. Negation of partnership and agency

The Borrower must not hold itself out, engage in any conduct or make any representation which may suggest to any person that for any purposes the Borrower is the agent of the State or has a partnership with the State or its activities are endorsed or sponsored by the State in any way.

* 1. Warranties and liability
     1. No warranties by State
        1. The State makes no warranties or representation of any kind under the Loan Agreement, including without limitation as to the suitability, condition or fitness for purpose, of the Survey Kit.
        2. To the full extent permitted by Law, all representations or warranties whether based in statute, common law or otherwise are excluded.
     2. No liability
        1. To the full extent permitted by Law, the State is not liable (including in negligence) for any claim, loss, liability, costs, charges and expenses made against or incurred or suffered by the Borrower, or its Personnel (in case of the Borrower being an organisation), or any other person directly or indirectly arising out of or in connection with their use of the Survey Kit.
        2. The Borrower acknowledges and agrees that it uses the Survey Kit at its own risk and acts on the basis of any materials produced by the Survey Kit at its own risk.
     3. Indemnities
        1. The Borrower indemnifies the State and its Personnel from and against all claim, loss, liability, costs, charges and expenses arising out of, or in connection with:
           1. a breach of these Terms and Conditions or any other provision of the Loan Agreement;
           2. access to or use or operation of the Survey Kit; or
           3. access or use of any material produced by the Survey Kit,

by the Borrower or its Personnel (in case of the Borrower being an organisation), or any third party who gains access to the Survey Kit or such material through the Borrower or its Personnel.

* + - 1. The Borrower must promptly advise the State of any claim, demand, litigation or arbitration or threat of litigation or arbitration which may involve the Survey Kit (**Claim**) and keep the State advised of the progress of such Claim. The Borrower must also comply with the State's reasonable directions in dealing with such Claim.
  1. Termination
     1. Termination
        1. The State may terminate the Loan Agreement with immediate effect by a notice in writing (including via email) to the Borrower if:
           1. the Borrower fails to remedy, to the satisfaction of the State, any breach of the provisions of the Loan Agreement (which in the reasonable opinion of the State is able to be remedied) within 14 days after the date on which the State issues the Borrower a written notice requiring the Borrower to remedy the breach;
           2. the Borrower breaches any material provision of the Loan Agreement and in the reasonable opinion of the State such breach cannot be remedied;
           3. the Borrower, or any of its Personnel (in case of the Borrower being an organisation), commits any act or does anything that is contrary to prevailing community standards or applicable Laws, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Borrower into disrepute and as a consequence the State believes that its continued association with the Borrower will be prejudicial or otherwise detrimental to the reputation of the State;
           4. the Borrower enters into liquidation or a receiver and manager or mortgagee’s or chargee’s agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors; or
           5. there is any other reason which the State in its absolute discretion thinks it necessary.
        2. The right of termination under clause 6.1(a) is in addition to any other rights that the State has under the Loan Agreement.
     2. Recovery of the Survey Kit

If the State has terminated the Loan Agreement with the Borrower pursuant to clause6.1:

* + - 1. the Borrower must return the Survey Kit to the State within 24 hours or any other time approved by the State; or
      2. the State may take all steps necessary (including legal action) to recover the Survey Kit, including entering any site occupied by the Borrower without prior notice to the Borrower.
    1. Survival

Clause 5 (Warranties and liability) and 6.2 (Recovery of Survey Kit) will survive the termination or expiry of the Loan Agreement and may be enforced at any time.

* 1. General
     1. No Assignment

The Borrower must not assign all or any of its rights and obligations under these Terms and Conditions without the prior written consent of the State.

* + 1. Variation

The Borrower agrees that the State may unilaterally vary these Terms and Conditions at any time by notice in writing to the Borrower.

* + 1. Governing law and jurisdiction

The Loan Agreement is governed by the law of Victoria and each party submits to the non-exclusive jurisdiction of the courts of Victoria.

* 1. Definitions and Interpretation
     1. Definitions

In these Terms and Conditions, unless the context otherwise requires:

**Business Day** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

**State's Cover Letter** means the State's letter issued to the Borrower with these Terms and Conditions (as amended from time to time).

**Loan Agreement** means the agreement for loan of the Survey Kit of which the State's Cover Letter and these Terms and Conditions (as amended from time to time) form part.

**Loan Period** means a period set out in clause 1.1(b).

**Leadbeater's Possum Survey Kit (Survey Kit)** means the equipment specified in the State's checklist provided to the Borrower at the time of collection.

**Laws** means:

* + - 1. the law in force in the State of Victoria and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and
      2. ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

**Personnel** includes employees, officers, agents and contractors and, for the Borrower (if is an organisation) it also includes members, volunteers and any other person involved in its activities.

**Safety Plan** means the State's safety plan for the Survey Kit Community Loan attached to these Terms and Conditions.

**Terms and Conditions** means these terms and conditions and includes the attachment and any other documents incorporated by reference, as amended from time to time.

* + 1. Interpretation

Unless expressed to the contrary, in these Terms and Conditions:

* + - 1. words in the singular include the plural and vice versa;
      2. if a word or phrase is defined its other grammatical forms have corresponding meanings;
      3. 'includes' means includes without limitation;
      4. no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
      5. a reference to:
         1. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
         2. a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
         3. any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
         4. an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
      6. if the date on or by which any act must be done under these Terms and Conditions is not a Business Day, the act must be done on or by the next Business Day.
    1. Headings

Headings do not affect the interpretation of these Terms and Conditions.