

Funding Agreement

Local Industry Fund

For Transition

[insert name of specific Project being funded]

THE STATE OF VICTORIA

as represented by its

**DEPARTMENT OF ECONOMIC DEVELOPMENT,
JOBS, TRANSPORT AND RESOURCES**

AND

[RECIPIENT]

[This is the Funding Agreement for the Local Industry Fund for Transition. The Schedules in the Funding Agreement will be tailored as required for each Project funded under the Fund. The Department reserves the right to amend the terms and conditions without prior notice.]

Funding Agreement

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Details

Parties

Name The State of Victoria (**State**) as represented by Department of Economic Development, Jobs, Transport and Resources (**Department**)

Address and notice details Address: 121 Exhibition Street, Melbourne Vic 3000
Email: lift@ecodev.vic.gov.au
Attention: [insert name and position]

Name [insert company name] (Recipient)
ABN [insert]

Address and notice [insert street number & name]
[insert suburb, state and postcode]
Email: [insert]

Attention: [insert full name & position]

Background

- A In December 2015 the former Minister for Industry launched the Local Industry Fund for Transition (**Program**), an initiative under the Victorian Government's Future Industries Fund, with the objective of supporting Victorian-based companies that are intending to implement new manufacturing technologies that create or preserve long-term sustainable jobs, improve productivity and international competitiveness or target growth opportunities.
- B The Recipient applied for and has been successful in receiving the Minister for Industry and Employment's approval for a Grant under the Program for the purpose of the Recipient carrying out the Project.
- C This Agreement sets out the terms on which the Grant is provided by the State to the Recipient.
- D This Agreement is legally binding upon the Recipient and the State.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Agreement means this agreement, including its schedules and annexures.

Audit Opinion means an audit opinion prepared in the form of Part B or Part C of Schedule 4 (or such other form approved in writing by the Department) by a person who is not an officer or employee of the Recipient and is a:

- (a) person who is registered as a company auditor under a Law in force in the State; and
- (b) member of the Institute of Chartered Accountants in Australia or of the Australian Society of Certified Practising Accountants;.

Background Intellectual Property means any Intellectual Property developed independently of the Project and used by the Recipient or any Participating Organisation for the purpose of undertaking the Project.

Claim means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent or at law (including negligence), in equity, under statute or otherwise.

Co-funding Cash Contribution means the amount set out in item 3 in Schedule 1.

Commencement Date means the date as set out item 4 in Schedule 1 being date by which the Project must have commenced.

Completion Date means the date as set out item 5 in Schedule 1 being date by which the Project must have been completed.

Company means a company registered under the *Corporations Act 2001* (Cth).

Confidential Information means details of the Grant, the terms and conditions contained in this Agreement and all other confidential or commercially sensitive information provided by the Department or the State to the Recipient in the context of this Agreement or the Project.

Conflict refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Recipient engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Recipient undertaking the Project fairly and independently and in accordance with this Agreement, but does not include the fact that the Recipient or a 'related entity' (as that term is defined in the *Corporations Act 2001* (Cth)) of the Recipient may profit from the Project.

Date of this Agreement means the date on which this Agreement has been signed by the last of the parties to sign it.

Department means the Department of Economic Development, Jobs, Transport and Resources and its successor Government departments, and all references to the Department shall be read and construed as references to the Crown in Right of the State of Victoria.

Eligible Project Expenditure means expenditure (exclusive of GST) incurred by the Recipient and/or a Participating Organisation directly on the Project within 18 months from the Date of this Agreement on-

- (c) purchase of equipment or machinery to assist business establishment or expansion for the Project (including for example, second hand or repurposed automotive manufacturing equipment);
- (d) labour costs directly incurred on Employees employed on implementing and/or commissioning the Project;
- (e) construction or fit-out of a new building or extension to existing premises in relation to the Project; or
- (f) associated Project management costs,

but does not include expenditure on:

- (g) the acquisition of land and/or property leasing or rental costs for the Project;
- (h) full scale production and inventory costs;
- (i) advertising/production of promotional materials for the Project;
- (j) establishing general infrastructure or obtaining resources used on the Project – such as loans and interest on loans, job advertising and recruiting;
- (k) opportunity costs relating to forgone production and production downtime arising from the allocation of resources to the Project;
- (l) activities undertaken for the Project prior to the date of this Agreement;
- (m) activities that breach OH&S or public safety;
- (n) relocation costs related to the Project;
- (o) any activities listed as ineligible Project activities in the LIFT Program Guidelines (which list is not exhaustive and may be amended from time to time); or
- (p) any other types of expenditure that the Department delegate decides does not directly support the achievement of the planned outcomes for the Project or that are contrary to the objectives and intention of the Program.

Employees means full time or part time employees of the Recipient or a Participating Organisation (including casual employees) with respect to whom Victorian payroll tax is payable.

Evidence means evidence to the satisfaction of the Department.

Final Report means the report required to be provided by the Recipient to the Department under clause 11.2.

FTEs means Employees of the Recipient or a Participating Organisation employed on a full time equivalent basis. For the purpose of calculating the number of FTEs:

- (a) figures must be based on payroll details as at the last pay day in each month throughout the period of the calculation; and
- (b) part-time employees are to be included on a pro rata basis by reference to their working hours (on a full time equivalent employee basis). Employees working in excess of standard full time hours shall only be counted as one Employee

Grant means the grant amount set out in item 2 in Schedule 1.

Grant Agreement Material means any reports, plans, documents, information, data or other material:

- (a) the Recipient or a Participating Organisation provides, or is required to provide, to the Department under or in connection with this Agreement; or
- (b) which is copied or derived at any time from the material referred to in paragraph (a).

GST, Tax Invoice, Recipient Created Tax Invoice and Taxable Supply have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Further, for the purposes of this Agreement 'taxable supply' means the obligations of the Recipient under the terms of this Agreement.

ICN means the Industry Capability Network Victoria of Level 11, 10 Queens Road Melbourne, Victoria, 3004.

Insolvency Administration means, in relation to a person:

- (a) the person ceases to carry on business;
- (b) an order is made by a Court of competent jurisdiction for the winding up or dissolution of the person pursuant to the *Corporations Act 2001* (Cth);
- (c) any step is taken to appoint a receiver, receiver and manager, trustee in bankruptcy or similar officer over all or any of the assets or undertakings of the person and is not discontinued or withdrawn within five days;
- (d) any step is taken by a mortgagee to take possession either directly or by an agent over all or any of the assets, operations, or undertakings of the person and is not discontinued or withdrawn within five days;
- (e) any step is taken to appoint a liquidator or provisional liquidator to the person and is not discontinued or withdrawn within five days;
- (f) any step is taken to appoint an administrator to the person;
- (g) any step is taken to enter into a compromise or deed of arrangement between the person and its creditors; or
- (h) the person is insolvent or is presumed insolvent under the *Corporations Act 2010* (Cth).

Intellectual Property means all types of intellectual property rights whether registered or not and includes all copyright and neighbouring rights (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, Know How, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including

as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

IRN means the 'interaction reference number' issued by the ICN to the Recipient.

IRN Form means the form submitted by the Recipient to the ICN via the VMC in accordance with clause 9.2.

IRN Letter means the letter provided by the ICN to the Recipient after the Recipient has consulted with the ICN regarding opportunities for local industry for the Project.

Know How means all information not in the public domain including drawings, designs, diagrams, computer programs, data, formulae, specifications, procedures for experiments and tests, results of experiments and tests, techniques and information.

Loss means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise.

Metropolitan Melbourne means a municipal district other than a rural and regional municipal district as that term is defined in the *Regional Development Victoria Act 2002*.

Minister means the Minister for Industry and Employment in the State of Victoria.

New Jobs Created means the additional number of FTEs employed by the Recipient or a Participating Organisation as a direct result of the Project. If the Recipient or a Participating Organisation merges with, takes over or acquires the undertakings or business operations of another organisation, (other than just winning business from another operator), the number of employees of that organisation who are employed in Victoria at the date of the merger takeover or acquisition as the case may be and are subsequently employed by the Recipient or a Participating Organisation shall not be included as additional FTEs.

Participating Organisation means any other Company or other incorporated entity working with the Recipient on the Project as set out in item 6 of Schedule 1.

Participating Organisation agreement means an agreement as described in clause 8;

Progress Report means the progress report described in clause 11.1 (the template for which is set out as Template 1 in Schedule 5).

Program has the meaning set out in the Background section of this Agreement.

Project means the project to be carried out by the Recipient, as described in item 1 of Schedule 2.

Project Intellectual Property means all Intellectual Property developed by or on behalf of the Recipient or a Participating Organisation in the course of undertaking the Project, including all Intellectual Property in all information, material and documents written, created or prepared by or on behalf of the Recipient in relation to the Project.

Project Milestones means the milestones relating to the Project, as set out in Schedule 3, and as varied from time to time in accordance with clause 6.3.

Project Implementation Plan means the Project Implementation Plan contained in Schedule 2.

Responsible Minister means the Minister with responsibility for administering the *Victorian Industry Participation Policy Act 2003* (Vic).

Rural and Regional Victoria has the same meaning as that term is defined in the *Regional Development Victoria Act 2002* (Vic).

Skills and Job Centres means the **Skills and Job Centres located at Victorian TAFES.**

State means the Crown in right of the State of Victoria.

Statewide means where the Project will occur in both Metropolitan Melbourne and Rural and Regional Victoria or across the entire State of Victoria.

Statutory Declaration means a statutory declaration in the form of Schedule 44, Part A (or such other form approved in writing by the Department).

Term means the term of this Agreement as described in clause 2.

VIPP means the Victorian Industry Participation Policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003* (Vic).

VIPP Commitments means the commitments of the Recipient as set out in the IRN Letter.

VMC means the VIPP Management Centre online system developed to manage the application of VIPP by Recipient's, Departments and agencies.

Warranted Materials has the meaning given to it in clause 15.4.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar, AUD** or **\$** is to Australian currency;
- (f) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) the meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions;
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and

- (j) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

1.3 Precedence of documents

To the extent of any inconsistency, the documents comprising this Agreement must be read in the following order of precedence:

- (a) these terms and conditions;
 - (b) Schedule 1 (Project Particulars);
 - (c) Schedule 2 (Project Implementation Plan);
 - (d) Schedule 3 (Milestones Timing and Payments); and
- the remaining Schedules to this Agreement.

1.4 Headings

Headings are for ease of reference only and do not affect interpretation

2. Term

This Agreement commences on the Date of this Agreement and continues until the Recipient has completed all its obligations under this Agreement to the satisfaction of the Department, or the effective date of termination of this Agreement, whichever is the earlier.

3. Grant

- (a) Subject to clause 3(b), the Recipient has been awarded the Grant amount as specified in item 2 of Schedule 1.
- (b) The Grant amount will be based on a 3:1 funding ratio and shall not exceed 25% of the Eligible Project Expenditure incurred on the Project.
- (c) The Recipient must use the Grant only for the purpose of carrying out the Project in accordance with this Agreement.
- (d) Nothing in this Agreement implies that the State shall provide funding for the Project or the Recipient beyond that specifically provided for under this Agreement and the Recipient must at all times secure funding from other sources to fully fund the Project to the extent it is not funded by the Grant.

4. Co-funding Cash Contribution

- 4.1** The Recipient shall ensure that it and the Participating Organisations (if any) make the agreed Co-funding Cash Contribution to the Project, as set out in item 3 of Schedule 1.
- 4.2** The Co-funding Cash Contribution shall be calculated on a funding ratio of 3:1 and shall not be less than 75% of the Eligible Project Expenditure incurred on the Project.
- 4.3** Payments of the Grant may be withheld if the Department is of the opinion that the Recipient or the Participating Organisations have failed to make the Co-funding Cash Contribution.
- 4.4** Funds received by the Recipient or a Participating Organisation from other State or Commonwealth programs shall not be included in any Co-funding Cash Contribution.

5. Grant payment

5.1 Payment of Grant

Subject to clauses 5.3, 5.3, 5.4, 5.5, 6, 7 and 13.3, the Department shall pay the Grant in instalments as set out in Schedule 3 within 30 days of receipt of a Tax Invoice containing the information set out in Schedule 6 and the acceptance by the Department of the requisite deliverables set out in Schedule 3.

- 5.2** The Recipient shall provide a Statutory Declaration in the form provided for in Schedule 4 Part A and Evidence (in the form of a purchase order and/or invoice from a supplier/s), to the Department within 90 days of the Date of this Agreement verifying that the Recipient and the Participating Organisations (if any) have incurred or are legally committed to spend a total minimum of 10% of Eligible Project Expenditure on the Project as at the date of the Statutory Declaration.

5.3 Conditions of Grant payment

Without limiting the operation of clause 5.1 or clause 5.2 and subject to clause 13.1, the payment of each Grant instalment is conditional on:

- (a) achievement to the Department's satisfaction of the relevant Project Milestones;
- (b) the Department being satisfied that the Project has been conducted in compliance with the Project Implementation Plan and the requirements of this Agreement;
- (c) provision to the Department of Evidence verifying that each of the Project Milestones for the relevant Grant instalment has been completed or achieved by the relevant date;
- (d) where applicable, the Recipient entering into and maintaining a Participating Organisation agreement with each Participating Organisation in accordance with clause 8;
- (e) provision to the Department of Evidence that payment of any required Co-funding Cash Contribution from a Participating Organisation, as specified in the Project Implementation Plan, has been received and is available for use by the Recipient to carry out the Project;
- (f) provision to the Department of any supporting documentation and other Evidence specified in Schedule 3 for that Grant instalment;

- (g) the Department being satisfied that the Grant funds paid to date have been applied towards the Project
- (h) the Department being satisfied that the Grant funds have not been used by the Recipient or any Participating Organisation to employ a person other than a permanent resident of Australia, a citizen of Australia or New Zealand, the spouse of an Australian permanent resident or citizen (visa sub-class 300 or 309) or refugee;
- (i) there being no material breach of any Participating Organisation agreement which has not been remedied to the satisfaction of the Department; and
- (j) the Department being satisfied that the written reports referred to in clause 11 have been provided by the Recipient in accordance with this Agreement (including that the non-confidential sections of those reports contains sufficient details for the Department to be able to use the reports as described in clause 11.4(a).

5.4 If the Project fails to achieve the number of New Jobs Created as specified in item 7 of Schedule 1, in the manner and timing as set out in Schedule 3, the Department may at the request of the Recipient, agree to a variation of this Agreement to enable a reduced Grant instalment to be advanced having regard to the actual number of New Jobs Created achieved

5.5 All payments of the Grant shall be made to the Recipient in full and final satisfaction of the Department's obligations under this Agreement. No amount of the Grant will be paid by the Department to any Participating Organisation.

5.6 The Recipient shall be solely responsible for ensuring that monies are appropriately applied to the Project and distributed amongst the Participating Organisations, if any, in accordance with the Participating Organisation's agreement.

5.7 Unused Grant amounts

Unless otherwise agreed between the Recipient and the Department in writing, all Grant amounts not applied in accordance with this Agreement by the Recipient at the termination or expiry of this Agreement must be returned by the Recipient to the Department within 30 days of the termination or expiry of this Agreement.

5.8 GST

- (a) Each payment under this Agreement shall be increased by an amount equal to any GST payable with respect to a Taxable Supply (if any) for which the payment is made provided that with each relevant claim for payment, the Recipient submits a Tax Invoice, unless the parties have agreed in writing to have issued a recipient created Tax Invoice. The total amount of moneys paid under this Agreement will be increased to include the total amount of GST payable.
- (b) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

6. Project Implementation Plan and milestones

6.1 Project Implementation Plan

The Project Implementation Plan submitted by the Recipient and approved by the Department for the Grant as part of the application process is incorporated into this Agreement at Schedule 2.

6.2 Revision of Project Implementation Plan

In addition to any material changes under clause 6.3 made during the Term, the Recipient must if requested to do so by the Department review and update the Project Implementation Plan and must submit a proposed updated Project Implementation Plan to the Department within the time specified by the Department. If the Department is not satisfied with the revised Project Implementation Plan the Department may withhold Grant instalments and seek redress under clause 13.

6.3 Changes to Project

Whenever there are expected or required material changes in the Project and/or expenditure of the Grant and/or the time in which the Recipient expects to achieve a Project Milestone, the Recipient must:

- (a) have the change approved in writing by the Department;
- (b) develop and revise that item in the Project Implementation Plan in consultation with the Department and any other Participating Organisations to take into account the change;
- (c) submit a revised Project Implementation Plan to the Department within 30 days of agreement on any changes; and
- (d) ensure that any revision to the Project Implementation Plan is approved by the Department, the Recipient and any Participating Organisation before the change occurs.

If the Department does not approve the revised item in the Project Implementation Plan and the Recipient does not comply with the Project Implementation Plan in the form approved by the Department, the Department may withhold Grant instalments and seek redress under clause 13.

7. Conduct of Project

7.1 Recipient to conduct Project

- (a) In consideration of the payment of the Grant, the Recipient must:
 - (i) conduct the Project in compliance with all applicable laws and regulatory requirements;
 - (ii) ensure that a Participating Organisation complies with the terms of the Participation Organisation agreement in undertaking any activities relating to the Project;
 - (iii) assume all responsibility for conducting the Project activities substantially and materially in accordance with the Project Implementation Plan, including by ensuring that the establishment and management of the activities detailed in

the Project Implementation Plan adheres to the timelines specified in the Project Implementation Plan and Schedule 3;

- (iv) ensure that the activities detailed in the Project Implementation Plan are at all times professionally managed;
 - (v) meet any other reasonable requests of the Department in relation to the Project Implementation Plan, having regard to existing resources and timelines; and
 - (vi) assume all financial responsibility and meet all costs and general operating expenses in connection with the Project.
- (b) The Recipient acknowledges and agrees that:
- (i) the State will not be held responsible for any losses or cost over-runs incurred in relation to any components of the Project; and
 - (ii) it has sole responsibility for actions and the performance of persons authorised by the Recipient or otherwise engaged to participate in any components of the Project activities including those obligations expressed to be those of Participating Organisations.

8. Participating Organisation Agreements

- 8.1** This clause 8 shall only apply where the Project will be undertaken by the Recipient and one or more Participating Organisations.
- 8.2** The Recipient must not allow a Project to commence, nor any amount of the Grant to be expended, until it has entered into a written agreement with each Participating Organisation in accordance with this clause 8. The Recipient must reach agreement with each Participating Organisation and enter into a written agreement with each such organisation before the Commencement Date of the Project.
- 8.3** An agreement entered into with a Participating Organisation must include provisions that:
- (a) detail the role of the Participating Organisation to the Project;
 - (b) detail the Co-funding Cash Contribution of the Participating Organisation to the Project;
 - (c) describe the Intellectual Property arrangements that apply to the outcome or results generated by the Project;
 - (d) are consistent with details contained in the application for funding submitted to the Department in relation to the Project, except as provided for in clause 8.6;
 - (e) do not impede or prevent the Recipient from complying with any of its obligations under this Agreement;
 - (f) reflect the terms of this clause 8; and
 - (g) reflect the terms of clause 10 and clause 17 of this Agreement.

- 8.4** A written agreement entered into under this clause 8 must continue to satisfy the requirements of this clause 8 at all times during the Term.
- 8.5** The Recipient must ensure that the Participating Organisation's Co-funding Cash Contribution for a Project satisfies the requirements of this Agreement.
- 8.6** Unless otherwise approved by the Department, the Recipient must ensure that each Participating Organisation provides the Co-funding Cash Contributions as set out in the application for funding submitted for the Project. However, if the Grant amount for a Project is less than the amount requested in the application for that Project, the Participating Organisation's Co-funding Cash Contribution may be reduced by the same proportion.
- 8.7** Once the written agreement for a Project has been entered into by the Recipient and all Participating Organisations, the Recipient must provide a copy of that agreement to the Department.
- 8.8** If a written agreement between a Participating Organisation and the Recipient is revised to change the level of cash contributions, the Recipient must provide to the Department a copy of the revised agreement.
- 8.9** If the Recipient receives notice that a Participating Organisation wishes to withdraw its support for the Project, in circumstances where a Participating Organisation may be in default, or the Recipient reasonably believes that a Participating Organisation is in default of any of its material obligations under a written Participating Organisation agreement entered into between that Participating Organisation and the Recipient, the Recipient must immediately notify the Department and may attempt to find a replacement Participating Organisation for the Project or modify remaining Participating Organisation arrangements, in accordance with the procedure outlined in clause 8.10.
- 8.10** Should the Recipient wish to proceed with a replacement Participating Organisation or modified Participating Organisation arrangement as allowed under clause 8.9, it must complete the procedure listed below within three months from the date of notification from the Participating Organisation or from the date on which the Recipient became aware that the Participating Organisation is not meeting its obligations, whichever is the earlier. By the end of the three-month period referred to in this clause:
- (a) the Recipient must request, in writing, the Department's approval of a replacement Participating Organisation or modified remaining Participating Organisation arrangement which complies with the requirements for Participating Organisations and Participating Organisation contributions specified in this Agreement;
 - (b) the replacement or remaining Participating Organisations must provide a written undertaking to provide in total a replacement contribution equivalent to that which would have been provided by the Participating Organisation in default and which satisfies the requirements of this Agreement; and
 - (c) the Recipient and the replacement Participating Organisation or remaining Participating Organisations must enter into a written agreement, or amend any existing agreement (as appropriate) consistent with this clause 8 to reflect the revised Participating Organisation contribution arrangements.
- 8.11** The Department may approve a replacement Participating Organisation if the replacement Participating Organisation meets the eligibility criteria as specified in the Program application guidelines.
- 8.12** If the Department approves a replacement Participating Organisation or modified remaining Participating Organisation arrangement proposed under clause 8.10, the Recipient must within

three months of the date of approval by the Department provide to the Department a revised Participating Organisation agreement reflecting the new approved arrangements.

8.13 To avoid doubt, the funding condition set out in clause 5.3(d) will not have been satisfied if:

- (a) the Department does not approve any replacement Participating Organisation or the modified Participating Organisation arrangements proposed under clause 8.10; or
- (b) the Recipient does not attempt to find any replacement Participating Organisation or modify existing Participating Organisation arrangements in accordance with clause 8.10.

9. VICTORIAN INDUSTRY PARTICIPATION POLICY

9.1 This clause 9 shall only apply where:

(a) the total value of the Project is-:

- (i) \$3 million or more in Metropolitan Melbourne or State Wide; or
- (ii) \$1 million or more in Rural and Regional Victoria,

and the amount of the Grant is greater than half the total value of the Project,
or

(b) the amount of the Grant is-:

- (i) \$3 million or more for a Project in Metropolitan Melbourne or State Wide; or
- (ii) \$1 million or more for a Project in Rural and Regional Victoria,

irrespective of the total value of the Project.

9.2 To maximise opportunities for local business in relation to the Project, the Recipient must, within 60 days of the signing of this Agreement, prepare and submit an IRN Form through the VMC setting out-:

- (a) details of the Project; and
- (b) the goods and services likely to be required to deliver the Project

9.3 When contacted by the ICN, the Recipient must consult with the ICN in respect of opportunities for local businesses to deliver the goods and services required for the Project.

9.4 Within five business days of receipt from the ICN, the Recipient must –

- (a) provide the IRN to the Department; and
- (b) inform the Department of any opportunities for local business agreed with the ICN. For this purpose, the Recipient must provide the Department with a copy of the IRN Letter.

- 9.5** The Recipient must prepare and maintain records demonstrating its compliance with any VIPP Commitments and must monitor its compliance with any VIPP Commitments.
- 9.6** The Recipient acknowledges and agrees that the Department may consult with and obtain information from the ICN in respect of the Recipient's compliance with any VIPP Commitments.
- 9.7** The obligations of the Recipient set out in this clause 9 are in addition to and do not derogate from any other obligations of the Recipient under this Agreement.
- 9.8** The Recipient acknowledges and agrees that any information provided to the Department by the ICN may be-
- (a) included in the Department's report of operations under Part 7 of the *Financial Management Act 1994* in respect of the Department's compliance with the VIPP in the financial year to which the report of operations relates;
 - (b) provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the VIPP during that year; or
 - (c) disclosed as otherwise required by Law.

10. Publicity and promotion

10.1 Publicity by Recipient

- (a) Subject to clauses 10.1(b) and (c), the Recipient will provide the Department or any other agency of the State nominated by the Department, recognition as a major funding contributor to the Project, with prominent written acknowledgement and display of appropriate Departmental and any other logos or trade marks notified by the Department wherever appropriate in all advertising material and other publications relating to the Project.
- (b) The Recipient must not make any public statements or communications, or publish any media releases, in relation to this Agreement, the Grant or the Project, other than disclosures that the Recipient is required to make under the rules of any applicable stock exchange, without first providing a copy of the statement, communication or media release to the Department in accordance with clause 20.1(b) and obtaining the prior written approval of the Department (not to be unreasonably withheld).
- (c) The Recipient must not do or omit to do anything which may:
 - (i) damage, bring into disrepute or ridicule the Department's or the State's name, messages or reputation; or
 - (ii) attract public or media attention which may be prejudicial or otherwise detrimental to the Department's or the State's name, messages or reputation.

10.2 Publicity by Department and State

- (a) The Recipient agrees that it will cooperate with the Department in relation to all publicity associated with the Grant and the Project and will provide any assistance required by the Department in the preparation of materials used to promote the benefits of the Program to industry, such as a media release or case study on the Project.
- (b) The Department may publicise the benefits accruing to both the Recipient and the State as a result of the provision of the Grant. The Department may include the name

of the Recipient and the amount of the Grant in its annual report or in any publicity material

11. Written reports

11.1 Progress Reports

The Recipient must provide to the Department progress reports:

- (a) in accordance with the timeframes set out in Schedule 3; and
- (b) in accordance with the form and content requirements set out in Schedule 5, for the duration of the Term.

11.2 Final Report

The Recipient agrees to provide the Final Report containing the information set out in Schedule 5 in accordance with the timeframes set out in Schedule 3. The Final Report must include details of the status and progress of the Project and the future outlook for the Project and any other information reasonably requested by the Department.

11.3 Post Completion Evaluation Reports

The Recipient agrees to provide the Post Completion Evaluation Reports containing the information set out in Schedule 5 in accordance with the timeframes set out in Schedule 3.

11.4 Other reporting

- (a) Whenever requested, and within a reasonable time frame for response, by or on behalf of the Department, the Recipient undertakes to participate in formal evaluations of the Program by the Department and provide non-confidential information in an agreed format detailing facilities, personnel, capabilities and services for incorporation in a publicly accessible database on manufacturing infrastructure for Victoria.
- (b) At the Department's request, the Recipient must provide any additional oral or written information or documentation that explains details of its performance throughout the Term, including participating in face-to-face meetings. The Recipient must respond in a timely manner to any such request, and if requested must provide a full and complete written response to the Department's satisfaction within 14 days of any such request.
- (c) At the Department's request at any time during the Term, the Recipient must provide information relating to the operation of the Project and the Recipient's plans for progress to commercialisation, if applicable.

11.5 Provision of non-confidential information in reports

Each report to be provided under clause 11.1 must be prepared in a format approved in writing by the Department that includes clearly identified confidential and non-confidential sections and be signed by a director of the Recipient, or other person approved in writing by the Department.

12. Records, audit and inspection

12.1 Separate accounting

- (a) The Recipient must account for all revenue and expenditure relating to the Grant and the Project separately from other funds managed by the Recipient. These accounts must disclose all cash contributions for all components of the Project.
- (b) Without limiting clause 12.1(a), the Recipient must identify the receipt and expenditure of Grant instalments separately within the Recipient's accounting records so that at all times the Grant instalments are identifiable and ascertainable.

12.2 Statutory Declaration provided by the Recipient

In accordance with the timeframe(s) set out in Schedule 3, the Recipient must provide the Department with a Statutory Declaration verifying the amount of Eligible Project Expenditure incurred on the Project and the number of New Jobs Created.

12.3 Audit Opinions provided by the Recipient

- (a) In accordance with the timeframe(s) set out in Schedule 3, the Recipient must provide Audit Opinions verifying the amount of Eligible Project Expenditure incurred on the Project and the number of New Jobs Created to the Department.
- (b) The Audit Opinion must be prepared at the Recipient's cost by a person who is not an officer or employee of the Recipient and is:
 - (i) a person who is registered as a company auditor under a law in force in the State; or
 - (ii) a member of the Institute of Chartered Accountants in Australia or CPA Australia.

12.4 Audit and inspection by Department

The Department shall be entitled to audit the monies expended from the Grant and inspect the records or separate agreements entered into for the Project and all other records of the operations of the Recipient associated with the Grant or the Project. For such purposes the Recipient:

- (a) shall permit access to and the copying of the financial and other records and any other materials, to the extent that they relate to the Grant or the Project, by any person duly authorised by the Department;
- (b) shall answer all relevant enquiries put to them by any person duly authorised by the Department;
- (c) shall assist any person duly authorised by the Department in the conduct of the audit or inspection relating to the Grant or the Project activities; and
- (d) shall permit any person duly authorised by the Department to inspect any relevant site, facilities and technologies and to assess quality, quantity and ongoing costs of the Project.

12.5 Access by Auditor-General

The Recipient shall, if required, provide the Auditor-General of Victoria with access to accounting records and documentation in respect of the Grant and the Project.

13. Compliance with undertakings and deterioration in financial circumstances

13.1 Rights to withhold Grant, require refund or terminate Agreement

Where the Department is of the opinion that:

- (a) there has been a significant deterioration in the financial circumstances of the Recipient;
- (b) the Recipient has failed to comply with clause 5.2;
- (c) the Recipient has failed to comply with any of its obligations under this Agreement and where the non-compliance is capable of remedy by the Recipient, the Recipient has failed to remedy the non-compliance within such period as specified by the Department in writing;
- (d) the Recipient will not, or is unlikely to complete the Project;
- (e) the Grant funds have been used by the Recipient or any Participating Organisation to employ a person other than a permanent resident of Australia, a citizen of Australia or New Zealand, the spouse of an Australian permanent resident or citizen (visa subclass 300 or 309) or refugee;
- (f) there has been any fraud relating to the Recipient or the Grant, misappropriation of Grant funds by the Recipient or there has otherwise been any misleading or deceptive conduct on the part of the Recipient or any Participating Organisation in connection with this Agreement or the provision or use of the Grant;
- (g) the Recipient or a Participating Organisation has engaged or may engage in any conduct which affects or may adversely affect the goodwill or reputation of the Recipient, a Participating Organisation, the Project, the Department, a Minister, or the State;
- (h) the Recipient or a Participating Organisation has become subject to Insolvency Administration;
- (i) the Recipient or a Participating Organisation in undertaking the Project and/or in meeting its obligations under this Agreement or a Participating Organisation agreement has or may have infringed, or is likely to infringe, the Intellectual Property rights of a third party;
- (j) the Recipient or a Participating Organisation has failed to ensure that the number of New Jobs Created are maintained for at least 12 months after the Completion Date;
- (k) there has been a change in the direct or indirect beneficial ownership or control of the Recipient without the prior written consent of the Department;
- (l) the Recipient has disposed of the whole or any part of its assets, operations or business other than in the ordinary course of business without the prior written consent of the Department;
- (m) the Recipient has undertaken a restructuring of its business or change to its legal status which has or may in the opinion of the Department adversely affect its ability to undertake the Project or carry out its obligations under this Agreement; or

- (n) the Recipient's or a Participating Organisation's application for any planning, building, environmental, occupational health and safety, land access and use approval or any other approval, permit or licence required to lawfully conduct and complete the Project in accordance with this Agreement is rejected or the Recipient or a Participating Organisation is unlikely to be able to obtain such approval, permit or licence,

then the Department may do one or more of the following:

- (o) withhold, suspend, cancel or terminate any payment or payments of the Grant due or to fall due under this Agreement;
- (p) require the Recipient to refund such amount of the Grant previously paid as the Department deems appropriate, together with interest calculated daily at the rate of 2% per annum above the rate fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983*, from the date of the relevant Grant payment until the date on which that amount is refunded; and/or
- (q) immediately terminate this Agreement by giving written notice to the Recipient.

13.2 Obligation to notify

The Recipient must promptly notify the Department if:

- (a) any event or circumstance occurs or arises that results or may result in a significant deterioration in the financial circumstances of the Recipient;
- (b) the Recipient or a Participating Organisation becomes subject to Insolvency Administration;
- (c) the Recipient receives notice under clause 8.9;
- (d) the Recipient in undertaking the Project and/or in meeting its obligations under this Agreement becomes aware that it or a Participating Organisation has, may have, or is likely to have any claim, action or demand made against it by a third party for infringement of that third party's Intellectual Property rights; or
- (e) the Recipient's or a Participating Organisation's application for any planning, building, environmental, occupational health and safety, land access and use approval or any other approval, permit or licence required to lawfully conduct and complete the Project in accordance with this Agreement is rejected or it becomes apparent that the Recipient or a Participating Organisation is unlikely to be able to obtain any such approval, permit or licence.

13.3 No derogation

Nothing in this Agreement, including clause 13.1, affects any rights or remedies otherwise available to the Department or the State at law.

14. Liability

- (a) The State, the Department, its servants and agents shall not be responsible at any time for any liabilities incurred or entered into by the Recipient or a Participating Organisation as a result of, or arising out of the Recipient's responsibilities under, this Agreement or the conduct of the Project.

- (b) It is the responsibility of the Recipient (and any Participating Organisation) to carry out its obligations under this Agreement and to carry out the Project at its own risk and, in so doing, it shall comply with the provisions of any Statute, Regulations or local law and the legal requirements of any authority with regard thereto.

15. Intellectual Property

15.1 Project Intellectual Property

As between the Recipient and the State, all Project Intellectual Property shall vest in the Recipient upon creation.

15.2 Licence of Grant Agreement Material

The Recipient grants to the State a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right to sub-license) to reproduce, publish, communicate to the public, adapt, modify or otherwise use the Grant Agreement Material (including any material provided by Participating Organisations) for non-commercial purposes.

15.3 Moral rights

If any Grant Agreement Material that is a copyright work contains information over which a third party (including the Recipient's personnel and subcontractors) has 'Moral Rights' (as defined in the *Copyright Act 1968* (Cth)), the Recipient must ensure that it has in place all necessary consents sufficient to allow the State to deal with the Grant Agreement Material in accordance with this Agreement.

15.4 Warranties

The Recipient warrants that:

- (a) it is entitled to use for the Project and for the purposes of meeting its obligations under this Agreement, all third party Intellectual Property, Background Intellectual Property and Project Intellectual Property (**Warranted Materials**); and
- (b) it has the right to grant the licence in clause 15.2.

15.5 Remedy for breach of warranty

If the Recipient breaches either of the warranties in clause 15.4, and as a result of the breach of that warranty, a third party claims the State or Department's use of all or part of the Warranted Materials infringes its Intellectual Property rights, the Recipient must, in addition to its obligations under clause 16 and to any other rights that the State and/or the Department may have against it, promptly, at the Recipient's expense:

- (a) use its best efforts to secure the rights for the State and/or the Department to continue to use the affected Warranted Materials as permitted under clause 15 free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the State and/or Department's use of them as permitted under this clause 15 does not infringe the Intellectual Property rights of any other person without any degradation of the affected Warranted Materials.

16. Indemnity and Insurance

16.1 Indemnity

- (a) The Recipient indemnifies (and must keep indemnified) the State, the Department, its officers, employees and agents (referred to in this clause as 'those indemnified') from and against all Losses sustained or incurred by those indemnified and arising out of or as a consequence of:
- (i) any Claim against the State, the Department, its officers, employees or agents in relation to any act or omission of the Recipient or a Participating Organisation, its officers, employees, agents or related bodies corporate in connection with this Agreement or the Project;
 - (ii) the exercise of any Intellectual Property (including the Grant Agreement Material, Background Intellectual Property or Project Intellectual Property) or other rights licensed or granted in accordance with this Agreement, including any Claim that any act in relation to the Grant Agreement Material, Background Intellectual Property or Project Intellectual Property infringes the Intellectual Property of any third party;
 - (iii) a negligent, reckless, wilful or unlawful act or omission of the Recipient or a Participating Organisation, its employees, agents or other persons acting on its behalf or under its direction in the conduct of the Project;
 - (iv) the breach by the Recipient of any obligation under this Agreement; or
 - (v) the breach of any representation or warranty given by the Recipient under this Agreement.
- (b) The Recipient's liability to indemnify those indemnified under this clause 16 will be reduced proportionally to the extent that any negligent, reckless, wilful or unlawful act or omission on the part of those indemnified directly caused the relevant Loss.

16.2 Consequential loss

Without prejudice to the State's right to recover Grant payments and interest under this Agreement, neither party is liable to the other party under this Agreement at law or otherwise for any kind of indirect or consequential loss or damage nor for any loss of profit, loss of revenue, loss of use, loss of production, business interruption or any other kind of financial or economic loss. This clause does not apply to the unlimited liability of the Recipient in relation to any breach of the warranties in clause 15.4 or under the indemnities in clause 16.1 (a)

16.3 Insurance

- (a) Unless otherwise agreed to in writing by the Department the Recipient shall, at its cost, take out and maintain the following insurances:
- (i) public liability insurance for an amount of at least \$20 million per claim;
 - (ii) professional indemnity insurance for an amount of at least \$10 million per claim; and

- (iii) insurance which fully indemnifies the State against any Loss arising due to the fraudulent misappropriation of any Grant monies paid under this Agreement, to the value of the full Grant amount.
- (b) The Recipient must maintain such insurance:
 - (i) in the case of insurance issued on a claims made basis, for 7 years after the end of the Term; or
 - (ii) otherwise, until the expiration of the Term.
- (c) Whenever requested, the Recipient must provide the Department, within 10 Business Days of the request, with a current certificate of currency and any other evidence the Department may reasonably require as evidence that the Recipient has complied with its obligation under this clause 16.3.

17. Confidentiality

17.1 Recipient's obligations of confidentiality

The Recipient shall not disclose or permit the disclosure of Confidential Information of the State or any information relating to the Grant (including this Agreement), and will ensure that the Participating Organisations do not disclose such information, except:

- (a) with the prior written consent of the Department;
- (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency;
- (c) to the extent required in connection with legal proceedings;
- (d) where otherwise permitted under this Agreement; or
- (e) to its legal advisers or accountants or tax advisers in order to obtain advice in relation to its rights under this Agreement or the Project,

and then only to the extent strictly necessary for that purpose.

18. Conflict of interest

18.1 Warranty

The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date, no Conflict exists or is likely to arise in the performance of the Recipient's obligations under this Agreement.

18.2 Conflict during the term

Without limiting the operation of this clause 18, the Recipient must, during the Term, ensure that no Conflict arises through the Recipient's involvement with the parties or programs, if any, specified in the Project Implementation Plan.

18.3 Obligations on Conflict arising

If, during the Term, a Conflict arises, the Recipient must:

- (a) immediately notify the Department in writing of that Conflict and of the steps the Recipient proposes to take to resolve or otherwise deal with the Conflict;

- (b) make full disclosure to the Department of all relevant information relating to the Conflict; and
- (c) take such steps as the Department may, if it chooses to, reasonably require to resolve or otherwise deal with that Conflict.

18.4 Failure to resolve Conflict

If the Recipient fails to notify the Department under this clause 18, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Agreement in accordance with clause 13.

19. Delay

- (a) The Recipient must take all reasonable steps to minimise delay in completion of the Project.
- (b) Without limiting the obligations of the Recipient under clause 6.3, if the Recipient becomes aware that it will be delayed in progressing or completing the Project in accordance with this Agreement, the Recipient must immediately notify the Department in writing of the cause and nature of the delay. The Recipient is to detail in the notice the steps it will take to contain the delay. For the avoidance of doubt, this clause 19 does not entitle the Recipient to an extension of any Project Milestone due date or other due dates under this Agreement.
- (c) If a delay notified to the Department will be longer than 2 months as compared with the relevant Project Milestone, the Department may at its sole option:
 - (i) notify the Recipient in writing of a period of extension to complete the Project and vary this Agreement accordingly;
 - (ii) notify the Recipient in writing of reduction in the scope of the Project and any adjustment to the Grant instalments for the Recipient to complete the reduced Project and vary this Agreement accordingly; or
 - (iii) terminate this Agreement under clause 13 or take such other steps as are available under this Agreement.
- (d) Unless the Department takes action under subclause 19(c), the Recipient is required to comply with the time frame for progressing and completing the Project as set out in this Agreement.

20. Notices

20.1 Service of notices

- (a) Subject to clause 20.1(b), any notice, demand, consent, approval or communication required by or permitted under this Agreement shall be deemed to be duly served if delivered to the recipient's address for notices specified at the beginning of this Agreement, as varied by any notice given by the recipient to the sender.
- (b) The Recipient must provide a copy of any proposed public statement, communication or media release under clause 10.1(b) to the Department by delivering it to the address specified at the beginning of this Agreement (addressed with attention to the

person specified below that address) as well as serving a copy in accordance with clause 20.1(a).

20.2 Methods of service

Notices may be delivered by hand, by prepaid mail, or by electronic mail and shall be deemed to be duly served:

- (a) in the case of delivery by hand, at the time of delivery;
- (b) in the case of prepaid mail, at the time at which it would normally arrive in ordinary course of the post at the address of the receiving party to which it is directed; and
- (c) in the case of electronic mail, if the message is correctly addressed and successfully transmitted to that party's electronic mail (e-mail) address, at the time that the sender's computer records that transmission was successful.

21. Miscellaneous

21.1 Governing law and jurisdiction

This Agreement shall be governed by the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

21.2 Equal opportunity, anti-discrimination and privacy legislation

The Recipient shall comply with the provisions of all applicable Commonwealth and State privacy, anti-discrimination and equal opportunity legislation.

21.3 Negation of partnership and agency

The Recipient shall not, by virtue of this Agreement, or for any purpose, be deemed to be a partner or agent of the State or as having any power or authority to bind or represent the State, and must not represent that it has any such authority.

21.4 Assignment

The Recipient must not assign or otherwise deal with this Agreement or any right under it without the prior written consent of the Department (acting reasonably).

21.5 Restructure

The Recipient must advise the Department as soon as a decision is taken regarding any restructuring of its business or change in ownership or control of the Recipient. Without limiting clause 13.1, if a restructure of the business or change in ownership or control of the Recipient affects, or will in the opinion of the Department affect, the Recipient's ability to carry out its obligations under this Agreement, or complete the Project, Grant instalments may be withheld or cancelled in the Department's absolute discretion.

21.6 Subcontracting

- (a) The Recipient must not engage subcontractors to conduct the whole or any part of the Project without the prior written approval of the Department. The Recipient remains fully responsible for the performance of all of its obligations under this Agreement and for all costs incurred with respect to its subcontractors and is liable for acts and omissions of its subcontractors as though they were actions of the Recipient itself.

- (b) The Recipient must ensure that any subcontractor complies with the following clauses to the same extent that the Recipient is required to comply with such clauses:
- (i) clauses 10.1(b) and 10.1(c) (Publicity and promotion);
 - (ii) clause 12 (Records audit and inspection);
 - (iii) clause 15 (Intellectual Property);
 - (iv) clause 16.1 (Indemnity);
 - (v) clause 16.3 (Insurance);
 - (vi) clause 17 (Confidentiality);
 - (vii) clause 18 (Conflict of interest); and
 - (viii) clause 21.2 (Equal opportunity, anti-discrimination and privacy legislation).

21.7 Severance

Each provision of this Agreement, and each part thereof shall, unless the context requires otherwise, be read and construed as a separate or severable provision, or as a separate and severable part thereof, so that if any provision or part thereof is void or otherwise unenforceable for any reason then that provision, or part thereof, as the case may be, shall be severed and the remainder shall be read and construed as if the severable provision or part thereof, has never existed.

21.8 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.

21.9 Variation

No agreement or understanding varying or extending this Agreement shall be legally binding upon either party unless in writing and signed by both parties.

21.10 Waiver

No right or obligation under this Agreement shall be deemed to be waived except upon written acknowledgement signed by the party waiving the right or obligation in each instance.

21.11 Stamp duty

The Recipient shall pay any stamp duty and any other taxes or imposts which may be payable in connection with the Grant or this Agreement.

21.12 Survival

Clauses 1, 10, 12, 13.3, 14, 15, 16, 21.1, 21.3, 21.6, 21.7, 21.8, 21.10 and this clause 21.12 survive termination or expiry of this Agreement.

Signing page

EXECUTED as an agreement.

Signed by **Anthony Sherry**, Executive Director, Programs & Systems, Department of Economic Development, Jobs Transport and Resources, for and on behalf of the State of Victoria in the presence of

Signature

Date

Signature of witness)

Name of witness (print)

[Select relevant option according to legal status of Recipient]

[Option A - Company]

Executed by **[insert Company name]** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

[Option B – Sole Director]

Executed by **[insert Recipient name]** in accordance with section 127 of the *Corporations Act 2001* in the presence of:

Sole Director and Sole Secretary Signature

Witness Signature

Print Name

Print Name

[Option C – Owners Corporation – see sections 10, 19-21 of the Owners Corporations Act 2006 (Vic)]

The common seal of **insert Recipient name** is fixed to this document in accordance with its constitution in the presence of

Signature of witness one

Signature of witness two

Name of witness one (print)

Name of witness two (print)

Address of witness one (print)

Address of witness two (print)

Position of witness one (print)

Position of witness two (print)

Schedule 1– Project Particulars

1. Project	The Project constitutes [insert description of Project].
2. Grant:	An amount not exceeding \$[insert grant amount] (excluding GST)
3. Co-funding Cash Contribution:	An amount not less than \$[insert required Co-funding cash Contribution]
4. Commencement Date:	Insert Date. If no date insert – Within 90 days from the Date of this Agreement.
5. Completion Date:	Insert Date – (the date must be no later than 18 months from the Commencement Date)
6. Participating Organisations:	Insert full corporate name, address and ABN of each Participating Organisation. If none insert NA.
7. New Jobs Created	Insert number of New Jobs to be created within the 18 month project period, eg Thirty (30). .
8. Eligible Project Expenditure	\$[insert eligible project expenditure amount]

Schedule 2– Project Implementation Plan

*Insert Project Implementation Plan as approved by the Department during the application process (and updated if required once application has been approved) or state “**Refer to the Attached Project Implementation Plan**”*

Schedule 3— Milestones, Timing and Payments

[Insert as many instalments as are required. The below deliverables are provided by way of example.]

Project Milestones	Deliverables	Due Date	Grant Instalment	
			Amount (Total AUD [exc. GST])	No.
<p>MILESTONE 1 [50% of grant]</p> <p>Confirmation that the Project has commenced and a minimum of ten per cent (10%) Eligible Project Expenditure has been incurred within 90 days of execution of the grant agreement.</p>	<ul style="list-style-type: none"> - (Tax invoice) A valid Tax Invoice; - (Co-contribution Commitment) – Evidence that the Recipient has secure all funds necessary to complete the Project; - Include any conditions in the Letter of Offer; - (VIPP Commitments) - Evidence that the Recipient has complied with its VIPP obligations as outlined in Clause 9 [only applies to LIFT-Geelong recipients – delete if N/A]; - (Skills & Job Centres Commitments) - Evidence that the Recipient has complied with its requirements to liaise with the Skills & Job Centres regarding the Project’s workforce requirements; - (Plant/Equipment Purchased/Fit-Out Costs) – Evidence that a minimum of ten per cent of Eligible Project Expenditure, namely \$xxxxx has been incurred; - (Reports) – Progress Report (as per Schedule 5, Attachment 1) - (Statutory Declaration) - A Statutory Declaration in the form provided in Schedule 4, Part A and declared by a director of the Recipient; confirming that the Recipient has: <ol style="list-style-type: none"> a) satisfied all of the requirements of Milestone 1; b) secured all the funds necessary to complete the Project; and c) incurred Project Expenditure of not less than \$[#] (10% of 	(Insert due date)	\$xxxx	1

	<p>Eligible Project expenditure).</p> <ul style="list-style-type: none"> - (Approvals) – Provide Evidence that all regulatory, environmental and planning approvals necessary to undertake and complete the Project have been applied for and/or obtained. If not required, please advise in writing; - (Project Accounts) – a statement to accompany the Statutory Declaration which itemises the Project Expenditure referred to in the Statutory Declaration, including the nature of each item of expenditure, its amount and its connection with the Project. 			
<p>MILESTONE 2 <i>[20% of grant]</i></p> <p>Confirmation that the Project is on schedule and on budget and a minimum of 35% of Eligible Project Expenditure has been incurred midway through the Project schedule</p>	<ul style="list-style-type: none"> - (Tax invoice) A valid Tax Invoice; - (VIPP Commitments) - Evidence that the Recipient has complied with its VIPP with its obligations as outlined in Clause 9 <i>[only applies to LIFT-Geelong recipients – delete if N/A]</i>; - (Skills & Job Centres Commitments) - Evidence that the Recipient has complied with its requirements to liaise with the Skills & Job Centres regarding the Project’s workforce requirements; - (Reports) – Progress Report (as per Schedule 5, Attachment 1) - (Approvals) – Provide Evidence that all regulatory, environmental and planning approvals necessary to undertake and complete the Project have been obtained (if required and not provided with in support of Milestone 1); - (Statutory Declaration) – A Statutory Declaration in the form provided in Schedule 4, Part A, and declared by a director of the Recipient confirming that the Recipient has: <ul style="list-style-type: none"> a) Incurred Eligible Project Expenditure of not less than 35% of eligible project expenditure, namely \$[#]; and b) satisfied all of the requirements for Milestone 2. - (Audit Opinion-Project Expenditure) - An Audit Opinion in the form provided in Schedule 4, Part B to the Department’s satisfaction, evidencing at least \$[#] of eligible Project Expenditure <i>[required when Milestones 1 and 2 grant payments</i> 	<p><i>(Insert due date)</i></p>	<p>\$xxxx</p>	<p>2</p>

<p>MILESTONE 3 [25% of grant]</p> <p>Confirmation that plant/equipment has been purchased, installed and commissioned and the construction/fit-out has been completed and the plant is fully operational. Confirmation that all stages of the Project are completed.</p>	<p><i>are more than \$250,000 together</i>];</p> <ul style="list-style-type: none"> - (Tax invoice) A valid Tax Invoice; - (VIPP Commitments) - Evidence that the Recipient has complied with its VIPP obligations as outlined in Clause 9 <i>[only applies to LIFT-Geelong recipients – delete if N/A]</i>; - (Skills & Job Centres Commitments) - Evidence that the Recipient has complied with its requirements to liaise with the Skills & Job Centres regarding the Project’s workforce requirements and final Employment Plan; - (Completion/Evidence) - Evidence that the Project and each of the Project Delivery Milestones as described in the Grant Details have been completed, including by permitting a site inspection by the Department, if requested; - (Reports) – Final Report as per Schedule 5, Attachment 2); - (Statutory Declaration) – A Statutory Declaration in the form provided in Schedule 4, Part A, and declared by a Director of the Recipient, confirming that the Recipient has: <ul style="list-style-type: none"> a) incurred eligible Project Expenditure of not less than \$[#]; b) created [#] New Jobs in the xxxx region; c) satisfied all of the requirements for Milestone 3; and c) fulfilled each of its obligations under this Agreement; - (Audit Opinions – Capital Expenditure and New Jobs Created) – Final Audit Opinions in the form provided in Schedule 4, Part B and Part C, to the Department’s satisfaction, evidencing at least [\$\$] of Project Expenditure and [#] New Jobs Created; - (Audited annual financial accounts) – Audited annual financial accounts for the most recently concluded financial year. 	<p>(Insert due date)</p>	<p>\$xxxxx</p>	<p>3</p>
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<p>MILESTONE 4 <i>(up to 5% of grant)</i></p> <p>Post Completion Evaluation Report (12 months after Project completion)</p>	<ul style="list-style-type: none"> - (Tax invoice) A valid Tax Invoice; - (Reports) - Post Completion Evaluation Report in the form provided in Schedule 5 Attachment 2; - (Audited annual financial accounts) – Audited annual financial accounts for the most recently concluded financial year; - (Statutory Declaration) a Statutory Declaration (in the form provided in Schedule 4 Part A), confirming that as a result of the Project, the Recipient has <ul style="list-style-type: none"> a) maintained in its employment [#] (XX) FTEs as a result of the New Jobs Created for at least 12 months after the Project Completion Date; and b) fulfilled each of its obligations under this Agreement. 	<p>(Insert due date)</p>	<p>\$xxxxx</p>	<p>4</p>
<p>Total</p>	<p style="text-align: right;">\$xxxxx</p>			

Schedule 4 – Audit Opinions and Statutory Declaration

Part A - Statutory Declaration

I, *[insert name and address]*, do hereby solemnly and sincerely declare that:

- I am a Director of *[insert name of recipient]* (the **Recipient**).
- The Recipient has complied with all of its obligations under the Grant Agreement dated *[insert date]* (the **Agreement**) between the Recipient and the State of Victoria.
- The Recipient confirms that the original evidence of co-contribution is still current. *[first instalment only]*
- The Recipient has confirmed that the location of the Project is within the areas approved for LIFT-*[insert LIFT region]*.
- The Recipient has incurred at least 10 per cent of Eligible Project Expenditure within 90 days from the Date of this Agreement. *[first instalment only]*
- The Recipient has complied with the obligation of working with the Skills & Job Centres regarding project workforce requirements (with a view to employing ex-automotive/*Alcoa* *[Geelong projects only]* workers).
- The Recipient has incurred at least 35 per cent of Eligible Project Expenditure midway through the Project schedule. *[second instalment only]*
- The Recipient has incurred a minimum of *[\$#]* of Eligible Project Expenditure on the Project as at *[insert date]* for milestone 3 in accordance with the terms of the Agreement. *[final instalment only]*
- The Recipient has created *[#]* of New jobs (FTEs) in *[insert LIFT region]* as a direct result of the Project as at *[insert date]* for milestone 3 in accordance with the terms of the Agreement. *[final instalment only]*
- The Recipient *[or a Participating Organisation]* have not used any of the Grant funds to employ a person other than a permanent resident of Australia, a citizen of Australia or New Zealand, the spouse of an Australian permanent resident or citizen (visa sub-class 300 or 309) or refugee. *[final instalment only]*
- The Recipient has complied with the obligation of contacting ICN in relation to VIPP requirements regarding using local content in projects. *[LIFT-Geelong projects only]*
- The accounts relating to the Project as attached to this Statutory Declaration are true and correct.*
- The Recipient has continued to employ the *[#]* FTEs created for the project for 12 months post project completion. *[milestone 4 only]*
- The Recipient has completed the Project *[Final Instalment only]*.

AND I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED at)
in the State of Victoria this)
day of Two Thousand and)
)
Before me) ←

..... ←

An Australian legal practitioner (within the meaning of the Legal Profession Uniform Law (Victoria))
Justice of the Peace;
A senior officer of a council (as defined in the *Local Government Act 1989*); or
Any other person empowered under Section 107A of the *Evidence (Miscellaneous Provisions) Act 1958*

**Note: The Project accounts should, at a minimum, itemise the Eligible Project Expenditure on the Project and, in relation to each item, describe the nature of expenditure, the amount, whether the expenditure was incurred by the Recipient [or a Participating Organisation – only if a joint application] and the connection to the Project.*

Part B - Audit Opinion – Eligible Project Expenditure

(To be prepared on the letterhead of the Accounting firm)

The Minister for Industry and Employment
c/- Industry Programs
Department of Economic Development,
Jobs, Transport & Resources
121 Exhibition Street
Melbourne, Vic, 3000

XXXXXXXXXXXXXXXXXX Pty Ltd

This Audit Opinion is prepared for the purposes of the Grant Agreement dated
(**Agreement**) between the State of Victoria and [insert] (**Recipient**) for the [insert name of project]
(**Project**).

Scope

We have conducted an independent audit in accordance with Australian Auditing Standards of the [attached insert description of relevant Recipient (or if relevant a Participating Organisation’s document audited – may be statement by Recipient’s/Participating Organisation’s chief financial officer)] provided by the Recipient which specifies an amount of of Eligible Project Expenditure on the Project, in order to express an opinion on it for the purposes of the Agreement.

Our audit involved an examination, on a test basis, of evidence supporting the amount of Eligible Project Expenditure incurred. This included an examination of the Recipient’s financial records and receipts, and an evaluation of the policies and procedures used to calculate the Eligible Project Expenditure incurred on the Project. These procedures have been undertaken to form an opinion as to whether the methodology used to calculate the Eligible Project Expenditure on the Project is in accordance with the Agreement, and that the figure stated is true and fair.

This Audit Opinion expressed in this report has been formed on the above basis.

Audit Opinion

We confirm that in our opinion, the Recipient (or [insert name of Participating Organisation]), has incurred \$..... of Eligible Project Expenditure on the Project as defined in the Agreement.

Signed

Dated:

Print Name:

Position:

[Name of the Accounting Firm]

Part C - Audit Opinion – New Jobs Created

(To be prepared on the letterhead of the Accounting firm)

The Minister for Industry and Employment
Department of Economic Development,
Jobs, Transport & Resources
121 Exhibition Street
Melbourne, Vic, 3000

XXXXXXXXXXXXXXXXXX Pty Ltd

This Audit Opinion is prepared for the purposes of the Grant Agreement dated
(**Agreement**) between the State of Victoria and [insert] (**Recipient**) for the [insert name of project]
(**Project**).

Scope

We have conducted an independent audit in accordance with Australian Auditing Standards of the
[attached insert description of relevant Recipient (or if relevant a Participating
Organisation’s) document audited – may be statement by Recipient’s/Participating Organisation’s
chief financial officer] provided by the Recipient which specifies an figure of New Jobs
Created by the Project, in order to express an opinion on it for the purposes of the Agreement.

Our audit involved an examination, on a test basis, of evidence supporting the number of New Jobs
Created. This included an examination of personnel and payroll records of the Recipient (or [insert
name of Participating Organisation]) and an evaluation of the policies and procedures used to
calculate the number of New Jobs created. These procedures have been undertaken to form an
opinion as to whether the methodology used to calculate the number of New Jobs Created by the
Project is in accordance with the Agreement, and that the figure stated is true and fair.

This Audit Opinion expressed in this report has been formed on the above basis.

Audit Opinion

We confirm that in our opinion:

- (a) the Project has created New Jobs in Victoria as averaged for the 3 month period commencing [insert date] and ending [insert date]; and
- (b) the Recipient or a Participating Organisation have not used any of the Grant funds to employ a person other than a permanent resident of Australia, a citizen of Australia or New Zealand, the spouse of an Australian permanent resident or citizen (visa sub-class 300 or 309) or refugee.

Signed

Dated:

Print Name:

Position:

[Name of the Accounting Firm]

Schedule 5 – Reports

REPORTING REQUIREMENTS

Each Progress Report must refer to activities in Schedule 2 (Project Implementation Plan), Schedule 3 (Milestones, Timing & Payments) & Schedule 5 (Reporting requirements).

Schedule 5, Attachment 1 – Progress Report

PROJECT PROGRESS REPORT – to be submitted with Milestones 1 and 2.

1. ACTIVITY / PROJECT DETAILS:

Project Description and Scope:	Insert text.		
Company Name:	Insert company name.		
Name and Position of person writing report	Insert Name and title		
Date Grant Agreement was executed.	Insert date	Date Project commenced (i.e. Project Expenditure incurred.)	Insert date
Eligible project expenditure incurred to date.	Insert details AU\$ amount of Eligible Project Expenditure incurred to date (excluding GST).		

2. Project Status

<p>Taking into consideration the approved Project Implementation Plan provided at time of application, please provide an up-to-date progress report on the Project, including issues such as:</p> <p>(a) Whether there is, or may be a delay to the Project;</p> <p>(b) Whether there is any change to the scope, estimated cost or other aspect of the delivery of the Project;</p> <p>(c) Any other issues that the Department should be aware of.</p>	<p>Insert text here.</p>
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<p>How many jobs have been created to date? (Provide a Statutory Declaration)</p>		Anticipated at Project Application	Actual
	New Jobs Created		
	New jobs created filled by Ex-automotive/Alcoa workers		
	Jobs transitioned to higher value roles		
	Project period jobs (construction phase if applicable)		
<p>Agreed Milestone Deliverables, as per Contract: Provide commentary on how you have met the following:</p> <ul style="list-style-type: none"> • VIPP Commitments [Geelong projects only] • Skills & Job Centres Commitments – to employ ex-automotive/Alcoa [Geelong projects only] workers in the New Jobs Created <p>(provide evidence: ie, updated Employment Plan, Skills Questionnaire and evidence of the liaison)</p>	<p>Insert text here.</p>		

Please attach evidence of Eligible Project Expenditure incurred to date (i.e. equipment ordered/deposit paid, fit-out costs, etc.). Please also attach evidence that all environmental and/or planning permits have been applied for and/or issued (if required), together with a Statutory Declaration (Schedule 4 Part A).

Schedule 5, Attachment 2

FINAL REPORT – to be submitted with Milestone 3.

3. Activity/Project Details:

Project Title:	Insert text here.
Company Name:	Insert text here.
Report Date:	Insert date that this report was written.

4. Provide evidence that the Project has been completed:

Evidence of project completion
Insert text here. You may attach photographs, invoices, or other supporting documentation separately.

5. Evaluate the completed Project having regard to the intended outcomes described in the Project Implementation Plan:

Level of Job Creation:		Anticipated at project commencement	Achieved at project completion	Total FTEs at Project completion	Any additional new FTEs to be created within the next 12 months
New jobs New jobs for ex-automotive/Alcoa workers (evidence in the form of an independent audit opinion)	New jobs created				
	Jobs created have been filled by ex-automotive/Alcoa workers				
	Jobs transitioned to higher value roles				
	Project period jobs (construction phase if applicable)				
Detail on the impact of the Project on the creation of sustainable jobs, and the creation of jobs for local workers facing retrenchment from the automotive industry/Alcoa - include any upskilling of existing employees					
Expected productivity gains as a consequence of the Project	Insert text here.				

<p>How the Project will assist in capitalising on growth opportunities and improving competitiveness, and any improvements to date</p>	<p>Insert text here.</p>
<p>How the Project will enhance the sophistication and technical expertise of the business and encourage wider and ongoing innovation</p>	<p>Insert text here.</p>
<p>Contribution of the Project towards building the region's economy</p>	
<p>Any other anticipated outcomes from the project, eg other economic benefits to the region.</p>	<p>Insert text here.</p>
<p>Agreed Milestone Deliverables, as per Contract:</p> <p>Provide commentary on how you have met the following:</p> <ul style="list-style-type: none"> • VIPP Commitments [Geelong projects only] • Skills & Job Centres Commitments – to employ ex-automotive/ Alcoa [Geelong projects only] workers in the New Jobs Created <p>(provide evidence: ie, completed Employment Plan, Skills Questionnaire and evidence of the liaison)</p>	<p>Insert text here.</p>

6. Audited Financial Accounts:

Please attach the Company's audited financial accounts for the most recently completed financial year.

7. Other comments:

Other Comments

Optional

Insert text here.

Note: A Post Completion Evaluation Report and Statutory Declaration are required 12 months after project completion.

Schedule 5, Attachment 3

POST COMPLETION EVALUATION REPORT – to be submitted 12 months after Project completion

8. ACTIVITY / PROJECT DETAILS:

Project Title:	Insert Project title.
Recipient Name:	Insert company name.
Name and Title of person writing report	Insert Name and title
Report Date (12 months after project completion):	Insert date of this report.

9. ACHIEVEMENTS

Has the project achieved all of the outcomes that were initially outlined in the Project Implementation Plan? How were these achieved?	Insert text here.			
How many jobs have been created or transitioned as a result of the project? (Statutory Declaration to be provided)		Anticipated	Achieved at Project Completion	Achieved 1 year-post completion of project (to indicate sustainability of new jobs)
	New Jobs Created			
	Jobs created have been filled by ex-automotive/Alcoa workers			
	Jobs transitioned to higher value roles			
	Project period jobs (construction phase if applicable)			Click here to enter text.
Detail on the impact of Project on creation of sustainable jobs, and the creation of jobs for local workers facing retrenchment from the automotive industry/Alcoa – one year post project completion				
How has the project helped to increase your productivity? Please quantify.	Insert text here.			

How has the project assisted you to capitalise on growth opportunities?	Insert text here.
How has the project enhanced the sophistication and technical expertise of your business?	Insert text here.
Has the project contributed towards building the region's economy (eg, diversification of the State's economy including supply chain improvements.	Insert text here.
Were there any other outcomes from the project?	Insert text here.

10. OTHER COMMENTS

Other Comments
<p><i>Optional</i></p> <p>Insert text here.</p>

Please attach the audited financial accounts of the Recipient for the most recently completed financial year, together with a Statutory Declaration Schedule 4 Part A.

Schedule 6– Tax Invoice requirements

[Note: A preferred invoicing template will also be accepted if it includes the information requested in the table.]

Tax Invoice	
Grant Recipient registered name	Invoiced to
	Department of Economic Development, Jobs, Transport and Resources
Project name	Grant Recipient ABN
Grant Recipient contact person	Grant Recipient postal address
Milestone number	Grant Recipient EFT details (BSB, Acct Name and Acct #)
Invoice Date	Invoice number
Invoice amount ex GST	Invoice GST amount
Invoice amount incl GST	