

**Template example document only** – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.

## **FUNDING AGREEMENT HYDROGEN INDUSTRY DEVELOPMENT FUND**

**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: **[#Reference Number]**

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

**Contents**

1. Interpretation ..... 6

2. Term ..... 11

3. Conditions on Funding Contribution ..... 11

4. The Recipient's Obligations ..... 12

5. Representations and Warranties ..... 14

6. Provision of Funding Contributions ..... 15

7. Payment Claims ..... 15

8. Refusing or withholding payment of Funding Contributions ..... 15

9. Non-Disposal of Assets ..... 16

10. Acknowledgement of Assistance ..... 16

11. Signage ..... 17

12. Confidentiality ..... 17

13. Release and Indemnity ..... 18

14. Limit on Liability ..... 19

15. Delay ..... 19

16. Project Variation ..... 19

17. Termination ..... 19

18. Intellectual Property ..... 20

19. Survival of Clauses ..... 20

20. Agreement Management and Dispute Resolution ..... 21

21. Goods and Services Tax (GST) ..... 21

22. Notices ..... 22

23. General Provisions ..... 22

24. Trustee provisions ..... 23

Schedule 1 - Deliverables ..... 25

Schedule 2 – Information and Material for Payment Claims ..... 26

Schedule 3 – Progress Report Format ..... 27

Schedule 4 – Completion Report Format ..... 28

Schedule 5 – Post Completion Report Format ..... 29

**Template example document only** – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.

## HYDROGEN INDUSTRY DEVELOPMENT FUND REFERENCE SCHEDULE

1.	<b>Recipient:</b>	#
2.	<b>Project title:</b>	#
3.	<b>Project ID and Application Reference:</b>	# Application Reference # and Date
4.	<b>Project:</b>	# <i>[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.]</i>  <i>The Department should clearly describe the plant and equipment (including installation and/or commissioning if appropriate) in this Item 4. This description of the Project should also describe the link to the Project Site]</i>
5.	<b>Project Site</b>	# <i>[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]</i>
6.	<b>Start Date:</b>	The date this Agreement is signed by the last party to sign this Agreement.
7.	<b>End Date:</b>	# <i>[Note: this date must be no earlier than 12 months after the final Deliverable Date – to align with clause 4.1(k)]</i>  That date which is [#] months after the final Deliverable Date.
8.	<b>Conditions Precedent Date:</b>	That date which is [#] Business Days from the Start Date.
9.	<b>Total Maximum Funding Contribution (exclusive of GST)</b>	# <i>[Note: this is the total of the Maximum Deliverable Funding Contributions, as set out in the last column of the table in Schedule 1]</i>
10.	<b>Total Project Cost (exclusive of GST)</b>	# <i>[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]</i>
11.	<b>Insurance:</b>	<ul style="list-style-type: none"> <li>• Public liability insurance for the amount of \$20,000,000 in respect of each claim.</li> <li>• General insurance against loss or damage to the Recipient's property caused by or resulting from accident, fire, theft, malicious damage or storms and any other insurable risk which property of a similar nature is commonly insured against.</li> </ul>

		<ul style="list-style-type: none"> <li>Workers' compensation insurance for the Recipient's employees as required at law.</li> <li># <i>[Insert others if applicable. For example – shipping insurance if the equipment is being transported from overseas.]</i></li> </ul>
12.	<b>Contact officers:</b>	<p><b>For the Department:</b></p> <p>Name: [#]  Title: [#]  Street Address: 1 William Street, Brisbane QLD 4000  Postal Address: PO Box 15009, City East QLD 4002  Tel: [#]  Email: [#]@dsdmip.qld.gov.au</p> <p><b>For the Recipient:</b></p> <p>Name: [#]  Title: [#]  Street Address: [#]  Postal Address: [#]  Tel: [#]  Mobile: [#]  Email: [#]</p>
13.	<b>Special conditions</b>	<p><b>Special Condition 1 – Project Plan</b></p> <p><i>[Note: DSDMIP will include this special condition 1 in Funding Agreements where the Project is particularly complex or involves a number of interdependent stages].</i></p> <p>1.1 Within 10 days of the Start Date, 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 1.2.</p> <p>1.2 The project plan (<b>Project Plan</b>) must set out how the Recipient proposes to complete the Project, including:</p> <ul style="list-style-type: none"> <li>(a) the objectives and outcomes of the Project;</li> <li>(b) how those objectives and outcomes are proposed to be achieved; and</li> <li>(c) the timing for achievement of those objectives and outcomes</li> <li>(d) expenditure to be incurred or proposed to be incurred by the Recipient in respect of the Project.</li> </ul> <p>1.3 If the Department is not satisfied with any aspect of the Project Plan:</p> <ul style="list-style-type: none"> <li>(a) the Department must notify the Recipient that it is not satisfied and request that the Recipient amend and resubmit the Project Plan and any further information required within a reasonable time period notified by the Department;</li> </ul>

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

		<p>(b) <i>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.</i></p> <p><i>The Department and the Recipient must repeat this process until the Department is satisfied with the Project Plan.</i></p> <p>1.4 <i>The Department must notify the Recipient in writing if it is satisfied with a Project Plan submitted in accordance with this Special Condition 1.</i></p> <p>1.5 <i>The Recipient:</i></p> <p>(a) <i>must conduct the Project in accordance with the Project Plan;</i></p> <p>(b) <i>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;</i></p> <p>(c) <i>may only submit a Payment Claim if the Department has notified the Recipient that it is satisfied with a submitted Project Plan.</i></p> <p>1.6 <i>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:</i></p> <p>(a) <i>refuse a Payment Claim;</i></p> <p>(b) <i>suspend the making of any Funding Contributions the subject of existing Payment Claims;</i></p> <p>(c) <i>terminate this Agreement in accordance with clause 17.</i></p> <p>1.7 <i>The Recipient may, at any time during the Term, submit to the Department a request to amend a Project Plan. Special conditions 1.4 and 1.5 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.</i></p> <p><b>Special Condition 2 – Queensland Charter for Local Content</b></p> <p><b>[Drafting note – Note: DSDMIP will include this special condition 2 in Funding Agreements where the Queensland Government Funding is \$2.5 million or greater].</b></p> <p>2.1 <i>In undertaking the Project, the Recipient must (and must ensure that its agents and contractors):</i></p> <p>(a) <i>without prejudice to any of its other obligations under this Agreement, comply with the principles of the Queensland Charter for Local Content;</i></p> <p>(b) <i>to the extent the Recipient is required, prepare a statement of intent for the Project (<b>Statement of Intent</b>), to the Department's satisfaction;</i></p> <p>(c) <i>comply with the Statement of Intent;</i></p>
--	--	---

**Template example document only** – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.

		<p>(d) complete and submit a Charter for Local Content – Project Outcome Report as required by the Queensland Charter for Local Content to the Department on the Final Local Content Reporting Date set out in the Reference Schedule and at such other times as reasonably requested by the Department, with a copy to <a href="mailto:gclc@dsd.qld.gov.au">gclc@dsd.qld.gov.au</a>.</p> <p>2.2 In this special condition 2.2, 'Queensland Charter for Local Content' means the "Queensland Charter for Local Content" published by the Queensland Department of State Development, in June 2016, and as amended or replaced from time to time.</p> <p><b>Special Condition 3 – [#Insert any others if relevant otherwise delete]</b></p>
14.	Additional Conditions Precedent (if any)	<p><b>[Insert any additional conditions precedent, if necessary. If not applicable, insert "not applicable"]</b></p> <p><b>[Additional Condition Precedent 1</b></p> <p>1. <b>The Recipient must provide to the State, evidence (certified by the Recipient's chief executive officer or equivalent) that the Recipient has sufficient unconditional finance or other committed funding necessary to implement and complete the Project.]</b></p>
15.	Trust	<b>[If applicable, insert the name of the trust. If not applicable, insert "not applicable"]</b>
16.	Nominated bank account	<p>Account Name: <b>[insert account name]</b></p> <p>BSB: <b>[insert BSB]</b></p> <p>Account Number: <b>[insert account number]</b></p>
17.	Restricted Logo	<b>[Drafting note – insert the coat of arms and/or tagline and/or letter Q]</b>
18.	Signage	<b>[Drafting note: Please refer to the Queensland Government corporate identity guidelines 2019 for Signage. Insert specific details of the onsite signage required to be installed at the project site. This needs to include the number, size, location and content of the signage at a minimum. Where possible, an example of the form of signage should be included.]</b>
19.	Signage Installation Date	<b>[Drafting note: this must post-date the satisfaction of any Conditions Precedent]</b>
20.	Signage End Date	<b>[INSERT]</b>
21.	Project Partners	<b>[Drafting note – please list the names of the legal entities which are also providing financial contributions to the Project, other than the Recipient, if any. If not, include 'Not Applicable.']</b>

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

## 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;

**'Additional Conditions Precedent'** means those listed in Item 14 of the Reference Schedule (if any);

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

**'Application'** means the application for stream one (plant and equipment) of the Hydrogen Industry Development Fund submitted by the Recipient in respect of the Project as referred to in Item 3 of the Reference Schedule (including, but not limited to, the expression of interest and detailed application and clarifications provided by the Recipient during the project assessment);

**'Approval'** includes any permit, consent, authorisation, permission, licence, approval, authority, certificate, registration or exemption by, or with, any Authority, and includes any condition or requirement imposed under any of the foregoing;

**'Assets'** means any items of plant or equipment or tangible property purchased, either wholly or partly with the use of the Funding Contribution, including software systems and associated hardware specified in Schedule 1;

**'Authority'** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity;

**'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;

**'Change in Control'** of an entity occurs if a person who did not previously do so acquires or holds, directly or indirectly:

- (a) securities conferring 50% or more of the voting or economic interests in the entity;
- (b) the power to control the appointment or dismissal of the majority of the entity's directors; or
- (c) the capacity to control the financial or operating policies or management of the entity or otherwise to control the entity as set out in section 50AA of the Corporations Act.

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

**'Completion Report'** means the completion report to be prepared by the Recipient in the

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

template form set out in Schedule 4, as updated and notified to the Recipient by the Department from time to time;

**'Conditions Precedent'** means the conditions set out in clause 3.1 and includes any Additional Conditions Precedent (if relevant);

**'Conditions Precedent Date'** means that date specified in Item 8 of the Reference Schedule;

**'Confidential Information'** means:

- (a) information of whatever description and in whatever form communicated (whether by electronic means, in an electronic storage device, in writing or orally) that:
  - (i) is by its nature confidential;
  - (ii) is designated by the Department as confidential; or
  - (iii) the recipient of the information knows or ought to know is confidential, (including the interpretation, analysis and application of general information in the public domain); and
- (b) the terms of this Agreement.

**'Corporations Act'** means the *Corporations Act 2001*;

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

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

**'Dispose'** means to sell, convey, transfer, assign, lease or otherwise part with possession of the Asset;

**'Eligible Project Costs'** means those costs and expenses reasonably incurred and paid for by the Recipient during the Term for:

- (c) the purchase of hydrogen related plant, equipment or technology required for the Recipient to deliver the Project; and
- (d) the installation and commissioning costs for hydrogen related plant, equipment or technology required for the Project;

**'End Date'** means the date specified in Item 7 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



**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

that party, including, but not limited to, forces of nature, industrial action, act of war or embargo;

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

**'Funding Contribution'** means an amount paid to the Recipient in relation to a Deliverable under this Agreement;

**'Government Agency'** means the crown, a Minister of the Queensland Government, a government or government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose whether, in each case, State or Commonwealth, any entity which is wholly owned or controlled by the State of Queensland, a local authority, a court, and any officer, employee or agent of any of the foregoing in that capacity;

**'Group Entity'** means any related body corporate (as defined in the Corporations Act) of the Recipient, and each entity that the Recipient is required by accounting standards (as defined in the Corporations Act) to include in consolidated financial statements, from time to time;

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

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

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

**'Ineligible Project Costs'** means:

- (a) 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;
- (b) costs relating to plant and equipment not directly related to the production, storage, utilisation or transportation of hydrogen;
- (c) any part of the Project funded by State or Commonwealth funds (other than the Funding);
- (d) preliminary project investigation costs, including but not limited to, option analysis, market study and early stage feasibility study costs;
- (e) site or site acquisition costs, including but not limited to, site rehabilitation, land survey, engineering or civil works costs; purchase or lease costs or building or storage facility costs;
- (f) costs associated with obtaining approvals to undertake and operate the Project, including but not limited, to planning approval, environmental licence or approval costs or impact assessment study costs;
- (g) foregone profits or revenue due to the need to modify or upgrade existing facilities for the Project;
- (h) operation, maintenance and repair costs of existing assets, including reimbursement of working capital;
- (i) travel costs;

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- (j) legal and financing costs;
- (k) salaries or wages;
- (l) costs associated with leased equipment;
- (m) any costs associated with the Recipient's Application, including but not limited to administration costs, monitoring costs, consultant or professional costs;
- (n) marketing costs, including but not limited to, promotion and advertising costs or costs associated with education and information campaigns;
- (o) any costs incurred by the Recipient in complying with laws whilst undertaking the Project;
- (p) contingency costs associated with the Project; or
- (q) any other costs deemed to be ineligible by the Department (in its discretion, acting reasonably) as incurred by the Recipient in connection with the Deliverables;

**'Insolvency Event'** means any of the following events:

- (a) the Recipient makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the Recipient is insolvent;
- (b) the Recipient stops or suspends payment of all or a class of debts, or threatens to stop or suspend payment of all or a class of its debts;
- (c) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Recipient;
- (d) the Recipient is unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act;
- (e) the Recipient ceases to carry on its business or a material part of it, or threatens to do either of those things except to reconstruct or amalgamate while solvent, on terms approved by the Department in writing;
- (f) the Recipient suffers a material adverse change in its financial position, which in the reasonable opinion of the Department, affects the Recipient's ability to fulfil its obligations under this Agreement;
- (g) an application or order is made for the liquidation of the Recipient or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Recipient, other than for the purpose of an amalgamation or reconstruction; or
- (h) an event analogous or similar to the events listed above in this definition occurs to the Recipient;

**'Intellectual Property'** includes all rights in relation to copyright, trademarks, designs, patents, trade, business or company names, trade secret, confidential or other property rights, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise;

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

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

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

**'Post Completion Report'** means the post completion report to be prepared by the Recipient in the template form set out in Schedule 5, as updated and notified to the Recipient by the Department from time to time;

**'Progress Report'** means the report or reports to be prepared by the Recipient in the template form set out in Schedule 3, as updated and notified to the Recipient by the Department from time to time;

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

**'Program Guidelines'** means the document published by the Department of State Development, Manufacturing, Infrastructure and Planning titled "Queensland Hydrogen Industry Development Fund Applicant Guidelines", as amended from time to time;

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

**'Project Partners'** means the co-contributors for the Project (other than the Recipient), as listed in Item 21 of the Reference Schedule, if any;

**'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;

**'Report'** means a Progress Report, Completion Report, or Post Completion Report;

**'Representative'** means an employee, agent, officer, director, contractor, subcontractor, or any other authorised representative of a party;

**'Restricted Logo'** means the logo set out in Item 17 of the Reference Schedule;

**'Security Interest'** has the meaning given in the *Personal Property Securities Act 2009 (Cth)*;

**'Signage'** means the signage described at Item 13 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 set out in Item 6 of the Reference Schedule;

**'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 9 of the Reference Schedule, being the total of all Maximum Deliverable Funding Contributions; and

**'Total Project Cost'** means the amount specified in Item 10 of the Reference Schedule.

1.2 In this Agreement, unless the contrary intention appears:

- (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

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

Department's and the Recipient's officers, employees, contractors or agents;

- (c) words importing a gender include any other gender;
- (d) words in the singular include the plural and vice versa;
- (e) headings have been inserted for ease of reference only and are not intended to affect the meaning of this Agreement;
- (f) in the case of any inconsistency between a Schedule (except the Special Conditions) and this Agreement, the precedence will be in the order of Special Conditions, Agreement and Schedules to the extent of any inconsistency;
- (g) defined terms include other parts of speech and grammatical forms of the defined word or phrase;
- (h) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (i) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) the meaning of general words is not limited by specific examples introduced by "includes" or "including" or similar expressions;
- (k) no rule of construction of documents shall apply to the disadvantage of a party, on the basis that the party put forward this document or any relevant part of it;
- (l) if the day on which any act, matter or thing is to be done under or pursuant to this Agreement is not a Business Day, the act, matter or thing must be done on or by the next Business Day;
- (m) acts, matters or things done after 5:00pm on a Business Day are deemed done on the next Business Day;
- (n) a reference to **dollars** or **\$** is to Australian currency;
- (o) every obligation on the Recipient under this Agreement will be deemed to include a covenant by the Recipient to procure compliance with that obligation by each of the Recipient's Representatives; and
- (p) mentioning anything after **includes, including, for example**, or similar expressions, does not limit what else might be included.

---

## **2. Term**

- 2.1 This Agreement starts on the Start Date and ends on the End Date unless terminated earlier in accordance with clause 17.

---

## **3. Conditions on Funding Contribution**

### **3.1 Conditions Precedent**

The Recipient must satisfy the following Conditions Precedent by the Conditions Precedent Date by providing the following (to the satisfaction of the Department):

- (a) written confirmation from each of the Project Partners that their respective financial contribution to the Project remains consistent with the contents of the Recipient's

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

Application as at the Start Date; and

- (b) evidence of insurance coverage for the types, amounts and the period specified in Item 11 of the Reference Schedule with an insurer and on terms approved by the Department; and
- (c) evidence that any Additional Conditions Precedent have been satisfied.

### 3.2 Request for further information

The Department may request further information from the Recipient for the purpose of assisting the Department in satisfying itself of the Recipient's performance under this Agreement, including:

- (a) in relation to any of the matters referred to in clauses 3.1 and 4.1 (including to verify any Payment Claim, the satisfaction of any Conditions Precedent, or anything in a Report);
- (b) information demonstrating the Recipient's progress, or completion of the Project or a Deliverable;
- (c) that any part of the Funding Contribution claimed previously has been used in accordance with this Agreement;

by providing written notice to the Recipient ('**Information Request**').

### 3.3 Provision of further information

The Recipient must comply with any Information Request within 10 Business Days from the date of the Information Request (or such longer period otherwise agreed to by the Department, acting reasonably).

---

## 4. The Recipient's Obligations

4.1 The Recipient must:

- (a) achieve each Deliverable by its respective Deliverable Date to the satisfaction of the Department;
- (b) expend an amount at least equal to the Total Project Cost on the delivery of the Project during the Term;
- (c) comply with the Special Conditions to the satisfaction of the Department;
- (d) exercise due care and skill in carrying out the Project;
- (e) 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;
- (f) conduct the Project in the State of Queensland throughout the Term;
- (g) have an Australian Business Number and maintain it for the duration of the Term;
- (h) continue to effect and maintain the insurances specified in Item 11 of the Reference Schedule throughout the Term covering the Recipient and all contractors, sub-contractors, employees, licensees and invitees of the Recipient in respect of the

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

Project and produce evidence that such insurances have been effected and maintained (including evidence of any renewal) to the Department at the time of making each Payment Claim and upon request by the Department;

- (i) 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;signed by the Recipient's chief executive officer (or equivalent);
- (j) submit to the Department the Completion Report with the Recipient's final Payment Claim, in accordance with Schedule 2;
- (k) submit to the Department the Post Completion Report 12 months after the final Deliverable Date;
- (l) own or have lawful access to and use of Intellectual Property for the product and/or service that the Recipient is undertaking as part of the Project and make it available for the Project;
- (m) keep proper and adequate Books of Account in relation to the Funding and the Project;
- (n) record all expenditure relating directly or indirectly to, the Project, separate from all other income and expenditure of the Recipient;
- (o) if required by the Department, at the end of the Project and at the expense of the Recipient, have its Books of Account audited in relation to the Funding and the Project (including expenditure on Ineligible Project Costs) and provide a copy of the audited accounts to the Department by that date which is three months before the End Date;
- (p) if requested by the Department, arrange for an authorised representative of the Recipient to attend an interview with the Department to discuss the outcomes of the Project;
- (q) upon 3 Business Days' notice from the Department, permit and provide persons (**Auditors**) nominated by the Department access at all reasonable times to the Recipient's premises, books, records, documents, computer systems, equipment and other property to verify compliance by the Recipient with its obligations under this Agreement;
- (r) if the Recipient is required to permit and provide access to Auditors in accordance with paragraph (q), permit the Auditors to make copies of books, records, documents and other materials, and provide the Auditors with the necessary facilities to enable them to do so; and
- (s) immediately notify the Department in writing when it becomes aware of any of the following:
  - (i) any actual or proposed material change which affects, or may affect, the Recipient (including, but not limited to, any actual or proposed Change in Control of the Recipient or any change in key personnel of the Recipient);
  - (ii) the occurrence or likely occurrence of any delay or failure to meet a Deliverable;
  - (iii) any change in relation to the Project Partners or the respective financial

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

contributions to the Project; and

- (iv) 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.

4.2 The Recipient's notification under clause 4.1(s) does not limit the Department's rights under this Agreement or at law.

---

## **5. Representations and Warranties**

5.1 The Recipient warrants and acknowledges that:

- (a) all information contained in the Application 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 or this Agreement is true, accurate and complete;
- (c) the Recipient undertakes the Project entirely at the Recipient's own risk;
- (d) the Department has not made any representations or warranties in connection with 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;
- (f) in entering into this Agreement, the Recipient:
  - (i) has not relied on or been influenced by any representations or warranties by the Department or by any person associated with the Department about:
    - A. the subject matter of this Agreement;
    - B. the suitability or otherwise of the Project;
    - C. the Project's feasibility;
    - D. the possibility of any further financial assistance or arrangements between the Recipient and the Department or
    - E. any other matter, except as expressly set out in this Agreement;
  - (ii) is not subject to an Insolvency Event;
  - (iii) has made full disclosure to the Department of all matters that relate to, or may be expected to adversely affect, the good reputation, character and standing of the Recipient, any of its Project Partners or any officeholders of the Recipient or Project Partners.

---

## **6. Provision of Funding Contributions**

- 6.1 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 relevant Deliverable; and
  - (b) 50% of the Actual Deliverable Eligible Project Cost expended by the Recipient for the Deliverable.
- 6.2 Subject to clauses 7 and 8, the Department will pay the relevant Funding Contribution to the Recipient to its nominated bank account listed in Item 16 of the Reference Schedule within 30 days of receipt of a valid Payment Claim.
- 6.3 The Recipient acknowledges that:
- (a) the Recipient is responsible for payment of all costs and expenses associated with the Project; and
  - (b) subject to clause 6.1, there is no obligation on the Department to provide any additional or future financial assistance in respect of the Project.
- 6.4 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.

---

## **7. Payment Claims**

- 7.1 The Recipient must make a Payment Claim to the Department to be eligible for a Funding Contribution.
- 7.2 A Payment Claim must include the information and material specified in Schedule 2.
- 7.3 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.
- 7.4 The Recipient may only make a Payment Claim within 10 Business Days of the completion of a Deliverable.
- 7.5 The Recipient must not make a Payment Claim for reimbursement of any Ineligible Project Costs.
- 7.6 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.

---

## **8. Refusing or withholding payment of Funding Contributions**

- 8.1 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;



**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- (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 17.

---

## **9. Non-Disposal of Assets**

9.1 The Recipient must, during the Term and for a period of 24 months following the End Date:

- (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, including serial numbers (if applicable) ('Register'),

unless otherwise approved by the Department in writing.

9.2 Upon request by the Department, the Recipient must provide a copy of the Register to the Department.

---

## **10. Acknowledgement of Assistance**

10.1 Subject to clause 10.3, the Recipient must include an acknowledgement that the Recipient has received financial support from the Department in relation to the Project in all of its corporate communications in respect of the Project, including in:

- (a) online materials, newsletters, brochures and promotional materials in any media, and its annual report (if the Recipient produces an annual report); and
- (b) public statements, media releases and speeches or media event made or held by or on behalf of the Recipient about the Project.

10.2 If requested by the Department, the Recipient must use the Restricted Logo in all its promotional and presentation material forming part of, or in conjunction with, the acknowledgement. The Department grants the Recipient a non-exclusive, royalty-free licence to use the Restricted Logo during the Term solely for the purpose of promoting the Recipient's association with the Department for the purposes of the Project.

10.3 Before the Recipient publishes or communicates any of the material referred to in clause 10.1 or makes any public statement or holds any media event in relation to the Project, the Recipient must:

- (a) provide to the Department full details of the proposed publication, communication or media event, at least 25 Business Days in advance; and

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- (b) comply with all requests, amendments or conditions that the Department may reasonably require by notice to the Recipient.
- 10.4 If requested by the Department, the Recipient will prepare a standing protocol for publications and communications about the Project for approval by the Department. Compliance by the Recipient with an approved protocol will discharge the Recipient's obligations under this clause with respect to the relevant publication or communication.

---

**11. Signage**

- 11.1 Subject to clause 11.2, the Recipient must procure and install, at the Recipient's cost, the Signage by the Signage Installation Date.
- 11.2 Before the Recipient prints any Signage, the Recipient must:
- (i) provide the final proof to the Department for approval to print; and
  - (ii) comply with all requirements, amendments or conditions that the Department may reasonably require by notice to the Recipient.
  - (iii) provide details of its proposed location for installation of the Signage for approval by the Department, such approval to not be unreasonably withheld.
- 11.3 The Recipient must, at its own cost, obtain and comply with all Approvals required in connection with the Signage.
- 11.4 The Recipient must maintain the Signage in good and visible condition at the Project Site until the Signage End Date.

---

**12. Confidentiality**

**12.1 Confidential Information**

Each party will treat all Confidential Information arising from or relating to the Project as confidential, subject to clause 12.4.

**12.2 Disclosure of Confidential Information**

- (a) Subject to paragraph (b), the Recipient must not disclose Confidential Information relating to this Agreement, the Funding or the Funding Contribution to any person except:
  - (i) employees, accountants, auditors, insurers, financial advisers or legal advisers (including those of any Group Entity) requiring the information for the purposes directly related to the Project or this Agreement (and who accept or owe a duty of confidence in relation to the information);
  - (ii) to a Project Partner, where the Project Partner requires the Confidential Information for purposes directly relating to the Project and only to the extent necessary (and who agrees to keep the Confidential Information confidential);
  - (iii) with the prior written consent of the Department;
  - (iv) if the Recipient is required to do so by law or by a stock exchange and the Department has been notified in writing before the disclosure; or

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- (v) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement and the Department has been notified in writing before the disclosure.
- (b) The Recipient may disclose information which:
  - (i) is or becomes public knowledge other than by breach of this Agreement; or
  - (ii) has been independently developed or acquired by the Recipient.

### 12.3 No further disclosure

- (a) The Recipient must use all reasonable endeavours to ensure that persons receiving information about the terms of this Agreement do not disclose the information except in the circumstances permitted in clause 0.
- (b) If the Recipient discloses Confidential Information under clause 12.2(a)(i) or 12.2(a)(ii), the Recipient assumes responsibility for the actions of any persons to whom it discloses the Confidential Information.

### 12.4 Disclosure by the Department

The Department reserves the right to:

- (a) disclose to any person the name of the Recipient and general information about this Agreement (including the amount of the Funding Contribution) and the Project, including, without limitation, for the purposes of complying with any law or complying with or meeting applicable standards for accountability of public money;
- (b) make press or other announcements or releases relating to the existence of this Agreement and details of the Project (including the amount of the Funding Contribution); and
- (c) disclose Confidential Information arising from or relating to the Project, including this Agreement:
  - (i) to any Government Agency to the extent such disclosure is required to be made in accordance with established governmental policies, procedures or protocols;
  - (ii) in response to a request by Parliament, or a Committee of the Parliament of the State of Queensland;
  - (iii) to the Department's Representatives; or
  - (iv) if required to do so by law.

---

## 13. Release and Indemnity

- 13.1 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.
- 13.2 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

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

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.

---

**14. Limit on Liability**

- 14.1 The Department's liability under this Agreement is limited to the amount of the Total Maximum Funding Contribution.
- 14.2 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.
- 14.3 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.

---

**15. Delay**

- 15.1 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 (as soon as practicable after becoming aware of the delay), 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.

---

**16. Project Variation**

- 16.1 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 23.12.

---

**17. Termination**

- 17.1 The Department may immediately terminate this Agreement by notice in writing if:
  - (a) the Recipient fails to meet the Conditions Precedent by the Conditions Precedent Date or fails to provide the further information requested by the Department in connection with the Conditions Precedent by the date set out in clause 3.3;

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- (b) 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; or
  - (c) the Recipient is subject to an Insolvency Event.
- 17.2 If the Department terminates this Agreement under clause 17.1:
- (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.
- 17.3 Within 10 Business Days of the termination or expiry of this Agreement, the Recipient must deliver to the Department:
- (a) all Reports and documents due under this Agreement as at the date of termination or expiration; and
  - (b) a Completion Report detailing the present status of the Project, the extent of the achievement of the Deliverables and the Project and any incidental results and benefits of the Project.

---

## **18. Intellectual Property**

- 18.1 The parties agree that the Project Intellectual Property is owned by the Recipient.
- 18.2 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.
- 18.3 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.

---

## **19. Survival of Clauses**

- 19.1 The following clauses will survive termination or expiration of this Agreement:
- (a) clauses 4.1(i), 4.1(j), 4.1(k) (submission of Progress Report, Completion Report and Post Completion Report);
  - (b) clause 4.14.1(h) (maintenance of insurance);
  - (c) clause 4.1(m) and (n) (record keeping);
  - (d) clause 4.1(o) (provision of accounts);
  - (e) clause 4.1(p) (outcomes interview);

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- (f) clause 9 (Non-Disposal of Assets);
- (g) clause 10 (Acknowledgement of Assistance);
- (h) clause 12 (Confidentiality);
- (i) clause 13 (Release and Indemnity);
- (j) clause 14 (Limit on liability);
- (k) clause 17.3 (consequences of termination)
- (l) clause 18 (Intellectual Property)
- (m) clause 20 (Agreement Management and Dispute Resolution);
- (n) clause 21 (GST);
- (o) clause 23.13 (Set-off); and
- (p) any Special Conditions.

---

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

- 20.1 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.
- 20.2 For the purposes of this clause a dispute will have arisen when either party gives notice to that effect to the other ("**Dispute**").
- 20.3 The parties agree to seek to settle any Dispute by negotiation, mediation or conciliation in accordance with this clause 20, before referring the Dispute to arbitration, or commencing court proceedings relating to the Dispute.
- 20.4 If the parties fail to settle the Dispute within 10 Business Days of receipt of the notice referred to in clause 20.2 the Dispute will be referred to mediation by either party.
- 20.5 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.
- 20.6 Clauses 20.2 to 20.5 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.

---

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

- 21.1 The Funding payable under this Agreement is exclusive of GST.
- 21.2 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.
- 21.3 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 and at the same time as the Funding, subject to the Recipient first submitting to the Department a valid Tax Invoice in respect of the supply.

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- 21.4 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.

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

---

## 22. Notices

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

- 22.2 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.

---

## 23. General Provisions

- 23.1 **(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.

- 23.2 **(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.

- 23.3 **(Subcontracting)** Other than engaging a contractor to deliver the goods comprising the Deliverables to the Recipient (or the installation or commissioning of them), the Recipient may not subcontract any part of the Recipient's obligations under this Agreement without the Department's prior written consent.

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

- 23.5 **(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.

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- 23.6 **(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.
- 23.7 **(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.
- 23.8 **(Compliance with laws and Approvals)** The Recipient must comply with all relevant laws, Approvals, regulations and legal duties that may be applicable to the Project and the Recipient's activities in undertaking the Project.
- 23.9 **(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.
- 23.10 **(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.
- 23.11 **(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.
- 23.12 **(Variation)** This Agreement may only be varied by agreement in writing by both parties.
- 23.13 **(Set-off)** The Department may at any time set off any amount due for payment by the Recipient to the Department against any amount due for payment by the Department to the Recipient under this Agreement.
- 23.14 **(No fetter)** Nothing in this Agreement will fetter the exercise by the Department or any other relevant Authority of any discretion whether to grant, grant subject to conditions, or refuse any approval, or fetter the exercise by the Department of any Authority of any resumption, planning or other regulatory or statutory powers, functions, duties or rights.
- 23.15 **(Counterparts)** This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

---

## **24. Trustee provisions**

- 24.1 The Recipient in its personal capacity and in its capacity as trustee of the trust specified in Item 15 of the Reference Schedule (**Trust**) warrants that:
- (a) the Trust is validly created and is in existence;
  - (b) the Trust has not been determined, wound up, or ceased to exist and will remain in force during the Term and the Recipient has no knowledge of any event or circumstance which may give rise to the termination, winding up or cessation of the Trust;
  - (c) the Recipient is the sole trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Recipient under this Agreement;



**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

- (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.
- 24.2 The Recipient is liable under this Agreement in its personal capacity and as trustee of the Trust.
- 24.3 For the purposes of clause 23.2, 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 24.1.

**Template example document only** – not to be completed by Applicants or submitted with an Applicant’s detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient’s Project.

**Schedule 1 - Deliverables**

Deliverable number	Deliverable	Deliverable Date	Estimated Total Deliverable Project Cost	Estimated Deliverable Eligible Project Cost	Estimated Deliverable Ineligible Project Cost	Maximum Deliverable Funding Contribution
1.	[Note: Insert details of the Project Deliverables]					
2.	[Note: Insert rows as required to provide sufficient Deliverable details.]					
3.						

**Template example document only – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.**

## **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. Provision of a Progress Report, or, for a Payment Claim for the final Deliverable under this Agreement, provision of a Completion Report.
3. 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;
  - (f) the total expenditure amount which has been expended on Eligible Project Costs;
  - (g) the total expenditure amount which has been expended on the Project at the time the Payment Claim is made, including Eligible Project Costs and Ineligible Project Costs;
  - (h) the Recipient's calculation of the Funding Contribution in accordance with Schedule 1 and clause 6.1 of this Agreement; and
  - (i) the description of the Recipient's progress for obtaining or delivering each Deliverable against the relevant Deliverable Date.
4. Evidence of expenditure on the Deliverable, the subject of the Payment Claim, 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 books of account or original bank statements of the Recipient showing payment of the Tax Invoices.
5. If the Deliverable relates to the installation or commissioning of Assets at the Project Site, photographs of those Assets (and installation or demonstrations of commissioning) must be provided.
6. Any other information and material reasonably requested by the Department, including information to demonstrate completion of the Project.

**Template example document only** – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.

**Schedule 3 – Progress Report Format**

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

DRAFT

**Template example document only** – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.

**Schedule 4 – Completion Report Format**

To be submitted at completion of Project when all Deliverables are complete.

DRAFT

**Template example document only** – not to be completed by Applicants or submitted with an Applicant's detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient's Project.

**Schedule 5 – Post Completion Report Format**

DRAFT

**Template example document only – not to be completed by Applicants or submitted with an Applicant’s detailed application. The State reserves the right to amend and update this template funding agreement from time to time and may include additional or alternative terms and conditions for individual Recipients having regard to the nature and the scope of the Recipient’s Project.**

**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)