

The department reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative funding terms and conditions for individual recipients having regard to the nature and scope of the recipient's project.

**FUNDING AGREEMENT
MADE IN QUEENSLAND PROGRAM**

BETWEEN

STATE OF QUEENSLAND
through the Department of State Development, Manufacturing,
Infrastructure and Planning
(ABN 29 230 178 530)

AND

[#RECIPIENT NAME] (ACN [#Recipient ACN])
(ABN [#Recipient ABN])

Project: [#Project Name]

Project ID: MIQ[#Reference Number]

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MADE IN QUEENSLAND PROGRAM

REFERENCE SCHEDULE

1.	Recipient:	#
2.	Project title:	#
3.	Project ID and Application Form Reference:	MIQ# Application Form Reference # and Date
4.	Project:	<p># [Note: This Item 4 must clearly set out the scope of the Project. The content of this Item 4 will depend on complexity of the project that is being implemented and the level of detail included by the Recipient in the Application Form.</p> <p>The Department should clearly describe the services/products in this item 4, and where required, by reference to the relevant technical document. This description of the Project should also describe the link to the Project Site]</p>
5.	Project Site	# [Note: Insert the address of the Project Site - e.g. the Queensland based office of the Recipient that will have the benefit of the Project]
6.	End Date:	Thirteen months after the final Deliverable Date
7.	Total Maximum Funding Contribution (exclusive of GST)	# [Note: this is the total of the Maximum Deliverable Funding Contributions, as set out in the last column of the table in Schedule 1]
8.	Total Project Cost (exclusive of GST)	# [Note this is the total of Estimated Total Deliverable Project Costs as set out in Schedule 1 - it includes both Eligible and Ineligible Project Costs]
9.	Initial Payment	# [Note: Department to insert the amount of the Initial Payment. The amount of the Initial Payment must not exceed 20% of the <u>Total Maximum Funding Contribution</u>]
10.	Retention Percentage	# [Note: Department to insert the percentage of the Funding Contribution beyond which the State will withhold payment until it receives the Post Completion Report]
11.	Insurance:	<ul style="list-style-type: none"> • Public liability insurance for the amount of \$20,000,000 in respect of each claim. • General insurance against loss or damage to the Recipient's property caused by or resulting from accident, fire, theft, malicious damage or storms and any other insurable risk which property of a similar nature is commonly insured against. • Workers' compensation insurance for the Recipient's employees in accordance with the <i>Workers Compensation and Rehabilitation Act 2004</i> (Qld).

		<ul style="list-style-type: none"> # [Insert others if applicable. For example – shipping insurance if the equipment is being transported from overseas.]
12.	Contact officers:	<p>For the Department:</p> <p>Name: Latiffa Ling Title: Director, Commercial Evaluation & Management Street Address: Level 17, 1 William Street, Brisbane QLD 4000 Postal Address: PO Box 15009, City East QLD 4002 Tel: (07) 3452 7348 Email: Latiffa.Ling@dsmip.qld.gov.au</p> <p>For the Recipient:</p> <p>Name: Title: Street Address: Postal Address: Tel: Mobile: Email:</p>
13.	Special conditions	<p>Special Condition 1 – Non-Disposal of Assets</p> <p>[Note: this special condition 1 should only be included in a Funding Agreement if the Project involves the purchase of assets (i.e. equipment) purchased with the MIQ funding].</p> <p>1.1 The Recipient must, during the Term and for a period of 48 months following the End Date:</p> <ul style="list-style-type: none"> (a) not Dispose of the Assets; (b) not relocate the Assets outside of Queensland; (c) not agree to or do anything to create or allow the creation of a Security Interest in the Assets; (d) not decommission the Assets; (e) use the Assets for the purposes of and in the manner contemplated for the Project; (f) maintain the Assets in good working order; (g) maintain all appropriate insurances in respect of the Assets; and (h) maintain a register of all Assets setting out the date of purchase and the purchase or lease price and Asset description (Register), <p>unless otherwise approved by the Department in writing.</p> <p>1.2 Upon request by the Department, the Recipient must provide a copy of the Register to the Department.</p> <p>1.3 For the purposes of this Special Condition:</p> <p>'Assets' means the items of plant or equipment, including software systems and associated hardware specified in Schedule 1;</p> <p>'Dispose' means sell, convey, transfer, assign, lease or otherwise part</p>

		<p>with possession of the Asset;</p> <p>'Security Interest' means a mortgage, charge (fixed or floating), lien, Personal Property Securities Act security interest, or other encumbrance over the Assets securing the repayment of a loan, credit contract, credit facility or other financial commitment.</p> <p>1.4 This Special Condition 1 survives termination or expiration of this Agreement.</p> <p>Special Condition 2 – Project Plan</p> <p>[Note: this special condition 2 should be included in a Funding Agreements if the Project is complex or there is a risk that the Recipient may not seek to complete the Deliverables within the Term. May not be necessary for projects involving the supply of a single piece of equipment from a single supplier].</p> <p>2.1 Within 10 days of the Start Date, and prior to sending the Department an invoice for the Initial Payment, the Recipient must prepare and submit to the Department a project plan for the Project that satisfies (in the Department's reasonable opinion) the requirements of special condition 2.2.</p> <p>2.2 The project plan (Project Plan) must set out how the Recipient proposes to complete the Project, including:</p> <ul style="list-style-type: none"> (a) the objectives and outcomes of the Project; (b) how those objectives and outcomes are proposed to be achieved; and (c) the timing for achievement of those objectives and outcomes. <p>2.3 If the Department is not satisfied with any aspect of the Project Plan:</p> <ul style="list-style-type: none"> (a) the Department must notify the Recipient that it is not satisfied and request that the Recipient amend and resubmit the plan and any further information required within a reasonable time period notified by the Department; (b) the Recipient must amend the Project Plan and provide such further information in the Project Plan within the reasonable time period, as notified by the Department. <p>The Department and the Recipient must repeat this process until the Department is satisfied with the Project Plan.</p> <p>2.4 The Department must notify the Recipient in writing if it is satisfied with a Project Plan submitted in accordance with this Special Condition 2.</p> <p>2.5 The Recipient:</p> <ul style="list-style-type: none"> (a) must conduct the Project in accordance with the Project Plan; (b) must demonstrate and provide evidence the Recipient's progress in achieving the objectives and outcomes set out in the Project Plan in accordance with the time periods set out in the Project Plan in each Progress Report it submits to the Department in accordance with this Agreement; (c) may only submit a Payment Claim if the Department has notified the Recipient that it is satisfied with a submitted Project Plan. <p>2.6 If the Department forms the reasonable opinion that the Recipient is not carrying out the Project in accordance with the Project Plan, the Department may, without prejudicing any of its other rights:</p>
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		<p>(a) refuse a Payment Claim;</p> <p>(b) suspend the making of any Funding Contributions the subject of existing Payment Claims;</p> <p>(c) terminate this Agreement in accordance with clause 14.</p> <p>2.7 The Recipient may, at any time during the Term, submit to the Department a request to amend a Project Plan. Special conditions 2.4 and 2.5 will apply to the review of an amended Project Plan as if the amendments requested were a new Project Plan. Any amendment to the Project Plan is at the absolute discretion of the Department.</p> <p>Special Condition 3 – [#Insert any others if relevant otherwise delete]</p>
14.	Trust	<i>[If applicable, insert the name of the trust. If not applicable, insert "not applicable"]</i>
15.	Nominated bank account	<p>Account Name: [insert account name]</p> <p>BSB: [insert BSB]</p> <p>Account Number: [insert account number]</p>

Funding Agreement dated

Parties State of Queensland through the Department of State Development, Manufacturing, Infrastructure and Planning ABN 29 230 178 530 (**Department**)

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

1. Interpretation

1.1 In this Agreement, unless the contrary intention appears:

'Actual Deliverable Eligible Project Cost' means, in relation to a Deliverable, the actual Eligible Project Costs in relation to the achievement of that Deliverable;

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

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

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

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

'Completion' means the stage when the Project has been completed in accordance with this Agreement;

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

'Deliverable' means a deliverable set out in Schedule 1;

'Deliverable Date' means the date specified in Schedule 1 in relation to the Deliverable;

'Deliverable Provider' means, for each Deliverable, the person named in the "Deliverable Provider Column" in Schedule 1, who will be engaged by the Recipient to provide the goods or services that comprise the Deliverable;

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

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

'Estimated Deliverable Eligible Project Cost' means the estimated Eligible Project Costs for each Deliverable, as specified for each Deliverable in the "Estimated Deliverable Eligible Project Cost" column in Schedule 1;

'Estimated Deliverable Ineligible Project Cost' means the estimated Ineligible Project Costs for each Deliverable, as specified for each Deliverable in the "Estimated Deliverable Ineligible Project Cost" column in Schedule 1;

'Estimated Total Deliverable Project Cost' means the estimated Eligible Project Costs and Ineligible Project Costs for each Deliverable, as specified for each Deliverable in the "Estimated Total Deliverable Project Cost" column in Schedule 1;

'Force Majeure' means any occurrence or non-occurrence of an event as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other

than a payment obligation) under this Agreement and that is beyond the reasonable control of that party, including, but not limited to, forces of nature, industrial action, act of war or embargo;

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

'Funding Contribution' means an amount paid to the Recipient in relation to a Deliverable under this Agreement, including the Retention Amounts.

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

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

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

'Ineligible Project Costs' means:

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

'Initial Payment' means 20% of the Total Maximum Funding Contribution, specified in Item 9 of the Reference Schedule;

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

'Maximum Deliverable Funding Contribution' means, for a Deliverable, the amount specified in the "Maximum Deliverable Funding Contribution" column at Schedule 1 in relation to the Deliverable;

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

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

'Program Guidelines' means the document published by the Department of State Development, Manufacturing, Infrastructure and Planning titled 'Made in Queensland Program - Round 2 - Guidelines for Applicants', as may be amended from time to time;

'Progress Report' means the report or reports to be prepared by the Recipient and submitted to the Department as required under clause 3.1(j);

'Project' means the goods or services described in Item 4 of the Reference Schedule to be part-funded by the Funding;

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

'Project Site' means the site specified in item 5 of the Reference Schedule;

'Reference Schedule' means the schedule containing project particulars at the beginning of

this Agreement;

'Retention Amount' has the meaning given in clause 8.1;

'Retention Percentage' means the amount, expressed as a percentage of the Funding Contribution, set out in Item 10 of the Reference Schedule;

'Special Conditions' means the Special Conditions, if any, described in Item 13 of the Reference Schedule;

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

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

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

'Term' has the meaning given in clause 2;

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

'Total Project Cost' means the amount specified in Item 8 of the Reference Schedule.

1.2 In this Agreement:

- (a) a reference to an individual or person includes a corporation or other legal entity;
- (b) a reference to 'the Department' or 'the Recipient' respectively includes the Department's and the Recipient's officers, employees, contractors or agents;
- (c) words importing a gender include any other gender;
- (d) words in the singular include the plural and vice versa;
- (e) headings have been inserted for ease of reference only and are not intended to affect the meaning of this Agreement;
- (f) in the case of any inconsistency between a Schedule (except the Special Conditions) and this Agreement, the precedence will be in the order of Special Conditions, Agreement and Schedules to the extent of any inconsistency;
- (g) defined terms include other parts of speech and grammatical forms of the defined word or phrase;
- (h) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (i) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) the meaning of general words is not limited by specific examples introduced by "includes" or "including" or similar expressions; and
- (k) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it.

2. Term

2.1 This Agreement starts on the Start Date and ends on the End Date unless terminated earlier in accordance with clause 14.

3. The Recipient's Obligations

3.1 The Recipient must:

- (a) achieve Completion of the Project within twelve months of the Start Date;
- (b) achieve each Deliverable by its respective Deliverable Date to the satisfaction of the Department;
- (c) expend an amount at least equal to the Total Project Cost on the delivery of the Project during the Term;
- (d) comply with the Special Conditions to the satisfaction of the Department;
- (e) exercise due care and skill in carrying out the Project;
- (f) only claim for the reimbursement of Eligible Project Costs and use the Funding for the purpose of obtaining or achieving the Deliverables and for no other purpose;
- (g) operate commercially in the State of Queensland throughout the Term;
- (h) have an Australian Business Number;
- (i) effect and maintain the insurances specified in Item 11 of the Reference Schedule covering all contractors, sub-contractors, employees, licensees and invitees of the Recipient in respect of the Project and produce evidence that such insurances have been effected and maintained to the Department at the time of making each Payment Claim and upon request by the Department;
- (j) submit to the Department the Progress Report(s):
 - (i) with each Payment Claim; and
 - (ii) within 5 Business Days following a request by the Department;in the format set out in Schedule 3 signed by the Recipient's chief executive officer (or equivalent);
- (k) submit to the Department the Completion Report with the Recipient's final Payment Claim, in accordance with Schedule 2 and in the format set out in Schedule 4;
- (l) submit to the Department the Post Completion Report 12 months after the final Deliverable Date in the format set out in Schedule 5;
- (m) provide to the Department reporting and information (additional to the Progress Reports) in respect of the Project and the Recipient's compliance with this Agreement, as reasonably requested by the Department;
- (n) own or have lawful access to Intellectual Property for the product and/or service that the Recipient is undertaking as part of the Project and make it available for the Project;
- (o) keep proper and adequate Books of Account in relation to the Funding and the Project;
- (p) record all expenditure relating directly or indirectly to, the Project, separate from all

other income and expenditure of the Recipient;

- (q) if required by the Department, at the end of the Project and at the expense of the Recipient, have its Books of Account audited in relation to the Funding and the Project (including expenditure on Ineligible Project Costs) and provide a copy of the audited accounts to the Department by the End Date;
- (r) if requested by the Department arrange for an authorised representative of the Recipient to attend an interview with the Department to discuss the outcomes of the Project;
- (s) upon 3 Business Days' notice permit and provide persons (**Auditors**) nominated by the Department access at all reasonable times to the Recipient's premises, books, records, documents, computer systems, equipment and other property to verify compliance by the Recipient with its obligations under this Agreement;
- (t) if the Recipient is required to permit and provide access to Auditors in accordance with paragraph (s), permit the Auditors to make copies of books, records, documents and other materials, and provide the Auditors with the necessary facilities to enable them to do so;
- (u) if applicable, promptly notify and obtain the Department's prior written consent to any proposed replacement of the Deliverable Provider for each Deliverable; and
- (v) immediately notify the Department in writing when it becomes aware of any of the following:
 - (i) any actual or proposed material change which affects, or may affect, the Recipient (including, but not limited to, any actual or proposed change in control of the Recipient or any change in key personnel of the Recipient);
 - (ii) the occurrence or likely occurrence of any delay or failure to meet a Deliverable; and
 - (iii) any matters that relate to, or may be expected to, adversely affect the Recipient (including, but not limited to, its financial position and reputation, or reputation and standing of its key personnel) or the Project.

3.2 The Recipient's notification under clause 3.1(v) does not limit the Department's rights under this Agreement or at law.

3.3 The Recipient warrants and acknowledges that:

- (a) all information contained in the Application Form or that the Recipient otherwise provides in support of this Agreement is true, accurate and complete;
- (b) all ancillary material provided by the Recipient at any time under or in connection with the Application Form or this Agreement is true, accurate and complete;
- (c) the Recipient engages the Deliverable Provider (if any) and undertakes the Project entirely at the Recipient's own risk;
- (d) the State has not made any representations or warranties in connection with any Deliverable Providers, the Project or the Project's outcomes and any representations or warranties that would otherwise be implied are excluded; and
- (e) no conflict of interest exists or is likely to arise in relation to its receipt of the Funding or the performance of its obligations under this Agreement and if during the Term a conflict of interest arises, the Recipient will notify the Department immediately in writing of that conflict of interest and will take all reasonable steps required by the Department to remove such conflict of interest.

4. Initial Payment

- 4.1 If applicable, the Department will pay the Initial Payment to the Recipient within 30 days of receipt of a valid Tax Invoice from the Recipient.
- 4.2 The Recipient must expend the Initial Payment towards the achievement of the Deliverables.
- 4.3 If at the end of the Term the Recipient has failed, in the Department's reasonable opinion, to comply with clause 4.2, the Department may at any time require the Recipient to repay the Initial Payment provided to the Recipient under this Agreement. The Recipient agrees that such sum will be a debt due and recoverable by the Department.

5. Provision of Funding Contributions

- 5.1 Subject to the terms of this Agreement, the Department will pay a Funding Contribution to the Recipient in relation to each Deliverable up to the lesser of:
- (a) the Maximum Deliverable Funding Contribution for the Deliverable; and
 - (b) 50% of the Actual Deliverable Eligible Project Cost expended by the Recipient for the Deliverable.
- 5.2 Subject to clause 6, 7 and 8, the Department will pay the relevant Funding Contribution to the Recipient to its nominated bank account listed in the Reference Schedule within 30 days of receipt of a valid Payment Claim.
- 5.3 The Recipient acknowledges that:
- (a) subject to clause 5.1, the Recipient is responsible for payment of all costs and expenses associated with the Project; and
 - (b) there is no obligation on the Department to provide any additional or future financial assistance in respect of the Project unless the Department, in its sole discretion, determines otherwise.
- 5.4 The Project and the Deliverables may only be varied with the prior written approval of the Department, to which approval may be given subject to conditions, including a variation to the amount of the Funding.

6. Payment Claims

- 6.1 The Recipient must make a Payment Claim to the Department to be eligible for a Funding Contribution.
- 6.2 A Payment Claim must include the information and material specified in Schedule 2.
- 6.3 The Department may, at any time after receiving a Payment Claim, request the Recipient to provide to the Department any additional information required by the Department prior to processing the Payment Claim. The Recipient must comply with any request under this clause within 5 Business Days of the Department's request.
- 6.4 The Recipient may only make a Payment Claim within 10 Business Days of the completion of a Deliverable specified in Schedule 1.
- 6.5 The Recipient must not make a Payment Claim for reimbursement of any Ineligible Project Costs.
- 6.6 For the avoidance of doubt, the Department will only provide a Funding Contribution in respect of a Payment Claim where the Payment Claim is for reimbursement of Eligible Project Costs.

7. Refusing or withholding payment of Funding Contributions

7.1 If the Recipient:

- (a) fails to obtain or achieve a Deliverable by the relevant Deliverable Date; or
- (b) is otherwise in breach of this Agreement,

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

- (c) refuse a Payment Claim;
- (d) withhold payment of a Payment Claim until the Recipient is no longer in breach of this Agreement or the Department has waived the Recipient's breach in writing; or
- (e) terminate this Agreement in accordance with clause 14.

8. Retention Payment

8.1 If a Retention Percentage is specified in Item 10 of the Reference Schedule, the Department may withhold from a Funding Contribution payment (other than the Initial Payment) an amount equal to the Retention Percentage of that Funding Contribution, until the State receives the Post Completion Report (**Retention Amounts**).

8.2 If the Department is satisfied that the Recipient has:

- (a) submitted a Post Completion Report;
- (b) obtained or achieved all of the Deliverables;
- (c) expended an amount at least equal to the Total Project Cost on the delivery of the Project during the Term; and
- (d) otherwise satisfied its obligations under this Agreement,

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

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

9. Confidentiality and Announcements

9.1 Where information is provided by one party which, in the opinion of that party, is confidential and communicated as such to the other party, the other party must take all reasonable steps to ensure that the information is not disclosed or communicated or used by persons other than those officers, employees or agents of the other party who need to know the information for purposes related to the Project.

9.2 The obligations in clause 9.1 are not applicable where a party expressly authorises the other party to reveal to any person the confidential operations, dealings, or affairs of the other or where a party is required to reveal such information by law.

9.3 Subject to clauses 9.4 and 9.5, the Recipient must not make any public media statement in relation to this Agreement, the Funding provided under this Agreement or the Project without the prior written consent of the Department.

9.4 The Recipient must acknowledge the provision of the Funding in all promotional material and publications relating to the Project and provide a draft of the proposed public media statement to the Department prior to publication for the Department's approval.

- 9.5 The Recipient must provide the Department with:
- (a) at least twenty-five Business Days' notice of any proposed public media event;
 - (b) any proposed public media statement for approval at least five Business Days' prior to its release as well as making any changes or amendments to the form, content or manner reasonably requested by the Department.
- 9.6 The Recipient acknowledges and agrees that the Department may publicly disclose:
- (a) the Recipient's name and address;
 - (b) details of the Funding;
 - (c) general details of the Project; and
 - (d) any information required to be disclosed:
 - (i) to comply with or meet applicable standards for accountability of public money;
 - (ii) to the State Government; or
 - (iii) in accordance with established governmental policies, procedures or protocols.

10. Release and Indemnity

- 10.1 In this clause 'Claim' includes any claim, cause of action, proceeding, demand, liability, loss, costs and expenses (including legal fees, costs and disbursements on a solicitor and own client basis) of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, direct or consequential, whether at law, in equity, under statute or otherwise.
- 10.2 The Recipient releases (to the full extent permitted by law) and indemnifies the Department from and against any Claim which may be brought against or made upon the Department arising directly or indirectly as a result of:
- (a) any breach of this Agreement by the Recipient;
 - (b) any negligent or unlawful act or omission by the Recipient in connection with the Project;
 - (c) the Recipient's use of any of the Intellectual Property in the course of or arising from the Project or a Claim by a third party against the Department for infringement (or alleged infringement) of that third party's Intellectual Property; or
 - (d) any Claim brought against or made upon or incurred by the Recipient in carrying out the Project,

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

11. Limit on Liability

- 11.1 The Department's liability under this Agreement is limited to the amount of the Total Maximum Funding Contribution.
- 11.2 To the extent permitted by law, the Department and its officers, employees, agents, contractors or suppliers are not liable for any Consequential Damages even if the Department, its officers, employees, agents, contractors or suppliers are aware of the possibility of those Consequential

Damages.

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

12. Delay

- 12.1 Without limiting the Department's rights, if for any reason the Recipient believes that the Recipient will not be able to achieve a Deliverable by the corresponding Deliverable Date, the Recipient must notify the Department in writing of the cause and nature of the delay and detail the steps the Recipient will take to address the delay.

13. Project Variation

- 13.1 The Recipient acknowledges that a variation to the Project may impact on the level of Funding, especially if the Project's scope is reduced and the Total Project Costs are less than the amount provided in the Reference Schedule. Any variation to the Project must be made in accordance with clause 20.12.

14. Termination

- 14.1 The Department may immediately terminate this Agreement by notice in writing if:
- (a) the Recipient breaches a clause in this Agreement and:
 - (i) the breach is not capable of being cured; or
 - (ii) the breach is capable of being cured and the Recipient fails to remedy the breach within 14 days after the Recipient is given a notice to remedy from the Department specifying the breach;
 - (b) the Recipient:
 - (i) enters into any arrangement or composition with the Recipient's creditors generally, or has a controller, receiver, receiver and manager or administrator appointed;
 - (ii) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purposes of reconstruction;
 - (iii) has execution levied on any of the Recipient's assets and the execution is not satisfied within 28 days; or
 - (iv) is otherwise (in the Department's reasonable opinion) unable to pay the Recipient's debts when they fall due.
- 14.2 If the Department terminates this Agreement under clause 14.1:
- (a) it may, in the notice of termination, require the Recipient to immediately repay all or part of the Funding and such sum will be a debt due and recoverable by the Department;
 - (b) it will have no liability to pay any further sums due under this Agreement to the Recipient; and

- (c) such termination will be without prejudice to any other rights the Department may have against the Recipient.

14.3 The Recipient may terminate this Agreement by notice in writing to the Department at any time before the Initial Payment has been paid or is payable on or before the termination. If this Agreement is terminated under this clause 14.3, the Department is not required to pay any Funding Contribution to the Recipient.

14.4 The Department may, at any time, by reasonable notice, terminate this Agreement without giving a reason. If the Department terminates this Agreement pursuant to this clause 14.4:

- (a) it will have no liability to pay any further sums under this Agreement to the Recipient other than those parts of the Funding that were due and payable at the date of termination; and
- (b) such termination will be without prejudice to any other rights the Department may have against the Recipient.

15. Intellectual Property

15.1 The parties agree that the Project Intellectual Property is owned by the Recipient.

15.2 The Recipient irrevocably grants a licence to the State of Queensland for the right to use reproduce and adapt the Project Intellectual Property for its own non-commercial purposes.

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

16. Survival of Clauses

16.1 The following clauses will survive termination or expiration of this Agreement:

- (a) clauses 3.1(j), 3.1(k), 3.1(l) (submission of Progress Report, Completion Report and Post Completion Report);
- (b) clause 3.1(o) and (p) (record keeping);
- (c) clause 3.1(q) (provision of accounts);
- (d) clause 3.1(r) (outcomes interview);
- (e) clause 9 (Confidentiality and Announcements);
- (f) clause 10 (Release and Indemnity);
- (g) clause 11 (Limit on liability);
- (h) clause 15 (Intellectual Property); and
- (i) any Special Conditions.

17. Agreement Management and Dispute Resolution

17.1 The parties nominate the persons specified in Item 12 of the Reference Schedule to be the contact officers for the day to day management of this Agreement. Either party may change the contact officer by written notice to the other party.

17.2 For the purposes of this clause a dispute will have arisen when either party gives notice to that effect to the other ("**Dispute**").

- 17.3 The parties agree to seek to settle any Dispute by negotiation, mediation or conciliation in accordance with this clause 17, before referring the dispute to arbitration, or commencing court proceedings relating to the Dispute.
- 17.4 If the parties fail to settle the Dispute within 10 Business Days of receipt of the notice referred to in clause 17.2 the Dispute will be referred to mediation by either party.
- 17.5 If the parties fail to agree on the appointment of a mediator within 5 Business Days after their failure to resolve the Dispute then either party may refer the question of the appointment of a mediator to the Australian Disputes Centre (Queensland). The costs of mediation shall be borne equally between the parties.
- 17.6 Clauses 17.2 to 17.5 do not apply if either party commences legal proceedings for urgent interlocutory relief or if an authority of the Commonwealth, a State or a Territory is investigating a breach or suspected breach of the law by the Recipient.

18. Goods and Services Tax (GST)

- 18.1 The Funding payable under this Agreement is exclusive of GST.
- 18.2 The Recipient warrants that it is registered for GST as at the Start Date. The Recipient must immediately notify the Department if it ceases to be registered for GST.
- 18.3 If the Funding is consideration for a taxable supply under the GST Legislation the Department will pay to the Recipient the GST Amount in addition to the Funding, subject to the Recipient first submitting to the Department a valid Tax Invoice in respect of the supply.
- 18.4 If, for any reason, there is, including without limitation:
- (a) any amendment to the GST Legislation;
 - (b) a ruling or advice issued by the Commissioner of Taxation;
 - (c) a refund to the Department or to the Recipient in respect of a supply made under this Agreement; or
 - (d) a decision of any tribunal or court,
- and the amount of GST paid by the Department differs from the amount of GST paid or payable by the Recipient to the Commissioner of Taxation, then the Recipient must issue an appropriate GST adjustment note and any difference must be paid by or to the Department as the case may be.
- 18.5 The parties agree to exchange such information as is necessary to enable each party to accurately assess its rights and obligations under this clause.

19. Notices

- 19.1 Any notice or other communication to be given under this Agreement must be in writing and may be delivered by hand, or sent by pre-paid post, facsimile or e-mail transmission to the respective addresses set out in Item 12 of the Reference Schedule or any substitute address a party may notify to the other for the purposes of this clause.
- 19.2 Notices will be deemed to have been given:
- (a) if mailed – 5 Business Days after posting;
 - (b) if delivered – on the date of delivery;
 - (c) if emailed – on the date of the email, unless an undeliverable report is received,
- except that a notice that is delivered or emailed after 5:00pm on any day, will be deemed to be

received on the next Business Day.

20. General Provisions

- 20.1 **(Entire Agreement)** The terms of agreement between the parties are those set out in this Agreement, and no written or oral agreement, arrangement or understanding made or entered into prior to the Start Date will in any way be read or incorporated into this Agreement.
- 20.2 **(No assignment or novation)** The Recipient may not assign or novate the Agreement or any of the benefits or obligations under the Agreement without the Department's prior written consent.
- 20.3 **(Subcontracting)** Other than engaging the Deliverable Providers to deliver the goods or services comprising the Deliverables, the Recipient may not subcontract any part of the Recipient's obligations under this Agreement without the Department's prior written consent.
- 20.4 **(Relationship)** The parties agree that no employment relationship, agency or partnership exists between the Department and the Recipient.
- 20.5 **(Severability)** The invalidity or unenforceability of any one or more of the provisions of this Agreement will not invalidate or render unenforceable the remaining provisions of the Agreement. Any illegal or invalid provision or part of a provision of this Agreement will be severable and all other provisions will remain in full force and effect.
- 20.6 **(Jurisdiction)** This Agreement is governed by the law of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of the State of Queensland.
- 20.7 **(Waiver)** No right under this Agreement will be deemed to be waived except by notice in writing agreed by the waiving party. A failure by a party to enforce at any time any provision of this Agreement will not constitute a waiver of the party's rights in respect of the provision.
- 20.8 **(Compliance with laws)** The Recipient must comply with all relevant laws, regulations and legal duties that may be applicable to the Project and the Recipient's activities in undertaking the Project.
- 20.9 **(Costs)** The parties will pay their own costs (including legal costs), expenses and disbursements of and incidental to the preparation, execution of this Agreement. The Recipient is responsible for any duty payable in respect of this Agreement or any payment under it.
- 20.10 **(Time)** Any act, matter or thing required under this Agreement to be done on a day which is not a Business Day must be done on the next Business Day.
- 20.11 **(Force Majeure)** If any party is unable by reason of Force Majeure to carry out any of its obligations whether wholly or in part under this Agreement, the party so affected (the Affected Party) will immediately give notice to the other party in writing of the Force Majeure specifying full particulars thereof whereupon its obligations will, to the extent to which they are affected by the Force Majeure, be suspended and the time prescribed under this Agreement for performing its obligations will be suspended, but for no longer period than the continuance of the Force Majeure. The party claiming Force Majeure will use all reasonable diligence to remove or overcome the conditions constituting Force Majeure and minimise the impact as quickly as possible. However, the other party may terminate this Agreement if the Affected Party's performance of its obligations under this Agreement is materially affected by Force Majeure lasting more than 60 days.
- 20.12 **(Variation)** This Agreement may only be varied by agreement in writing by both parties.

21. Trustee provisions

- 21.1 The Recipient in its personal capacity and in its capacity as trustee of the trust specified in Item 14 of the Reference Schedule (**Trust**) warrants that:
- (a) the Trust is validly created and is in existence;

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

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

21.3 For the purposes of clause 20.2, an assignment is deemed to occur if the trust deed for the Trust is amended so that the Recipient would no longer be able to make any of the warranties in clause 21.1.

Schedule 1 - Deliverables

	Deliverable	Deliverable Provider	Deliverable Date	Estimated Total Deliverable Project Cost	Estimated Deliverable Eligible Project Cost	Estimated Deliverable Ineligible Project Cost	Maximum Deliverable Funding Contribution
1.	<i>[Note: Insert details of the Project Deliverables as set out]</i>						
2.	<i>[Note: Insert rows as required to provide sufficient Deliverable details.]</i>						
3.							

Schedule 2 – Information and Material for Payment Claims

1. A valid Tax Invoice from the Recipient setting out the amount sought as a Funding Contribution under this Agreement.
2. For the first Payment Claim if the Department has made an Initial Payment to the Recipient:
 - (a) evidence of the expenditure of:
 - (i) the Initial Payment; and
 - (ii) a further amount equal to the Initial Payment by the Recipient (**Initial Recipient Contribution**),
towards the achievement of the Deliverables; and
 - (b) a description of the Deliverable and the Deliverable Number to which the Recipient has applied the Initial Payment and the Initial Recipient Contribution.
3. Provision of a Progress Report, or, for a Payment Claim for the final Deliverable under this Agreement, provision of a Completion Report.
4. The Progress Report must set out:
 - (a) a description of the Deliverable;
 - (b) the Deliverable number;
 - (c) a cost breakdown showing each item of expenditure by the Recipient for the Payment Claim;
 - (d) the date of each item of expenditure;
 - (e) the total expenditure by the Recipient for the Payment Claim (which must not include expenditure of the Initial Payment and Initial Recipient Contribution (if any));
 - (f) the total expenditure amount which has been expended on Eligible Project Costs, including expenditure of the Initial Payment and Initial Recipient Contribution (if any);
 - (g) the total expenditure amount which has been expended on the Project including Eligible Project Costs and Ineligible Project Costs;
 - (h) the Recipient's calculation of the Funding Contribution in accordance with Schedule 1 and clause 5.1 of this Agreement; and
 - (i) the description of the Recipient's progress for obtaining or delivering each Deliverable against the relevant Deliverable Date.
5. Evidence of expenditure on the Deliverable satisfactory to the Department including:
 - (a) copies of Tax Invoices from external suppliers;
 - (b) copies of receipts for payments of Tax Invoices or remittance advices or original bank statements of the Recipient showing payment of the Tax Invoices.
6. If the Deliverable relates to the delivery of equipment or a tangible product to the Project Site, photographs of that equipment or tangible product must be provided.
7. Any other information and material reasonably requested by the Department, including information to demonstrate completion of the Project.

Schedule 3 – Progress Report Format

To be submitted with each Payment Claim, note use the Completion Report for the final Payment Claim.

SAMPLE

Made in Queensland Program – Round 3

Funding Agreement

Progress Report and Payment Claim

Recipient Name:

Project:

Project Reference:

Date:

Deliverable Number	
Deliverable Description	

Total claimed in this Payment Claim (exclusive of GST):

\$



1. Purpose of the Progress Report

The purpose of the Progress Report is to capture progress on Projects in accordance with the Funding Agreement and Project Plan (where applicable). A Progress Report is to be submitted to the Department of State Development, Manufacturing, Infrastructure and Planning with each Payment Claim in accordance with clause 3.1(j) and Schedule 2 of the Funding Agreement.

A Progress Report is not required when making a Payment Claim for an Initial Payment. When making a Final Payment Claim at the completion of the Project, a Completion Report should be submitted.

2. Progress

Provide a description of progress for obtaining or delivering each Deliverable against the relevant Deliverable Date.

Deliverable Number	Deliverable Date	Description of Progress

3. Payment Claim

3.1 Project Costs

Was an Initial Payment claimed? Yes / No

Total of Initial Payment:

\$

Total spend on Eligible Project Costs (exclusive of GST) to date, including expenditure of the initial Payment and Initial Recipient Contribution (if any). Refer to Clause 1 of the Funding Agreement in relation to Eligible Project Costs and Ineligible Project Costs:

\$

Total spent on the Project (exclusive of GST) to date, including Eligible Project Costs and ineligible Project Costs:

\$

3.2 Payment Claim

Total expenditure by the Recipient for the Payment Claim (exclusive of GST), which must not include expenditure of the Initial Payment and Initial Recipient Contribution (if any):

\$

Cost breakdown showing each item of expenditure and expenditure dates for each item claimed as part of this Payment Claim:

Expenditure Item	Date	Expenditure Amount (exclusive of GST)

Calculation of the Department’s Funding Contribution (exclusive of GST), in accordance with Schedule 1 and clauses 4.1 and 4.2 of the Funding Agreement:

4. Adverse Matters

If there are any matters that may adversely affect the Project (for example, by causing significant delay or reducing the scope of the Project), please provide relevant information.

5. Attachments

Please provide copies of the following as attachments to this report:

- Recipient's tax invoice for Payment Claim
- Copies of tax invoices from suppliers
- Copies of receipts for payments of bank statements showing payment of tax invoices
- Photographs of equipment (where applicable)

6. Submission of Progress Report

Report prepared by:

Position Title

I certify that:

- 1 The information contained within this report and its attachments is true and correct;
- 2 The stated portion of work on the Project has been completed in accordance with the MIQ Funding Agreement; and
- 3 The funding provided by the Department to date has been utilised in accordance with the MIQ Funding Agreement.

Signed:

Date:

/ /

Made in Queensland Program – Round 3

Funding Agreement

Completion Report and Final Payment Claim

Recipient Name:

Project:

Project Reference:

Date:

Deliverable Number	
Deliverable Description	

Total claimed in this Payment Claim (exclusive of GST):

\$

1. Purpose of the Completion Report

The purpose of the Completion Report is to capture outcomes of a Project. A Completion Report is to be submitted to the Department of State Development, Manufacturing, Infrastructure and Planning with the Payment Claim for the final deliverable under the Agreement, in accordance with clause 3.1(k) and Schedule 2 of the Funding Agreement.

The Completion Report should demonstrate how the Project outcomes align with the key aims and objectives of the Made in Queensland Program, to:

- Increase the productivity and international competitiveness of Queensland-based manufacturing small to medium sized enterprises (SMEs)
- Encourage Queensland-based manufacturing SMEs to adopt innovate processes and technologies
- Encourage more Queensland based manufacturing SMEs to become advanced manufacturers
- Project traditional manufacturing jobs and create the new high-skill manufacturing jobs of the future.

2. Project Completion

Please comment on the completion of the project, including how each Deliverable was obtained or delivered.

Comment on the completion of the project:		
Deliverable No.	Deliverable Date	Comment on how Deliverable was obtained or delivered

3. Project Outcomes

Please provide a summary of the outcomes of the Project including:

- How the Project met the objectives of the Made in Queensland Program
 - increasing the productivity and international competitiveness of the business;
 - encouraging the business to adopt innovative processes and technologies;
 - encouraging the business to become Advanced Manufacturers; and
 - supporting traditional manufacturing jobs and creating new high-skilled manufacturing jobs of the future.

SAMPLE

4. Costs

4.1 Project Costs

Was an Initial Payment claimed? Yes / No

Total of Initial Payment:

\$

[Your publication title here] | [Source reference]

Were subsequent Payment Claims submitted? Yes / No

Payment Claims Submitted:

Payment Claim No.	Payment Claim Amount (exclusive of GST)	Date

Total spent on Eligible Project Costs (exclusive of GST), including expenditure of the Initial Payment and Initial Recipient Contribution (if any). Refer to clause 1 of the Funding Agreement in relation to Eligible Project Costs and Ineligible Project Costs:

\$

Total spent on the Project (exclusive of GST), including Eligible Project Costs and Ineligible Project Costs:

\$

4.2 Payment Claim

Total expenditure by the Recipient for the Payment Claim (Exclusive of GST), which must not include expenditure of the Initial Payment and Initial Recipient Contribution (if any):

\$

Cost breakdown showing each item of expenditure and expenditure dates for each item claimed as part of this Payment Claim:

Expenditure Item	Date	Expenditure Amount (Exclusive of GST)

Expenditure Item	Date	Expenditure Amount (Exclusive of GST)

Calculation of the Department’s Funding Contribution (exclusive of GST), in accordance with Schedule 1 and Clauses 4.1 and 4.2 of the Funding Agreement:

5. Attachments

Please provide copies of the following as attachments to this report:

- Recipient’s tax invoice for Payment Claim
- Copies of tax invoices from suppliers
- Copies of receipts for payments of bank statements showing payment of tax invoices
- Photographs of equipment (where applicable)

6. Submission of Completion Report

Report prepared by:

Position Title

I certify that:

- 1 The information contained within this report and its attachments is true and correct;
- 2 The stated portion of work on the Project has been completed in accordance with the MIQ Funding Agreement; and
- 3 The funding provided by the Department to date has been utilised in accordance with the MIQ Funding Agreement.

Signed:

SAMPLE

Made in Queensland Program – Round 3

Funding Agreement

12 Month Post Completion Report and Claim for Release of Retention

Recipient Business Name:

Recipient ABN:

Project:

MIQ Project Reference:

Date:

1. Purpose of the 12 Month Post Completion Report

The purpose of the 12 Month Post Completion Report is to demonstrate the benefits and outcomes of a Project. A 12 Month Post Completion Report is to be submitted to the Department of State Development, Manufacturing, Infrastructure and Planning in accordance with clause 3.1(l) and Schedule 2 of the Funding Agreement.

The 12 Month Post Completion Report should demonstrate how the Project outcomes align with the key aims and objectives of the Made in Queensland Program, to:

- increase the productivity and international competitiveness of Queensland-based manufacturing SMEs;
- encourage Queensland-based manufacturing SMEs to adopt innovative processes and technologies;
- encourage more Queensland-based manufacturing SMEs to become Advanced Manufacturers; and
- support traditional manufacturing jobs and create the new high-skilled manufacturing jobs of the future.

2. Project Benefits and Outcomes 12 Month Post Completion

Please comment on the benefits and outcomes 12-month post completion of the project.

Comment on the completion of the project:	
Benefit or Outcome	Comment on how the benefit or outcome was measured and realised by the business

Job Outcomes				
No. of Jobs Created		No. of FTE's Retained		Total Current FTE's
New	No. of Highly Skilled	No. Retained	Number Upskilled	

For the High Skilled Jobs Created	
No. of Highly Skilled	Provide the Highly Skilled Job Title

3. Retention Claim

Was a retention held by the Department? Yes / No

What is the value of the retention held?

\$

4. Attachments

Please provide copies of the following as attachments to this report:

- Evidence of project benefit or outcome
- Photographs of equipment (where applicable)

SAMPLE

5. Submission of Completion Report

Report prepared by:

Position Title

I certify that:

- 1 The information contained within this report and its attachments is true and correct;
- 2 The stated portion of work on the Project has been completed in accordance with the MIQ Funding Agreement; and
- 3 The funding provided by the Department to date has been utilised in accordance with the MIQ Funding Agreement.

Signed:

SAMPLE

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

EXECUTED for and on behalf of the)
STATE OF QUEENSLAND acting through the)
DEPARTMENT OF STATE DEVELOPMENT,)
MANUFACTURING, INFRASTRUCTURE)
AND PLANNING (ABN 29 230 178 530) by:)

..... (Insert name)

.....
(Signature)

..... (Insert position)
a duly authorised person, in the presence of:

.....
(Signature of Witness)

...../...../.....
(Date)

SIGNED for and on behalf of)
[#RECIPIENT NAME] (ABN [#Insert)
ABN]) in accordance with s127)
Corporations Act 2001 by:)

..... (print name)

...../...../.....
(Signature of Director) (Date)

Director,

..... (print name)

...../...../.....
(Signature of Director/Company Secretary*) (Date)

Director/Company Secretary*

* cross out whichever is not applicable

SIGNED for and on behalf of)
[#RECIPIENT NAME] (ABN [#Insert)
ABN]) by its attorney under a power of)
attorney dated in the)
presence of:

.....
Signature of Witness

...../...../.....
Signature of attorney who declares that the attorney has not
received any notice of the revocation of the power of attorney (Date)

.....
Full name of Witness

...../...../.....
Full name of attorney (Date)