

**FUNDING AGREEMENT**  
**MANUFACTURING HUBS GRANT PROGRAM (MHGP)**

**BETWEEN**

**STATE OF QUEENSLAND**  
**(represented by the Department of Regional Development,**  
**Manufacturing and Water)**  
(ABN 51 242 471 577)

**AND**

**Name (ACN XXX)**

(ABN xxx)

**Project:**

**Project ID:**

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# MANUFACTURING HUBS GRANT PROGRAM

## REFERENCE SCHEDULE

1.	Recipient:	Entity name and ACN
2.	Project title:	Title as per application
3.	Project ID and Application Form Reference:	SmartyGrants/GMS reference
4.	Project:	Project description
5.	Specified Region	SA4
6.	End Date:	Fifteen months after the latest Eligible Activity Completion Date (Schedule 1)
7.	Total Maximum Funding Contribution (exclusive of GST)	\$XXX
8.	Retention Amount	\$XXX
9.	Total Project Cost	\$XXX
10.	Total Eligible Costs	\$XXX
11.	Insurance:	<ul style="list-style-type: none"> <li>Public liability insurance for the amount of \$20,000,000 in respect of each claim.</li> <li>General insurance against loss or damage to the Recipient's property caused by or resulting from accident, fire, theft, malicious damage or storms and any other insurable risk which property of a similar nature is commonly insured against.</li> <li>Workers' compensation insurance for the Recipient's employees in accordance with the <i>Workers Compensation and Rehabilitation Act 2004</i> (Qld).</li> </ul>
12.	Contact officers:	<p><b>For the Department:</b></p> <p>Title: XXXX</p> <p>Street Address: XXXX</p> <p>Postal Address: XXXX</p> <p>Tel: XXXX</p> <p>Email: mhgp@rdmw.qld.gov.au</p> <p><b>For the Recipient:</b></p> <p>Name: XXXX</p> <p>Title: XXXX</p> <p>Street Address: XXXX</p> <p>Postal Address: XXXX</p> <p>Tel: XXXX</p> <p>Mobile: XXXX</p>

		Email: <b>xxxx</b>
13.	Security	<b>XXX</b>
14.	Special Conditions	<p><b>Special Condition 1 – Non-Disposal of Assets</b></p> <p>1.1 The Recipient must, during the Term and for a period of 48 months following the End Date:</p> <ul style="list-style-type: none"> <li>(a) not Dispose of the Assets;</li> <li>(b) not relocate the Assets outside of Queensland;</li> <li>(c) not agree to or do anything to create or allow the creation of a Security Interest in the Assets;</li> <li>(d) not decommission the Assets;</li> <li>(e) use the Assets for the purposes of and in the manner contemplated for the Project;</li> <li>(f) maintain the Assets in good working order;</li> <li>(g) maintain all appropriate insurances in respect of the Assets; and</li> <li>(h) maintain a register of all Assets setting out the date of purchase and the purchase or lease price and Asset description, including serial numbers (if applicable) (<b>Register</b>),</li> </ul> <p>unless otherwise approved by the Department in writing.</p> <p>1.2 Upon request by the Department, the Recipient must provide a copy of the Register to the Department.</p> <p>1.3 For the purposes of this Special Condition:</p> <p><b>'Assets'</b> means the items of plant or equipment, including software systems and associated hardware specified in Schedule 1;</p> <p><b>'Dispose'</b> means sell, convey, transfer, assign, lease or otherwise part with possession of the Asset;</p> <p><b>'Security Interest'</b> means a mortgage, charge (fixed or floating), lien, <i>Personal Property Securities Act 2009</i> (Cth) security interest, or other encumbrance over the Assets securing the repayment of a loan, credit contract, credit facility or other financial commitment.</p> <p>1.4 This Special Condition 1 survives termination or expiration of this Agreement.</p> <p><b>Special Condition 2 – Security</b></p> <p>2.1 Security over Assets</p> <ul style="list-style-type: none"> <li>(a) This Special Condition 2.1 applies if the Reference Schedule specifies that Security includes security over Assets</li> <li>(b) The Recipient charges the Assets to the Department as security for:</li> </ul>

		<ul style="list-style-type: none"> <li>(i) the due performance of Recipient's obligations under this Agreement; and</li> <li>(ii) repayment of the Funding as required by this Agreement.</li> </ul> <p>(c) The Recipient acknowledges that the Funding provided by the Department is for the acquisition of the Assets described in Schedule 1 in order to facilitate the Recipient undertaking the Project.</p>
	2.2	<p>No postponement of attachment</p> <p>(a) Nothing in this Agreement causes a security granted under Special Condition 2.1 or arising from transactions between the parties, to attach later than the time specified in section 19(2) of the PPSA.</p>
	2.3	<p>Registration</p> <p>(a) The Recipient must promptly cause this Agreement to be registered or recorded in any places the Department reasonably requires and in each place where failure to do so would render this Agreement or the security interest or charge created by it void or void as against a liquidator or judgment creditor.</p> <p>(b) Despite paragraph (a), the Department may elect to effect any registration of this Agreement or the security interests conferred by it itself.</p>
	2.4	<p>Further steps</p> <p>(a) The Recipient must do everything (including executing agreements and documents) necessary or reasonably required by the Department or follow any reasonable directions by the Department, to give full effect to the Security granted under Special Condition 2.1.</p>
	2.5	<p>Recourse</p> <p>(a) The Department may have recourse to Security granted under Special Conditions 2.1 without notice to the Recipient, to recover any amounts actually or contingently owing by the Recipient to the Department in respect of this Agreement.</p> <p>(b) If the Department is entitled to enforce its rights under the security over Assets granted under Special Condition 2.1, then without limiting the Department's other rights, the Recipient must:</p> <ul style="list-style-type: none"> <li>(i) on demand, transfer to the Department full legal and equitable title in Assets in discharge of its obligations to the Department under Special Condition 2.1; and</li> <li>(ii) consent to any court order necessary or desirable to facilitate the transfer referred to in subparagraph (b) (i).</li> </ul> <p>(c) To avoid doubt, the Department:</p>

		<p>(i) may exercise its rights under this Special Condition 2.5 even if the Department has not served a notice of default on the Recipient pursuant to clause 15.1 (a) (ii) of this Agreement and even if a notice of dispute has been given by the Recipient under clause 15.2 of this Agreement.</p>
	<p>2.6 Release</p> <p>The Department must release any Security granted under Special Conditions 2.1:</p> <p>(a) if this Agreement is terminated under clause 15 of this Agreement or clause 21.11 of this Agreement, within 20 Business Days of termination provided that at the time of the termination taking effect the Recipient has no outstanding liabilities under this Agreement;</p> <p>(b) in accordance with clause 15.2 (c)</p> <p>(c) within 20 Business Days of the End Date upon request by the Recipient if the Recipient:</p> <p>(i) has satisfied Eligible Activity Milestone by its respective Eligible Activity Completion Date the satisfaction of the Department; and</p> <p>(ii) is not in default of its obligations under this Agreement.</p>	
	<p>2.9 Apart from the costs to register the asset on the PPSR, everything the Recipient is required to do under this Special Condition 2 is at the Recipient's expense.</p>	
	<p>2.10 Neither the Department nor the Recipient will disclose information of the kind mentioned in section 275(1) of the PPSA and the Recipient will not authorise, and will ensure that no other Party authorises, the disclosure of such information. This Special Condition 2 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of sections 275(7)(b), (d) and (e) of the PPSA.</p>	
	<p>2.11 Survival</p> <p>This Special Condition 2 survives termination of this Agreement.</p> <p><b>Special Condition 3 – Project Plan</b></p> <p>3.1 Within 10 days of the Start Date, the Recipient must ensure that their project plan for the Project is current.</p> <p>3.2 The project plan (<b>Project Plan</b>) must set out how the Recipient proposes to complete the Project, including:</p> <p>(a) the objectives and outcomes of the Project;</p>	

		<p>(b) how those objectives and outcomes are proposed to be achieved; and</p> <p>(c) the timing for achievement of those objectives and outcomes.</p> <p>3.3 If the Department is not satisfied with any aspect of the Project Plan:</p> <p>(a) the Department must notify the Recipient that it is not satisfied and request that the Recipient amend and resubmit the plan and any further information required within a reasonable time period notified by the Department;</p> <p>(b) the Recipient must amend the Project Plan and provide such further information in the Project Plan within the reasonable time period, as notified by the Department.</p> <p>The Department and the Recipient must repeat this process until the Department is satisfied with the Project Plan.</p> <p>3.4 The Department must notify the Recipient in writing if it is satisfied with a Project Plan submitted in accordance with this Special Condition 3.</p> <p>3.5 The Recipient:</p> <p>(a) must conduct the Project in accordance with the Project Plan;</p> <p>(b) must demonstrate and provide evidence the Recipient's progress in achieving the objectives and outcomes set out in the Project Plan in accordance with the time periods set out in the Project Plan in each Progress Report it submits to the Department in accordance with this Agreement;</p> <p>(c) may only submit a Payment Claim if the Department has notified the Recipient that it is satisfied with a submitted Project Plan.</p> <p>3.6 If the Department forms the reasonable opinion that the Recipient is not carrying out the Project in accordance with the Project Plan, the Department may, without prejudicing any of its other rights:</p> <p>(a) refuse a Payment Claim;</p> <p>(b) suspend the making of any Funding Contributions the subject of existing Payment Claims;</p> <p>(c) terminate this Agreement in accordance with clause 15.</p> <p>3.7 The Recipient may, at any time during the Term, submit to the Department a request to amend a Project Plan. Special conditions 3.4 and 3.5 will apply to the review of an amended Project Plan as if the amendments requested were a new Project Plan. Any amendment to the Project Plan is at the absolute discretion of the Department.</p>
15.	Trust	XXX
16.	Nominated bank account	<p>Account Name: xxxxx</p> <p>BSB: xxxxxx</p> <p>Account Number: xxxxxx</p>

17.	Restricted Logo	
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EXAMPLE



## Funding Agreement dated

**Parties** State of Queensland (represented by the Department of Regional Development, Manufacturing and Water) ABN 51 242 471 577 (**Department**)

The person described in Item 1 of the Reference Schedule (**Recipient**)

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### 1. Interpretation

1.1 In this Agreement, unless the contrary intention appears:

**'Actual Eligible Activity Costs'** means the actual Eligible Activity Costs expended by the Recipient in connection with the relevant Eligible Activity;

**'Agreement'** means this document including the schedules attached to it;

**'Application Form'** means the application form for the Manufacturing Hubs Grant Program submitted by the Recipient in respect of the Project and clarifications provided by the Recipient during the project assessment as referred to in Item 3 of the Reference Schedule;

**'Books of Account'** means any account, register or financial statement prepared by or for the Recipient and includes the source document used to prepare the account, register or financial statement;

**'Business Day'** means a day that is not a Saturday, Sunday or gazetted public holiday in Brisbane in the State of Queensland;

**'Completion'** means the stage when the Project (including each of the Eligible Activities) has been completed in accordance with this Agreement;

**'Completion Report'** means the report to be prepared by the Recipient and submitted to the Department in accordance with clause 3.1(i);

**'Electronic Signature'** means an electronic method of signing that identifies the person and indicates their intention to sign this Agreement;

**'Eligible Activity'** means each of the activities specified in Schedule 1.

**'Eligible Activity Costs'** means those costs and expenses reasonably incurred by the Recipient in connection with the Eligible Activities, but excluding any Ineligible Activity Costs;

**'Eligible Activity Completion Date'** means, for each Eligible Activity, the relevant completion date specified in Schedule 1;

**'Eligible Activity Maximum Funding Contribution'** means the maximum amount of the Funding Contributions approved by the Department for an Eligible Activity as specified in Schedule 1;

**'Estimated Total Activity Cost'** means the sum of the Estimated Eligible Activity Cost and the Estimated Ineligible Activity Cost, as specified in Schedule 1.

**'Eligible Activity Milestone'** means, for each Eligible Activity, the milestones specified for the activity in Schedule 1;

**'End Date'** means the date specified in Item 6 of the Reference Schedule;

**'Estimated Eligible Activity Cost'** means, for an Eligible Activity, the value of Eligible Activity Costs estimated to be expended for the conduct of the Eligible Activity, as specified in Schedule 1;

**'Final Instalment'** means the last Eligible Activity Milestone for the final Eligible Activity to be completed by the Recipient;

**'Force Majeure'** means any occurrence or non-occurrence of an event as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Agreement and that is beyond the reasonable control of that party, including, but not limited to, forces of nature, industrial action, act of war or embargo;

**'Funding'** means the funding provided by the Department to the Recipient under this Agreement and includes any Funding Contributions;

**'Funding Contribution'** means an amount paid to the Recipient in relation to an Eligible Activity Milestone under this Agreement, including the Retention Amounts.

**'GST'** means any tax imposed by or through the GST Legislation;

**'GST Amount'** means the amount of GST that may be payable in respect of any taxable supply under this Agreement, calculated at the rate of GST applicable at the time of the taxable supply;

**'GST Legislation'** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts.

**'Ineligible Activity Costs'** means:

- (a) the costs identified as being 'Ineligible Activity Costs' in the Program Guidelines;
- (b) costs deemed to be ineligible by the Department as incurred by the Recipient in connection with the Project; and
- (c) costs relating to the Project which have been paid for, or incurred (either in full or in part) by the Recipient, prior to the Start Date;

**'Instalment Amount'** means the amount specified in Schedule 1 in respect of an Eligible Activity Milestone;

**'Initial Instalment'** means an instalment specified as being an initial instalment in Schedule 1.

**'Intellectual Property'** includes all copyrights, patent, trade marks, designs, semiconductor or circuit layout rights, confidentiality rights and other proprietary rights recognised by the World Intellectual Property Organisation, whether registrable or not, whether created before, on or after the Start Date;

**'Nominated Subcontractor'** means, for each Eligible Activity, the person named in the "Nominated Subcontractor" column in Schedule 1 (if any);

**'Payment Claim'** means a claim for payment of a Funding Contribution;

**'Post Completion Report'** means the report to be prepared by the Recipient and submitted to the Department in accordance with clause 3.1(j).

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**'Program Guidelines'** means the document published by the then Department of State Development, Manufacturing, Infrastructure and Planning titled 'Manufacturing Hubs Grant Program Guidelines, January 2020', as may be amended from time to time;

**'Progress Report'** means the report or reports:

- (a) to be prepared by the Recipient and submitted to the Department as required under clause 3.1(h); and

(b) containing, at a minimum, the information set out in Schedule 2;

**'Project'** has the meaning given in Item 4 of the Reference Schedule. The Project includes Eligible Activities and Ineligible Activities as specified in Schedule 1;

**'Project Intellectual Property'** means Intellectual Property created or developed in the course of, or as a result of the Project.

**'Reference Schedule'** means the schedule containing project particulars at the beginning of this Agreement;

**'Retention Amount'** means the amount set out in Item 8 of the Reference Schedule;

**'Special Conditions'** means the Special Conditions, if any, described in Item 14 of the Reference Schedule;

**'Specified Region'** means the region of Queensland stated in Item 5 of the Reference Schedule.

**'Start Date'** means the date this Agreement is signed by the last party to sign this Agreement;

**'State Government'** includes the Queensland Government, any of its departments or divisions, Ministers, government-owned corporations, any agent or representative of the State, or a corporation or body constituted for a public purpose of the State.

**'Tax Invoice'** has the meaning given to that term in the GST Legislation;

**'Term'** has the meaning given in clause 2;

**'Total Maximum Funding Contribution'** means the maximum amount of the Funding approved by the Department for the Project as specified in Item 7 of the Reference Schedule, being the total of all Instalment Amounts.

## 1.2 In this Agreement:

- (a) a reference to an individual or person includes a corporation or other legal entity;
- (b) a reference to 'the Department' or 'the Recipient' respectively includes the Department's and the Recipient's officers, employees, contractors or agents;
- (c) words importing a gender include any other gender;
- (d) words in the singular include the plural and vice versa;
- (e) headings have been inserted for ease of reference only and are not intended to affect the meaning of this Agreement;
- (f) in the case of any inconsistency between a Schedule (except the Special Conditions) and this Agreement, the precedence will be in the order of Special Conditions, Agreement and Schedules to the extent of any inconsistency;
- (g) defined terms include other parts of speech and grammatical forms of the defined word or phrase;
- (h) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (i) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) the meaning of general words is not limited by specific examples introduced by "includes" or "including" or similar expressions;

- (k) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- (l) a reference to **dollars** or **\$** is to Australian currency;
- (m) the terms **attach** and **security interest** have the meanings given to them in the PPSA; and
- (n) no rule of construction will apply to a provision of this Agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it

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## 2. Term

- 2.1 This Agreement starts on the Start Date and ends on the End Date unless terminated earlier in accordance with clause 15.

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## 3. The Recipient's Obligations

- 3.1 The Recipient must:

- (a) achieve each Eligible Activity Milestone by its respective Eligible Activity Completion Date to the satisfaction of the Department;
- (b) comply with the Special Conditions to the satisfaction of the Department;
- (c) exercise due care and skill in carrying out the Project;
- (d) only claim Funding for Eligible Activity Costs and, where relevant, use the Funding for the purpose of carrying out the Eligible Activities and for no other purpose;
- (e) operate commercially in the Specified Region throughout the Term;
- (f) be registered for GST and have an Australian Business Number;
- (g) effect and maintain the insurances specified in Item 11 of the Reference Schedule covering all contractors, sub-contractors, employees, licensees and invitees of the Recipient in respect of the Project and produce evidence that such insurances have been effected and maintained to the Department at the time of making each Payment Claim and upon request by the Department;
- (h) submit to the Department the Progress Report(s):
  - (i) with each Payment Claim; and
  - (ii) within 10 Business Days following a request by the Department, containing, at a minimum, the information set out in Schedule 2, signed by the Recipient's chief executive officer (or equivalent);
- (i) submit to the Department the Completion Report with the Recipient's final Payment Claim for the last Eligible Activity forming the Project, in accordance with Schedule 2;
- (j) submit to the Department the Post Completion Report 12 months after the final Eligible Activity Completion Date for the last Eligible Activity, in the format notified by the Department, in writing;
- (k) provide to the Department reporting and information (additional to the Progress Reports) in respect of the Project (and each Eligible Activity) and the Recipient's compliance with this Agreement, as reasonably requested by the Department;

- (l) own or have lawful rights to Intellectual Property for the product and/or service that the Recipient is undertaking as part of the Project and make it available for the Project;
- (m) keep proper and adequate Books of Account in relation to the Funding and the Project;
- (n) record all expenditure relating directly or indirectly to, the Project, separate from all other income and expenditure of the Recipient;
- (o) if required by the Department, at the end of the Project and at the expense of the Recipient, have its Books of Account audited in relation to the Funding and each Eligible Activity (including expenditure on Ineligible Activity Costs) and provide a copy of the audited accounts to the Department by the date specified by the Department by written notice to the Recipient;
- (p) if requested by the Department arrange for an authorised representative of the Recipient to attend an interview with the Department to discuss the outcomes of the Project;
- (q) upon 3 Business Days' notice permit and provide persons (**Auditors**) nominated by the Department access at all reasonable times to the Recipient's premises, books, records, documents, computer systems, equipment and other property to verify compliance by the Recipient with its obligations under this Agreement;
- (r) if the Recipient is required to permit and provide access to Auditors in accordance with paragraph (q), permit the Auditors to make copies of books, records, documents and other materials, and provide the Auditors with the necessary facilities to enable them to do so;
- (s) immediately notify the Department in writing when it becomes aware of any of the following:
  - (i) any actual or proposed material change which affects, or may affect, the Recipient (including, but not limited to, any actual or proposed change in control of the Recipient, any change in key personnel of the Recipient or a proposed change of a Nominated Subcontractor);
  - (ii) the occurrence or likely occurrence of any delay or failure to meet an Eligible Activity Milestone; and
  - (iii) any matters that relate to, or may be expected to, adversely affect the Recipient (including, but not limited to, its financial position and reputation, or reputation and standing of its key personnel) or the Project.

3.2 The Recipient's notification under clause 3.1(s) does not limit the Department's rights under this Agreement or at law, including the Department's right to refuse to consent to a change of Nominated Subcontractor.

3.3 The Recipient warrants and acknowledges that:

- (a) all information contained in the Application Form or that the Recipient otherwise provides in support of this Agreement is true, accurate and complete;
- (b) all ancillary material provided by the Recipient at any time under or in connection with the Application Form or this Agreement is true, accurate and complete;
- (c) the Recipient undertakes the Project entirely at the Recipient's own risk;
- (d) the Recipient engages each Nominated Subcontractor (if any) and undertakes the Project and each Eligible Activity entirely at the Recipient's own risk;

- (e) the Department has not made any representations or warranties in connection with any Nominated Subcontractors, the Project or the Project's outcomes and any representations or warranties that would otherwise be implied are excluded; and
- (f) no conflict of interest exists or is likely to arise in relation to its receipt of the Funding or the performance of its obligations under this Agreement and if during the Term a conflict of interest arises, the Recipient will notify the Department immediately in writing of that conflict of interest and will take all reasonable steps required by the Department to remove such conflict of interest.

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#### **4. Initial Instalment**

- 4.1 The Recipient may make a claim for the Initial Instalment within 30 days of the Start Date.
- 4.2 The Department will pay the Initial Instalment to the Recipient within 30 days of receipt of a valid Tax Invoice from the Recipient for the Initial Instalment.
- 4.3 The Recipient must expend the Initial Instalment towards the progress of the Project on Eligible Activity Costs.
- 4.4 If at the end of the Term the Recipient has failed, in the Department's reasonable opinion, to comply with clause 4.3, the Department may at any time require the Recipient to repay the Initial Instalment provided to the Recipient under this Agreement. The Recipient agrees that such sum will be a debt due and recoverable by the Department.

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#### **5. Provision of Funding Contributions**

- 5.1 Subject to the terms of this Agreement, the Department will pay the Funding Contribution to the Recipient in relation to each Eligible Activity, in the Instalment Amounts specified for each Eligible Activity.
- 5.2 Subject to clauses 6, 7 and 8, the Department will pay the relevant Funding Contribution to the Recipient to its nominated bank account listed in the Reference Schedule within 30 days of receipt of a valid Payment Claim (or valid tax invoice in respect of a Eligible Activity Milestone that requires only the provision of a valid Tax Invoice).
- 5.3 The Recipient acknowledges that:
  - (a) subject to clause 5.1, the Recipient is responsible for payment of all costs and expenses associated with the Project; and
  - (b) there is no obligation on the Department to provide any additional or future financial assistance in respect of the Project unless the Department, in its sole discretion, determines otherwise.
- 5.4 The Project, the Eligible Activities and the Eligible Activity Milestones may only be varied with the prior written approval of the Department, to which approval may be given subject to conditions, including a variation to the amount of the Funding.

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#### **6. Payment Claims**

- 6.1 Other than in respect of an Eligible Activity Milestone that requires only the provision of a Tax Invoice, the Recipient must make a Payment Claim to the Department to be eligible for a Funding Contribution.
- 6.2 A Payment Claim must include the information and material specified in Schedule 2.
- 6.3 At the time of submitting the Payment Claim for the Final Instalment in respect of an Eligible Activity:
  - (a) If the Actual Eligible Activity Costs are less than the Estimated Eligible Activity Cost which results in the Recipient receiving less of the Funding Contribution for this

Eligible Activity (**Actual Funding Contribution**), subject to the approval of the Department at its sole discretion, the Recipient may accrue the difference between the Funding Contribution and the Actual Funding Contribution in respect of this Eligible Activity as a credit (**Underspend Credit**).

- (b) The Underspend Credit can be used to offset an overspend of another Eligible Activity where the Actual Eligibility Activity Costs are more than the Estimated Eligible Activity Cost for that Eligible Activity (**Overspend**) provided that:
  - (i) the amount of the Underspend Credit applied to the Overspend is no more than 50% of the Overspend; and
  - (ii) the Total Maximum Funding Contribution remains unchanged.

6.4 The Department may, at any time after receiving a Payment Claim, request the Recipient to provide to the Department any additional information required by the Department prior to processing the Payment Claim. The Recipient must comply with any request under this clause within 5 Business Days of the Department's request.

6.5 The Recipient must not make a Payment Claim for reimbursement of any Ineligible Activity Costs.

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## 7. Refusing or withholding payment of Funding Contributions

7.1 If the Recipient:

- (a) fails to obtain or achieve an Eligible Activity Milestone by the relevant Eligible Activity Completion Date for any Eligible Activity; or
- (b) is otherwise in breach of this Agreement,

the Department may, without prejudicing any of its other rights:

- (c) refuse a Payment Claim;
- (d) withhold payment of a Payment Claim until the Recipient is no longer in breach of this Agreement or the Department has waived the Recipient's breach in writing; or
- (e) terminate this Agreement in accordance with clause 15.

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## 8. Retention Payment

8.1 If a Retention Amount is specified in Item 8 of the Reference Schedule, the Department may withhold from a Funding Contribution payment the Retention Amount, until the Department receives the Post Completion Report.

8.2 If the Department is satisfied that the Recipient has:

- (a) submitted a Post Completion Report;
- (b) obtained or achieved the Eligible Activity Milestones for all of the Eligible Activities; and
- (c) otherwise satisfied its obligations under this Agreement,

the Department will pay the Retention Amount to the Recipient within 30 Business Days of the later of:

- (d) receipt of the Post Completion Report; and
- (e) the Department satisfying itself of the matters set out in clauses 8.2(a) - 8.2(c).

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## 9. Confidentiality

- 9.1 Where information is provided by one party which, in the opinion of that party, is confidential and communicated as such to the other party, the other party must take all reasonable steps to ensure that the information is not disclosed or communicated or used by persons other than those officers, employees or agents of the other party who need to know the information for purposes related to the Project.
- 9.2 The obligations in clause 9.1 are not applicable where a party expressly authorises the other party to reveal to any person the confidential operations, dealings, or affairs of the other or where a party is required to reveal such information by law.
- 9.3 The Recipient acknowledges and agrees that the Department may publicly disclose:
- (a) the Recipient's name and address;
  - (b) details of the Funding (including the amount);
  - (c) general details of the Project;
  - (d) anticipated and realised outcomes of the Project (including for example, jobs creation benefits and business improvement metrics); and
  - (e) any information required to be disclosed:
    - (i) to comply with or meet applicable standards for accountability of public money;
    - (ii) to the State Government; or
    - (iii) in accordance with established governmental policies, procedures or protocols.

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## 10. Acknowledgement of assistance

- 10.1 Subject to clause 10.3, the Recipient must include an acknowledgement that the Recipient has received financial support from the Department in relation to the Project in all of its corporate communications in respect of the Project, including in:
- (a) online materials, newsletters, brochures and promotional materials in any media, and its annual report (if the Recipient produces an annual report); and
  - (b) public statements, media releases and speeches made by or on behalf of the Recipient about the Project.
- 10.2 The Recipient must use the Department's restricted logo (the **Restricted Logo**, as identified in the Reference Schedule) in all its promotional and presentation material forming part of, or in conjunction with, the acknowledgement. The Department grants the Recipient a non-exclusive, royalty-free licence to use the Restricted Logo during the Term solely for the purpose of promoting the Recipient's association with the Department for the purposes of the Project.
- 10.3 Before the Recipient publishes or communicates any of the material referred to in clause 10.1, the Recipient must:
- (a) provide to the Department full details of the proposed publication or communication, at least 10 Business Days in advance;
  - (b) at least 25 Business Days' notice of any proposed public media event; and
  - (c) comply with all requests, amendments or conditions that the Department may reasonably require by notice to the Recipient,



provided that the parties may agree a standing protocol for categories of publication or communication which, if complied with by the Recipient in the applicable circumstances, will discharge the Recipient's obligations under this clause 10.3 with respect to the relevant publication or communication.

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## **11. Release and Indemnity**

11.1 In this clause "**Claim**" includes any claim, cause of action, proceeding, demand, liability, loss, costs and expenses (including legal fees, costs and disbursements on a solicitor and own client basis) of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, direct or consequential, whether at law, in equity, under statute or otherwise.

11.2 The Recipient releases (to the full extent permitted by law) and indemnifies the Department from and against any Claim which may be brought against or made upon the Department arising directly or indirectly as a result of:

- (a) any breach of this Agreement by the Recipient;
- (b) any negligent or unlawful act or omission by the Recipient in connection with the Project;
- (c) the Recipient's use of any of the Intellectual Property in the course of or arising from the Project or a Claim by a third party against the Department for infringement (or alleged infringement) of that third party's Intellectual Property; or
- (d) any Claim brought against or made upon or incurred by the Recipient in carrying out the Project,

except to the extent that any breach of this Agreement or negligent or unlawful act or omission by the Department caused the Claim.

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## **12. Limit on Liability**

12.1 The Department's liability under this Agreement is limited to the amount of the Total Maximum Funding Contribution.

12.2 To the extent permitted by law, the Department and its officers, employees, agents, contractors or suppliers are not liable for any Consequential Damages even if the Department, its officers, employees, agents, contractors or suppliers are aware of the possibility of those Consequential Damages.

12.3 For the purposes of this clause, "**Consequential Damages**" means special, incidental, indirect, exemplary, punitive or consequential damages, loss of revenue, loss of profits, loss of production, loss of data, loss of goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, loss of anticipated savings, or increased or wasted overhead costs; or which relates to additional expenses incurred or rendered futile; or which is not a natural or immediate consequence of the cause of action; or which is suffered as a result of a claim by a third party, whether in contract, tort, statute or otherwise.

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## **13. Delay**

13.1 Without limiting the Department's rights, if for any reason the Recipient believes that the Recipient will not be able to achieve an Eligible Activity Milestone by the corresponding Eligible Activity Completion Date, the Recipient must notify the Department in writing of the cause and nature of the delay and detail the steps the Recipient will take to address the delay.

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## **14. Project and Eligible Activity Variation**

14.1 The Recipient acknowledges that a variation to the Project may impact on the level of Funding,

especially if the Project's scope is reduced and the Estimated Eligible Activity Costs are less than the amount provided in the Reference Schedule. Any variation to the Project (including to Eligible Activities) must be made in accordance with clause 21.12.

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## **15. Termination**

- 15.1 The Department may immediately terminate this Agreement by notice in writing if:
- (a) the Recipient breaches a clause in this Agreement and:
    - (i) the breach is not capable of being cured; or
    - (ii) the breach is capable of being cured and the Recipient fails to remedy the breach within 14 days after the Recipient is given a notice to remedy from the Department specifying the breach;
  - (b) the Recipient:
    - (i) enters into any arrangement or composition with the Recipient's creditors generally, or has a controller, receiver, receiver and manager or administrator appointed;
    - (ii) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purposes of reconstruction;
    - (iii) has execution levied on any of the Recipient's assets and the execution is not satisfied within 28 days; or
    - (iv) is otherwise (in the Department's reasonable opinion) unable to pay the Recipient's debts when they fall due.
- 15.2 If the Department terminates this Agreement under clause 15.1:
- (a) it may, in the notice of termination, require the Recipient to immediately repay all or part of the Funding and such sum will be a debt due and recoverable by the Department;
  - (b) it will have no liability to pay any further sums due under this Agreement to the Recipient; and
  - (c) (after exercising its rights of recourse, if any, under the Security) must release the Security; and
  - (d) such termination will be without prejudice to any other rights the Department may have against the Recipient.
- 15.3 The Department may, at any time, by reasonable notice, terminate this Agreement without giving a reason. If the Department terminates this Agreement pursuant to this clause 15.3:
- (a) it will have no liability to pay any further sums under this Agreement to the Recipient other than those parts of the Funding that were due and payable at the date of termination; and
  - (b) such termination will be without prejudice to any other rights the Department may have against the Recipient.

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## **16. Intellectual Property**

- 16.1 The parties agree that the Project Intellectual Property is owned by the Recipient.
- 16.2 The Recipient irrevocably grants a licence to the State of Queensland for the right to use reproduce and adapt the Project Intellectual Property for its own non-commercial purposes.

- 16.3 If the Project Intellectual Property contains or makes use of material which is subject to pre-existing Intellectual Property of a third party, the Recipient must procure the relevant third party to grant to the State of Queensland a non-exclusive, non-transferable, irrevocable, paid up licence to use, reproduce and adapt the material and any future development of the material.

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## **17. Survival of Clauses**

- 17.1 The following clauses will survive termination or expiration of this Agreement:
- (a) clauses 3.1(h), 3.1(i), 3.1(j) (submission of Progress Report, Completion Report and Post Completion Report);
  - (b) clause 3.1(m) and (n) (record keeping);
  - (c) clause 3.1(o) (provision of accounts);
  - (d) clause 3.1(p) (outcomes interview);
  - (e) clause 9 (Confidentiality);
  - (f) clause 11 (Release and Indemnity);
  - (g) clause 12 (Limit on liability);
  - (h) clause 16 (Intellectual Property); and
  - (i) any Special Conditions.

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## **18. Agreement Management and Dispute Resolution**

- 18.1 The parties nominate the persons specified in Item 12 of the Reference Schedule to be the contact officers for the day to day management of this Agreement. Either party may change the contact officer by written notice to the other party.
- 18.2 For the purposes of this clause a dispute will have arisen when either party gives notice to that effect to the other (**Dispute**).
- 18.3 The parties agree to seek to settle any Dispute by negotiation or mediation in accordance with this clause 18, before commencing court proceedings relating to the Dispute.
- 18.4 If the parties fail to settle the Dispute by negotiation within 10 Business Days of receipt of the notice referred to in clause 18.2 the Dispute may be referred to mediation by either party to a mediator and on terms as agreed between the parties.
- 18.5 If the parties fail to agree on the appointment of a mediator or terms of mediation within 5 Business Days after their failure to resolve the Dispute, then either party may refer the question of the appointment of a mediator and terms of mediation to the Australian Disputes Centre (Queensland). The costs of mediation shall be borne equally between the parties.
- 18.6 Clauses 18.2 to 18.5 do not apply if either party commences legal proceedings for urgent interlocutory relief or if an authority of the Commonwealth, a State or a Territory is investigating a breach or suspected breach of the law by the Recipient.

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## **19. Goods and Services Tax (GST)**

- 19.1 The Funding payable under this Agreement is exclusive of GST.
- 19.2 The Recipient warrants that it is registered for GST as at the Start Date. The Recipient must immediately notify the Department if it ceases to be registered for GST.
- 19.3 If the Funding is consideration for a taxable supply under the GST Legislation the Department will pay to the Recipient the GST Amount in addition to the Funding, subject to the Recipient first

submitting to the Department a valid Tax Invoice in respect of the supply.

19.4 If, for any reason, there is, including without limitation:

- (a) any amendment to the GST Legislation;
- (b) a ruling or advice issued by the Commissioner of Taxation;
- (c) a refund to the Department or to the Recipient in respect of a supply made under this Agreement; or
- (d) a decision of any tribunal or court,

and the amount of GST paid by the Department differs from the amount of GST paid or payable by the Recipient to the Commissioner of Taxation, then the Recipient must issue an appropriate GST adjustment note and any difference must be paid by or to the Department as the case may be.

19.5 The parties agree to exchange such information as is necessary to enable each party to accurately assess its rights and obligations under this clause.

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## 20. Notices

20.1 Any notice or other communication to be given under this Agreement must be in writing and may be delivered by hand, or sent by pre-paid post, or e-mail transmission to the respective addresses set out in Item 12 of the Reference Schedule or any substitute address a party may notify to the other for the purposes of this clause.

20.2 Notices will be deemed to have been given:

- (a) if mailed – 5 Business Days after posting;
- (b) if delivered – on the date of delivery;
- (c) if emailed – on the date of the email, unless an undeliverable report is received,

except that a notice that is delivered or emailed after 5:00pm on any day, will be deemed to be received on the next Business Day.

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## 21. General Provisions

21.1 **(Entire Agreement)** The terms of agreement between the parties are those set out in this Agreement, and no written or oral agreement, arrangement or understanding made or entered into prior to the Start Date will in any way be read or incorporated into this Agreement.

21.2 **(No assignment or novation)** The Recipient may not assign or novate the Agreement or any of the benefits or obligations under the Agreement without the Department's prior written consent.

21.3 **(Subcontracting)** The Recipient may not subcontract any part of the Recipient's obligations under this Agreement, other than an Eligible Activity for which there is a Nominated Subcontractor, without the Department's prior written consent.

21.4 **(Relationship)** The parties agree that no employment relationship, agency or partnership exists between the Department and the Recipient.

21.5 **(Severability)** The invalidity or unenforceability of any one or more of the provisions of this Agreement will not invalidate or render unenforceable the remaining provisions of the Agreement. Any illegal or invalid provision or part of a provision of this Agreement will be severable and all other provisions will remain in full force and effect.

21.6 **(Jurisdiction)** This Agreement is governed by the law of the State of Queensland and the parties

agree to submit to the jurisdiction of the courts of the State of Queensland.

- 21.7 **(Waiver)** No right under this Agreement will be deemed to be waived except by notice in writing agreed by the waiving party. A failure by a party to enforce at any time any provision of this Agreement will not constitute a waiver of the party's rights in respect of the provision.
- 21.8 **(Compliance with laws)** The Recipient must comply with all relevant laws, regulations and legal duties that may be applicable to the Project and the Recipient's activities in undertaking the Project.
- 21.9 **(Costs)** The parties will pay their own costs (including legal costs), expenses and disbursements of and incidental to the preparation, execution of this Agreement. The Recipient is responsible for any duty payable in respect of this Agreement or any payment under it.
- 21.10 **(Time)** Any act, matter or thing required under this Agreement to be done on a day which is not a Business Day must be done on the next Business Day.
- 21.11 **(Force Majeure)** If any party is unable by reason of Force Majeure to carry out any of its obligations whether wholly or in part under this Agreement, the party so affected (the **Affected Party**) will immediately give notice to the other party in writing of the Force Majeure specifying full particulars thereof whereupon its obligations will, to the extent to which they are affected by the Force Majeure, be suspended and the time prescribed under this Agreement for performing its obligations will be suspended, but for no longer period than the continuance of the Force Majeure. The party claiming Force Majeure will use all reasonable diligence to remove or overcome the conditions constituting Force Majeure and minimise the impact as quickly as possible. However, the other party may terminate this Agreement if the Affected Party's performance of its obligations under this Agreement is materially affected by Force Majeure lasting more than 60 days.
- 21.12 **(Variation)** This Agreement may only be varied by agreement in writing by both parties.
- 21.13 **(Counterparts)** This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument. This Agreement, or any other document required to be executed under this Agreement, may be entered into and will become binding on the parties named in this Agreement (or the other document) upon one party signing a copy (including a scanned copy) that has been signed by the other party and transmitting a copy of this Agreement (or the other document) to the other party or the other party's agent or solicitors.
- 21.14 **(Electronic signing)** If this Agreement is signed by a person using an Electronic Signature, the parties:
- (a) agree to enter into this Agreement in electronic form;
  - (b) consent to either or all parties signing this Agreement using an Electronic Signature; and
  - (c) agree a counterpart may be electronic and signed using an Electronic Signature.

Each signatory to this Agreement confirms that their signature appearing in the Agreement through use of an Electronic Signature, including any print-out (irrespective of which party printed it), is their personal signature authenticating this Agreement.

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## 22. Trustee provisions

- 22.1 This clause applies if the Recipient enters into this Agreement in its personal capacity and in its capacity as trustee of a trust and if the trust is specified in Item 15 of the Reference Schedule.
- 22.2 The Recipient in its personal capacity and in its capacity as trustee of the trust specified in Item 15 of the Reference Schedule (**Trust**) warrants that:
- (a) the Trust is validly created and is in existence;

- (b) the Trust has not been determined, wound up, or ceased to exist and will remain in force during the Term and the Recipient has no knowledge of any event or circumstance which may give rise to the termination, winding up or cessation of the Trust;
- (c) the Recipient is the sole trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Recipient under this Agreement;
- (d) the Recipient has the power to enter into and observe its obligations under this Agreement in its capacity as trustee of the Trust;
- (e) the Recipient has all authorisations necessary to:
  - (i) enter into this Agreement;
  - (ii) perform its obligations under this Agreement; and
  - (iii) allow those obligations to be enforced against it,(including all authorisations under the trust deed of the Trust);
- (f) the Recipient is not in material default under the trust deed of the Trust;
- (g) the Recipient is entitled to be indemnified out of the property of the Trust in relation to all of the obligations and liabilities incurred by the Recipient under this Agreement and the property of the Trust is sufficient to satisfy that right in full and the Recipient has not released or disposed of its equitable lien over the property of the Trust;
- (h) there is no limitation on the Recipient's right of indemnity against the property of the Trust other than when there has been a breach of trust, breach of duty or fraud on the part of the Recipient; and
- (i) the Recipient is not acting in breach of its duties as trustee of the Trust such that its entry into this Agreement or the performance or carrying out of its obligations would cause the Recipient to not be indemnified out of the property of the Trust.

22.3 The Recipient is liable under this Agreement in its personal capacity and as trustee of the Trust.

22.4 For the purposes of clause 21.2, an assignment is deemed to occur if the trust deed for the Trust is amended so that the Recipient would no longer be able to make any of the warranties in clause 22.2.

## Schedule 1 - Eligible and Ineligible Activities

Nominated Subcontractor	Eligible Activity Completion Date*	Estimated Total Activity Cost	Estimated Eligible Activity Cost	Estimated Ineligible Activity Costs	Eligible Activity Maximum Funding Contribution	Eligible Activity Milestone Number	Eligible Activity Milestone	Instalment Amount (GST exclusive)
Eligible Activity 1: XXX (Asset)								
	24 months from the Start Date					1 (Initial Instalment)	Provision of a valid Tax Invoice (refer to Schedule 2 item 1)	20% of the Eligible Activity Maximum Funding Contribution (i.e. \$xxx)
						2	Provision of information and material for a Payment Claim (refer to Schedule 2)	The lesser of: a) 40% of the Eligible Activity Maximum Funding Contribution; and b) 50% of the Actual Eligible Activity Costs expended by the Recipient, less any Funding Contribution already paid by the Department in respect of the Eligible Activity
						3	Provision of information and material for a Payment Claim (refer to Schedule 2)	The lesser of: a) 10% of the Eligible Activity Maximum Funding Contribution; and b) 50% of the Actual Eligible Activity Costs expended by the Recipient, less any Funding Contribution already paid by the Department in respect of the Eligible Activity
						4	Provision of: a) information and material for a Payment Claim (refer to Schedule 2); and b) Completion Report (refer to section 3.1(i)).	The lesser of: a) the Eligible Activity Maximum Funding Contribution; and b) 50% of the Actual Eligible Activity Costs expended by the Recipient  less any Funding Contribution already paid by the Department in respect of the Eligible Activity and the Retention Amount
Ineligible Activity 1: XXX								

Nominated Subcontractor	Eligible Activity Completion Date*	Estimated Total Activity Cost	Estimated Eligible Activity Cost	Estimated Ineligible Activity Costs	Eligible Activity Maximum Funding Contribution	Eligible Activity Milestone Number	Eligible Activity Milestone	Instalment Amount (GST exclusive)
N/A	24 months from the Start Date		\$0.00		\$0.00	N/A	N/A	N/A

\* The latest date that the applicant can submit their Payment Claim without having to apply for a contract variation. If the Eligible Activity Milestone conditions are met, the applicant can submit a Payment Claim at any date prior to this date.

EXAMPLE



## **Schedule 2 – Information and Material for Payment Claims**

1. A valid Tax Invoice from the Recipient setting out the amount sought as a Funding Contribution under this Agreement, including, if there are multiple Eligible Activities, a breakdown of the Funding Contribution claimed for each Eligible Activity.
2. A Progress Report for a Payment Claim. This report template will be provided to you by the Department.
3. Evidence of expenditure on the Eligible Activity satisfactory to the Department including:
  - (a) copies of Tax Invoices from external suppliers;
  - (b) copies of receipts for payments of Tax Invoices or remittance advices or original bank statements of the Recipient showing payment of the Tax Invoices.
4. If the Eligible Activity relates to the delivery of equipment or a tangible product to the Project Site, photographs of that equipment or tangible product must be provided.
5. Any other information and material reasonably requested by the Department, including information to demonstrate completion of the Eligible Activity and the Project.

EXAMPLE

**EXECUTED AS AN AGREEMENT** by the parties on the dates set out below.

**EXECUTED** for and on behalf of the **STATE OF QUEENSLAND** (represented by the Department of Regional Development, Manufacturing and Water) (**ABN 51 242 471 577**) by a duly authorised person:

\_\_\_\_\_  
Name of Delegate

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

**EXECUTED** by **XXX (ACN XXX)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

**DRAFT-DO NOT SIGN**

**DRAFT-DO NOT SIGN**

\_\_\_\_\_  
Signature of Director/Sole Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director/Sole Director in full  
*Full name of Company Secretary/Director [delete position as appropriate] who states that they are a Company Secretary/Director [delete position as appropriate] of **XXX (ACN XXX)***

\_\_\_\_\_  
Name of Director/Company Secretary in full  
*Full name of Company Secretary/Director [delete position as appropriate] who states that they are a Company Secretary/Director [delete position as appropriate] of **XXX (ACN XXX)***

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date