



Department of Economic Development,
Jobs, Transport & Resources

Funding Agreement

Future Industries Fund

Manufacturing Program

[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 Future Industries Fund, Manufacturing Program. The Schedules in the Funding Agreement will be tailored as required for each Project funded under the Manufacturing Program. 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 its Department of Economic Development, Jobs, Transport and Resources (**Department**)

Address and notice details Address: Level *[insert]*, 121 Exhibition Street, Melbourne Vic 3000
Email: *[insert]*
Attention: *[insert]*

Name ***[insert name and ABN]***

ABN ***[insert]***

Short form name **Recipient**

Address and notice details Address: *[insert]*
Email: *[insert]*
Attention: *[insert]*

Background

- A In October 2015 the Minister launched the Manufacturing Grants Program (**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'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 in the form of Part B or Part C of Schedule 4 (or such other form approved in writing by the Department).

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 this Agreement on-

- (a) Project related non-capitalised expenditure (excluding expenditure on vehicles, internal costs or salaries);
- (b) manufacturing product and process improvements (including significant improvements in technical specifications, components and materials, software for the Project, user friendliness or other functional characteristics and/or new or significantly improved production or delivery methods);
- (c) prototyping, evaluation and testing of new products and manufacturing processes;
- (d) supply chain capability development;
- (e) tooling;
- (f) external training costs specific to the technology for the Project;
- (g) labour and contractors for the Project (but does not include internal salaries);
- (h) manufacturing machinery and equipment, (for example, repurposing state-of-the-art automotive manufacturing equipment); or
- (i) minor alterations and fit-out costs to existing buildings.

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 10.2.

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.

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, 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.

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.

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

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.

Minister means the Minister for Industry 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;

Post Completion Evaluation Report means the report required to be provided by the Recipient to the Department under clause 10.3.

Progress Reports means the reports required to be provided by the Recipient to the Department under clause 10.1.

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 1.

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 Plan means the Project Plan contained in Schedule 2.

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

Statutory Declaration means a statutory declaration in the form of Schedule 4, Part A (or such other form approved in writing by the Department).

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

Transitioned Job means an existing job as at the Date of this Agreement, that is transitioned into a higher value, or higher skilled position as a direct result of the Project.

Warranted Materials has the meaning given to it in clause 14.4.

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 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 under clause 12, 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 is 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 5.2, 5.3, 5.4, 5.5, 6, 7 and 12.3, 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 12.1, 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 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 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) there being no material breach of any Participating Organisation agreement which has not been remedied to the satisfaction of the Department; and
- (i) the Department being satisfied that the written reports referred to in clause 10 have been provided by the Recipient in accordance with this Agreement (including that the non-confidential sections of those reports contain sufficient details for the Department to be able to use the reports as described in clause 10.4(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 Plan and milestones

6.1 Project Plan

The Project 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 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 Plan and must submit a proposed updated Project Plan to the Department within the time specified by the Department. If the Department is not satisfied with the revised Project Plan the Department may withhold Grant instalments and seek redress under clause 12.

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 Plan in consultation with the Department and any other Participating Organisations to take into account the change;
- (c) submit a revised Project Plan to the Department within 30 days of agreement on any changes; and
- (d) ensure that any revision to the Project 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 Plan and the Recipient does not comply with the Project Plan in the form approved by the Department, the Department may withhold Grant instalments and seek redress under clause 12.

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 Plan, including by ensuring that the establishment and management of the activities detailed in the Project Plan adheres to the timelines specified in the Project Plan and Schedule 3;
 - (iv) ensure that the activities detailed in the Project Plan are at all times professionally managed;
 - (v) meet any other reasonable requests of the Department in relation to the Project 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 9 and clause 16 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 or ought to reasonably believe 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. Publicity and promotion

9.1 Publicity by Recipient

- (a) Subject to clauses 9.1(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 19.1(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 or bring into disrepute 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.

9.2 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.

10. Written reports

10.1 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 the form and with the content requirements set out in Schedule 5, Attachment 1 or Attachment 2.

10.2 Final Report

The Recipient agrees to provide the Final Report in the form and with the content requirements set out in Schedule 5, Attachment 3 in accordance with the timeframes set out in Schedule 3.

10.3 Post Completion Evaluation Report

The Recipient agrees to provide the Post Completion Evaluation Report in the form and with the content requirements set out in Schedule 5, Attachment 4 within 30 days after the first anniversary date of the Completion Date.

10.4 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. Records, audit and inspection

11.1 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 11.1(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.

11.2 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 (if relevant).

11.3 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 (if relevant) 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.

11.4 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.

11.5 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.

12. Compliance with undertakings and deterioration in financial circumstances

12.1 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) 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;
- (f) 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;
- (g) the Recipient or a Participating Organisation has become subject to Insolvency Administration;
- (h) 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;
- (i) 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;
- (j) the Recipient has failed to ensure that the number of New Jobs Created are maintained for at least 12 months after the Completion Date;
- (k) 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;
- (l) 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
- (m) 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:

- (n) withhold, suspend, cancel or terminate any payment or payments of the Grant due or to fall due under this Agreement;
- (o) 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
- (p) immediately terminate this Agreement by giving written notice to the Recipient.

12.2 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.

12.3 No derogation

Nothing in this Agreement, including clause 12.1, affects any rights or remedies otherwise available to the Department or the State at law.

13. 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.

14. Intellectual Property

14.1 Project Intellectual Property

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

14.2 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.

14.3 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.

14.4 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 14.2.

14.5 Remedy for breach of warranty

If the Recipient breaches either of the warranties in clause 14.4, 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 15 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 14 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 14 does not infringe the Intellectual Property rights of any other person without any degradation of the affected Warranted Materials.

15. Indemnity and Insurance

15.1 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 15 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.

15.2 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 14.4 or under the indemnities in clause 15.1(a).

15.3 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 15.3.

16. Confidentiality

16.1 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.

17. Conflict of interest

17.1 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.

17.2 Conflict during the term

Without limiting the operation of this clause 17, 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 Plan.

17.3 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.

17.4 Failure to resolve Conflict

If the Recipient fails to notify the Department under this clause 17, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Agreement in accordance with clause 12.

18. 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 18 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 two (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 12 or take such other steps as are available under this Agreement.

18.2 Unless the Department takes action under subclause 18(c), the Recipient is required to comply with the time frame for progressing and completing the Project as set out in this Agreement.

19. Notices

19.1 Service of notices

- (a) Subject to clause 19.1(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 9.1(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 19.1(a).

19.2 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.

20. Miscellaneous

20.1 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.

20.2 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.

20.3 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.

20.4 Assignment

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

20.5 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 12.1, 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.

20.6 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 9.1(b) and 9.1(c) (Publicity and promotion);
 - (ii) clause 11 (Records audit and inspection);
 - (iii) clause 14 (Intellectual Property);
 - (iv) clause 15.1 (Indemnity);
 - (v) clause 15.3 (Insurance);
 - (vi) clause 16 (Confidentiality);
 - (vii) clause 17 (Conflict of interest); and
 - (viii) clause 20.2 (Equal opportunity, anti-discrimination and privacy legislation).

20.7 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.

20.8 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.

20.9 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.

20.10 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.

20.11 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.

20.12 Survival

Clauses 1, 9, 11, 12.3, 13, 14, 15, 20.1, 20.3, 20.6, 20.7, 20.8, 20.10 and this clause 20.12 survive termination or expiry of this Agreement.

Draft Agreement

Signing page

EXECUTED as an agreement.

Signed by *[insert name and title of person signing on behalf of the Department]*
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 in accordance with section 127 of
the *Corporations Act 2001* (Cth) by *[insert
Recipient name]*

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Date

|

[Option B – Sole Director]

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

Sole Director and Sole Secretary Signature

Witness Signature

Print Name

Print Name

Date

Draft Agreement

Schedule 1– Project Particulars

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

Schedule 2– Project Plan

Insert Project Plan as approved by the Department during the application process

Draft Agreement

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 <i>[Insert description of Project Milestone.</i></p> <p><i>Milestones are achievements of significant steps in the Project, usually the completion of significant milestones/targets, expenditure of Eligible Project Expenditure, creation of New Jobs, or acceptance of important deliverables.]</i></p>	<ul style="list-style-type: none"> - (Tax invoice) A valid Tax Invoice; - (Evidence) <i>[insert details of any relevant milestones/targets/approvals etc. that are required ie number of New jobs created and by whom, amount of Eligible Project Expenditure required to have been incurred etc.];</i> - (Reports) <i>[insert details of any relevant reports, models, Project plans, audit options, statutory declarations that are required]</i> - (Statutory Declaration) <i>[A Statutory Declaration in the form provided in Schedule 4, Part A.]</i> - (Audit Opinion) <i>[An Audit Opinion in the form provided in Schedule 4, Part B or Part C, if required.]</i> - (Other) <i>[insert other milestones, targets, approvals, or anything else that is required. If nothing is required, this can be deleted.]</i> 			
<p>MILESTONE 2 <i>[Insert description of Project Milestones.]</i></p>	<ul style="list-style-type: none"> - (Tax invoice) A valid Tax Invoice; - (Evidence) <i>[insert details of any relevant milestones/targets/approvals etc. that are required];</i> - (Reports) <i>[insert details of any relevant reports, models, Project plans, audit options, statutory declarations that are required]</i> - (Audit Opinion) <i>[A final Audit Opinion in the form provided in Schedule 4, Part B or Part C]</i> - (Other) <i>[insert other milestones, targets, approvals, or anything else that is required. If nothing is required, this can be deleted.]</i> 			

MILESTONE 3 <i>[Insert description of Project Milestones.]</i>	<ul style="list-style-type: none"> - (Tax invoice) A valid Tax Invoice; - (Evidence) <i>[insert details of any relevant milestones/targets/approvals etc. that are required];</i> - (Reports) <i>[insert details of any relevant reports, models, Project plans, audit options, statutory declarations that are required]</i> - (Audit Opinion) <i>[A final Audit Opinion in the form provided in Schedule 4, Part B or Part C]</i> - (Other) <i>[insert other milestones, targets, approvals, or anything else that is required. If nothing is required, this can be deleted.]</i> 			
Total	\$			

Draft Agreement

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 has incurred or is legally obliged to incur at least 10 per cent of Eligible Project Expenditure within 90 days from the Date of this Agreement.*
- The Recipient has incurred *[\$#]* of Eligible Project Expenditure on the Project as at *[insert date]* for milestones *[#,# and #]* in accordance with the terms of the Agreement.
- *[insert name]* a Participating Organisation has incurred *[\$#]* of Eligible Project Expenditure on the Project as at *[insert date]* for milestones *[#,# and #]* in accordance with the terms of the Agreement.**
- The Recipient has created [] New jobs in Victoria as a direct result of the Project as at *[insert date]* for milestones *[#,# and #]* in accordance with the terms of the Agreement.**
- *[insert name]* a Participating Organisation has created [] New jobs in Victoria as a direct result of the Project as at *[insert date]* for milestones *[#,# and #]* in accordance with the terms of the Agreement.**
- The accounts relating to the Project as attached to this Statutory Declaration are true and correct.***

[Insert any other details as required – delete if nothing else is required]

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*

**only required for first instalment*

***insert if relevant, otherwise delete*

****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 and the connection to the Project.*

Draft Agreement

Part B - Audit Opinion – Eligible Project Expenditure

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

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

XXXXXXXXXXXXXXXXX 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
Department of Economic Development,
Jobs, Transport & Resources
121 Exhibition Street
Melbourne, Vic, 3000

XXXXXXXXXXXXXXXXX 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 in Victoria 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 in Victoria. 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 in Victoria. These procedures have been undertaken to form an opinion as to whether the methodology used to calculate the number of New Jobs Created in Victoria 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, the Project has created New Jobs in Victoria as averaged for the 3 month period commencing [*insert date*] and ending [*insert date*].

Signed

Dated:

Print Name:

Position:

[*Name of the Accounting Firm*]

Schedule 5 – Reports

REPORTING REQUIREMENTS

The Recipient must provide the following reports to the Department:

Schedule 5, Attachment 1 – Progress Report

FUTURE INDUSTRIES FUND

MANUFACTURING PROGRAM

PROJECT PROGRESS REPORT – to be submitted with Milestone 1.

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. NB. A minimum of ten per cent (10%) of Eligible Project Expenditure must be incurred within 90 days of execution of the Grant Agreement (evidence to be attached).	Insert details AU\$ amount of eligible project expenditure incurred to date (excluding GST).		

2. Project Status

<p>Taking into consideration the approved Project 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>Insert text here.</p>			
<p>How many jobs have been created or transitioned to date? (Provide evidence and a Statutory Declaration)</p>	<p>New Jobs Created</p>		<p>Transitioned Jobs</p>	
	<p>Anticipated</p>	<p>Insert number of new jobs that were anticipated at time of application</p>	<p>Anticipated</p>	<p>Insert number of transitioned jobs that were anticipated at time of application.</p>
	<p>Actual</p>	<p>Insert actual number of jobs created to date.</p>	<p>Actual</p>	<p>Insert actual number of jobs transitioned to date.</p>
<p>Agreed Milestone Deliverables, as per Contract.</p>	<p>Insert text here.</p>			

Please attach evidence of Eligible Project Expenditure incurred to date (i.e. equipment ordered/deposit paid, consulting fees, 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).

Schedule 5, Attachment 2 – Progress Report

FUTURE INDUSTRIES FUND

MANUFACTURING PROGRAM

PROJECT PROGRESS REPORT – to be submitted with Milestone 2 (midway through the Project).

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		Anticipated completion date of Project	Insert date
Date of this Report	Insert date			
Eligible project expenditure incurred to (evidence to be attached together with a Statutory Declaration).	Insert details AU\$ amount of eligible project expenditure incurred to date (excluding GST).			

2. Project Status

<p>Taking into consideration the approved Project Plan provided at time of application, please provide an up-to-date progress report on the Project, including issues such as:</p> <p>(c) Whether there is, or may be a delay to the Project;</p> <p>(d) Whether there is any change to the scope, estimated cost or other aspect of the delivery of the Project.</p> <p>(e) Please attach an updated Project Plan if substantially different from the original, approved Plan</p>	Insert text here.
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How many jobs have been created or transitioned to date? (Provide evidence and a Statutory Declaration)	New Jobs Created		Transitioned Jobs	
	Anticipated	Insert number of new jobs anticipated at time of application	Anticipated	Insert number of transitioned jobs anticipated at time of application.
	Actual	Insert actual number of jobs created to date.	Actual	Insert actual number of jobs transitioned to date.
Agreed Milestone Deliverables, as per Contract.	Insert text here.			

Please attach evidence of Eligible Project Expenditure incurred to date (i.e. equipment ordered/deposit paid, consulting fees, etc. Please also attach evidence that all environmental and/or planning permits have been issued (if required) and a Statutory Declaration (Schedule 4).

Schedule 5, Attachment 3 – Final Report

FUTURE INDUSTRIES FUND

MANUFACTURING PROGRAM

FINAL REPORT – to be submitted with Milestone 3.

1. Activity/Project Details:

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

2. 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.

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

Impact of the Project on Employment and Skills:		Anticipated at project commencement	Achieved at project completion	Any additional new FTEs to be created within the next 12 months
New and transitioned jobs (evidence in the form of an independent audit)	New jobs created	Insert text here.	Insert text here.	Insert text here.
	Jobs transitioned to higher value roles	Insert text here.	Insert text here.	Insert text here.
Impact of the Project on Employment and Skills: Training for new and existing employees	Insert text here.			
Expected productivity gains as a consequence of the Project (please quantify).	Insert text here.			
How the Project will assist in capitalising on growth opportunities and improving competitiveness, and any improvements to date.	Insert text here.			

How the Project will enhance the sophistication and technical expertise of the business and encourage wider and ongoing innovation.	Insert text here.
Any other anticipated outcomes from the project.	Insert text here.

4. Audited Financial Accounts:

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

5. Other comments:

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

Note: A Post Completion Evaluation Report and separate audit of employment, are required 12 months after project completion.

Schedule 5, Attachment 4 – Post Completion Evaluation Report

FUTURE INDUSTRIES FUND

MANUFACTURING PROGRAM

POST COMPLETION EVALUATION REPORT – to be submitted within 30 days after the first anniversary date of the Completion Date of the Project

6. 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.

7. ACHIEVEMENTS

Has the project achieved all of the outcomes that were initially outlined in the project plan? How were these achieved?	Insert text here.			
How many jobs have been created or transitioned as a result of the project? <i>(Independent audit of staff to be provided as evidence, together with a Statutory Declaration.)</i>	New Jobs Created		Transitioned Jobs	
	Anticipated	Insert number of new jobs that were anticipated at time of application	Anticipated	Insert number of transitioned jobs that were anticipated at time of application.
	Actual	Insert actual number of jobs created to date.	Actual	Insert actual number of jobs transitioned to date.
How has the project helped to increase your productivity? Please quantify.	Insert text here.			
How has the project assisted you to access new markets and improve your competitiveness?	Insert text here.			
How has the project enhanced the sophistication and technical expertise of your business?	Insert text here.			
Has the project contributed to the diversification of the State's economy including supply chain improvements.	Insert text here.			

Were there any other outcomes from the project?

Insert text here.

8. OTHER COMMENTS

Other Comments

Optional

Insert text here.

Please attach the audited financial accounts of the Recipient for the most recently completed financial year, together with a Statutory Declaration and an Audit Opinion of New Jobs Created – see Schedule 4 parts A and C.

Draft Agreement

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, Acc Name and Acc #)
Invoice Date	Invoice number
Invoice amount ex GST	Invoice GST amount
Invoice amount incl GST	