

**AGREEMENT BETWEEN**

**THE STATE OF WESTERN AUSTRALIA**

**AND**

**ORGANISATION NAME**

**FINANCIAL ASSISTANCE AGREEMENT FOR  
THE WESTERN AUSTRALIAN INDUSTRY FACILITATION SCHEMES,  
LOCAL CAPABILITY FUND**

**ROUND NAME**

**Application Number**

This Agreement is made on the                      day of                      2024

BETWEEN

**THE STATE OF WESTERN AUSTRALIA acting through the Department of Jobs, Tourism, Science and Innovation ("State")**

AND

**Organisation Name (ABN: Applicant ABN) of  
Address, Suburb, State, Post Code, Country  
("Recipient")**

## **BACKGROUND**

- A. The Local Capability Fund is a funding program which assists small and medium enterprises in Western Australia to increase their capability, capacity and competitiveness.
- B. Subject to the terms of this Agreement, the State wishes to provide a Grant to the Recipient for the purposes of the Project.
- C. The Recipient acknowledges the State is required by law to ensure accountability for public money, and the Recipient is required to be accountable for all State funding.
- D. The Parties now wish to record the terms and conditions upon which the approved Grant will be provided by the State to the Recipient.

## OPERATIVE PART

The Parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1. Definitions

In this Agreement unless the context otherwise requires:

**Agreement** means this Financial Assistance Agreement, including its Background and the Schedules.

**Application Form** is the completed electronic application process on the SmartyGrants software system.

**Asset** includes personal, real or incorporated property, with a value of \$5,000 or more, but shall not mean Intellectual Property.

**Authorised Officer** means a person appointed by the State or by the Recipient to act as its authorised officer under this Agreement.

**Business Day** means a day, not being a Saturday, Sunday or public holiday, on which banks are open for general banking business in Western Australia.

**Confidential Information** means any information relating to the State, this Agreement or the Project which is confidential or which is justifiably specified by a Party as confidential in nature.

**Claim Expiry Date** is the final date on which grant payment will be made under the Agreement and detailed in Item 2 of Schedule 1.

**Department** means the Department of Jobs, Tourism, Science and Innovation or such other agency or instrumentality of the State which is charged with the administration of this Agreement from time to time for and on behalf of the State.

**Discloser** means the Party who provides Confidential Information to the other Party.

**Event of Default** means an event so described in clause 10.1.

**Execution Date** means the date when the last Party to execute this Agreement does so.

**Guidelines** means the approved Local Capability Fund scheme guidelines for the funding round and published on the Industry Link website at: <https://www.wa.gov.au/organisation/departments-of-jobs-tourism-science-and-innovation/wa-industry-link>.

**Grant** means the grant described as such in Item 1 of Schedule 1.

**Insolvency Event** means the happening of any of these events:

- (a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or
- (b) except to reconstruct or amalgamate while solvent, a body corporate:

- (i) is wound up or dissolved; or
  - (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or
  - (iii) enters into, or resolves to enter into, any form or formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or
- (c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the *Corporations Act 2001* (Cth) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
- (e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate; or
- (f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgement or order for the payment of money or the recovery of any property; or
- (g) a body corporate:
- (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
  - (ii) stops or suspends payment of all, or a class of, its debts; or
  - (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
    - (A) insolvent or unable to pay its debts when they fall due; or
    - (B) the subject of an event described in section 459C(2)(b) or section 585 of the *Corporation Act 2001* (Cth); or
  - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F (1) of the *Corporations Act 2001* (Cth); or
  - (v) ceases, or threatens to cease, to carry on all or a material part of its business; or

- (h) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in the event; or
- (i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Insurance** means the insurance referred to in clause 12.

**Intellectual Property** or **IP** includes all copyright and associated rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Party** depending on the context means the State or the Recipient as the context required, and **Parties** means both of them.

**Personnel** means officer, employee or contractor.

**Project** means the Project as described in Item 3 of Schedule 1.

**Purposes** means the purposes of this Agreement, including the Project.

**Responsible Officer** means a person appointed by the Recipient to act as its authorised officer under this Agreement.

**Schedule** means the schedules to, and forming part of, this Agreement.

**Specified Person** in relation to a Party means:

- (k) a related body corporate of that Party;
- (l) an adviser of that Party; or
- (m) Personnel of that Party or any entity referred to in items (a) or (b) of this definition.

**State** means the State of Western Australia.

**Term** means the duration of this Agreement as set out in Item 5 of Schedule

## 1.2 Interpretations

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other gender;
- (c) references to persons include corporations;

- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include emails;
- (h) an obligation of two or more persons binds them jointly and severally;
- (i) an obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (j) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (k) references to this Agreement include its Background, Recitals, Schedules and Annexures (if any);
- (l) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (m) references to time are to local time in Perth, Western Australia;
- (n) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (o) references to currency are to Australian currency unless otherwise stated;
- (p) no rule of construction applies to the disadvantage of a Party on the basis that that Party put forward this Agreement or any part of this Agreement;
- (q) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (r) when the day or last day for doing an act is not a Business Day in the place where that act is to be done, then the day or last day for doing the act will be the directly preceding Business Day in the place where that act is to be done.

## **2. ADMINISTRATION OF THIS AGREEMENT**

The Recipient acknowledges that the Department will be administering this agreement for and on behalf of the State.

### **3. GRANT**

#### **3.1 Payment**

- (a) Subject to the terms of this Agreement, the State agrees to pay the Grant to the Recipient in the instalments and at the times specified in Schedule 1 upon the:
  - (i) completion of the applicable milestone as detailed in Item 6 of Schedule 1;
  - (ii) the Recipient's presentation of a claim for payment together with written evidence (including all of the information specified in Item 6 of Schedule 1 and any further information required by the Department), to the satisfaction of the Department; and
  - (iii) the Department's receipt of a valid tax invoice from the Recipient.
- (b) Unless otherwise specified in Schedule 1, the State agrees to pay the Grant to the Recipient as a reimbursement to the Recipient of eligible costs under this Agreement.
- (c) Where payment of the Grant is made in advance of the Recipient incurring eligible costs, the Recipient must only apply the Grant towards eligible costs.
- (d) The claim for payment must be made on or before the Claim Expiry Date. The Recipient must immediately notify the Department of any issues or problems that could cause a delay to the claim for payment in writing.
- (e) An extension to the Claim Expiry Date may be granted at the discretion of the State.
- (f) The State may, at the State's discretion, refuse to pay the Grant where the claim for payment is received after the Claim Expiry Date.
- (g) Payment will be made via electronic funds transfer to the account details specified in Item 7 of Schedule 1.

#### **3.2 Approved Project**

The Recipient must use the Grant solely for carrying out the Project, or as otherwise agreed by the Parties in writing.

The Recipient must carry out the Project fully, properly, competently, carefully, diligently and efficiently in accordance with the terms and conditions of this Agreement. The Recipient must use the Grant efficiently and not extravagantly, wastefully or irresponsibly.

#### **3.3 No Endorsement**

The Recipient agrees that nothing in this Agreement constitutes an endorsement by the Department or State of any goods or services provided by the Recipient to any person.

### **3.4 Additional Expenditure**

The Recipient acknowledges and agrees that it is solely responsible for any expenditure in relation to the Project which exceeds the Grant. The Department and State have no liability whatsoever to provide any additional funding to the Recipient over and above the Grant.

### **4. RECIPIENT'S GENERAL UNDERTAKINGS**

The Recipient covenants and agrees in favour of the State that during the Term:

- (a) (representation or warranty incorrect) it will notify the State promptly if any representation or warranty made or taken to be made by or on behalf of the Recipient in or in connection with this Agreement is found to be incorrect or misleading when made or taken to be made, or has become or is likely to become untrue;
- (b) (performance of obligations) it will at all times duly perform and observe its obligations arising out of or in connection with this Agreement and will promptly inform the State of any occurrence which might materially adversely affect its ability to perform;
- (c) (authorisations) it will comply with the terms of each authorisation necessary to enter into this Agreement, observe obligations under it and allow it to be enforced and it will obtain and renew on time each such authorisation;
- (d) (acknowledge) it acknowledges that:
  - (i) funding provided under this Agreement is public money and is subject to compliance by the Recipient with the terms of the Grant as detailed in this Agreement;
  - (ii) a list of all recipients of the Local Capability Fund may be tabled in the Western Australian Parliament;
  - (iii) a list of all recipients of the Local Capability Fund may be used in promotional material published by the Department; and
  - (iv) in either scenario, additional information that may be published may include the names of Grant recipients, the value of the Grant awarded, the name of the project/activity for which the Grant was awarded and the related outcomes resulting from the Grant funding. The Department may share this information without seeking the Recipient's prior approval.
- (e) (undertake) it will undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices;
- (f) (cooperate) it will cooperate fully with the State in the administration of this Agreement;



- (g) (laws) it will comply with all relevant State and Commonwealth laws, rules, regulations and by-laws under and in connection with the Project and this Agreement; and
- (h) (inspection) it will permit the State, any officers of the State or any other person authorised by any of them to enter the Recipient's premises at any reasonable time to determine whether the Recipient is performing its obligations under this Agreement, provided that any person entering the Recipient's premises does so in a manner so as to cause minimal disruption to the Recipient's business.
- (i) (publicity):
  - (i) it will work collaboratively with the Department to publicise outcomes achieved by the recipient as a result of the grant funding and through activities promoting the grant program. This may include reports, publications, case studies and media statements produced by the Department; and
  - (ii) if and when the Recipient promotes or advertises or releases, publishes or displays information, signage or material pertaining to the Agreement, the Recipient must, in a positive way, acknowledge therein the WA State Government's assistance via the Local Capability Fund.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 Recipient's Warranties**

The Recipient represents and warrants that:

- (a) it is duly authorised and has the power to enter into and observe its obligations under this Agreement;
- (b) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms;
- (c) all authorisations, registrations, consents, approvals licences and permits which are or will be required in connection with the Project or the performance by the Recipient of its obligations under this Agreement have been or will be obtained or effected and are or will be and will remain in force and effect for as long as necessary;
- (d) to the best of its knowledge or belief there is no litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the Recipient which could have a materially adverse effect on the Recipient's ability to perform this Agreement or on the State's or Department's reputation;
- (e) to the best of its knowledge or belief this Agreement and performance under it does not violate any law or government order or decree or any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient;

- (f) all information provided by or on behalf of the Recipient to the State relating to the Recipient's affairs and this Agreement are true, accurate and complete and, without limiting this clause 5.10, all financial information provided by or on behalf of the Recipient to the State is, in all material respects, a true, fair and accurate statement of its financial position as at the date of preparation of the information;
- (g) it has, after diligent inquiry and investigation, fully disclosed to the State all material information which could reasonably be regarded as affecting in any way the State's decision to enter into this Agreement; and
- (h) it will comply with all prior representations made by it in connection with the Recipient or this Agreement.

## **5.2 Made Continuously**

The representation and warranties made by the Recipient under clause 0 are taken to be made continuously throughout the Term.

## **6. BENEFITS TO WESTERN AUSTRALIAN INDUSTRY AND OTHER END-USERS**

The Recipient acknowledges that underlying the Grant is the State's belief that it will create jobs, diversify the economy and enhance innovation, in Western Australia. Therefore the Recipient will have Project outputs that will benefit industry and other end-users in Western Australia.

## **7. ASSETS**

- (a) For Assets purchased with the Grant, the Recipient must follow ordinary and commercially prudent procedures and arrangements for the purchase, installation, maintenance and preservation of such Assets.
- (b) The Recipient must ensure that all Assets purchased with the Grant must be available and used only for the Project.
- (c) Assets purchased with the Grant must vest in the Recipient.
- (d) Assets purchased with the Grant should be kept within the State unless the State has first given the Recipient written approval to move any items outside Western Australia.
- (e) During the Term of the Agreement, the Recipient must not sell, transfer, dispose of, mortgage, charge or otherwise encumber Assets purchased with the Grant without the prior written consent of the State.

## **8. RECORDS, REPORTS, INFORMATION AND AUDIT**

### **8.1 Records**

The Recipient must keep proper, detailed, accurate, complete and up-to-date written records of:

- (a) its income, expenditure and financial commitments in relation to the Project (including bills, accounts, invoices, dockets, receipts and the like); and

- (b) the activities, performance, progress, successes, achievements, setbacks, failures and remedial actions of and associated with the Project.

Such records must be kept for five years after the Execution Date. The State may access the above records at all times.

## **8.2 Reporting**

- (a) The Recipient must submit a detailed written reports on the success or otherwise of the Project, as required from time to time and set out in Item 4 of Schedule 1.
- (b) All reports must be:
  - (i) accurate and complete;
  - (ii) on the template provided by the Department; and
  - (iii) to the total satisfaction of the Department in every respect.
- (c) The report is to include, where applicable:
  - (i) copies of certificates that the Recipient has received as a result of completing the Project; anddetails of:
  - (ii) whether the outcomes listed in the Application Form or milestone schedule have been achieved, together with evidence of such achievements;
  - (iii) what impediments or hurdles have prevented the outcomes from being achieved on time and what (if any) remediation measures have been taken, or are to be taken;
  - (iv) the community benefits resulting from the funding;
  - (v) the number and value of successful contracts resulting from the funding; and
  - (vi) the Recipient's performance in terms of turnover and employment numbers.

## **8.3 Site Visits**

The Department may at any time visit the Recipient's site to monitor the level of compliance with the Agreement or for purposes of promoting successful outcomes from the Project.

## **8.4 Notification**

- (a) The Recipient must provide to the State notification of any legal proceedings or debt recovery actions against the Recipient or any of its officers or employees, where such legal proceedings could have a materially adverse effect on the ability of the Recipient to perform its obligations under this Agreement.

- (b) Any information provided under clause 8.4(a) above shall be provided on a confidential basis, and may only be used by the State for the purposes of considering or enforcing its rights under this Agreement.

## **8.5 Information**

- (a) The Recipient must promptly provide to the Department with information and documents (including supporting evidence) in connection with the Recipient or this Agreement that the Department requests from time to time including, without limitation, any information and documents (including supporting evidence) which the Department requires in considering whether the Department is or should be satisfied of any matter in connection with this Agreement.

- (b) Where:

- (i) any document or other matter previously provided under this Agreement has changed and that change would, or might, result in, or cause, circumstances which would, or might, adversely affect the ability of the Recipient to comply with its obligations under this Agreement; or
- (ii) any accounts or financial statements provided by the Recipient under this Agreement have been replaced by later accounts or financial statements since having been provided to the State,

the Recipient must promptly provide the Department with full details of the change or with updated copies of the accounts or financial statements (as the case may be).

- (c) All information and documentation provided by the Recipient to the Department hereunder must be true, accurate, complete, sufficiently detailed, up-to-date and in no way misleading or deceptive.

## **8.6 Audit Rights**

The State may arrange, at its own cost, for an independent audit to be carried out of the Recipient's activities and finances that relate directly to the Project and the Grant. If the State arranges for an independent audit to be carried out:

- (a) the State must provide reasonable written notice to the Recipient that the State has arranged for an independent audit to be carried out;
- (b) the Recipient must allow all persons appointed by the State to carry out the independent audit to have full access to the financial records of the Recipient for the purpose of carrying out the independent audit; and
- (c) the Recipient must allow the Auditor General for the State, the Internal Audit Branch of the Department, or an authorised representative, to have access to and examine records and information concerning the Project and the Grant, during normal business hours upon giving not less than five Business Days' written notice to the Recipient.

Where the State considers that any information or evidence provided by the Recipient under this Agreement is incorrect, out-of-date, incomplete or inaccurate and arranges for an independent audit to be carried out in respect of that information or evidence, and where the audit substantiates the State's concern, then the independent audit will be at the Recipient's expense.

The Recipient must note that a list of all recipients of the Local Capability Fund will be tabled in the Western Australian Parliament. The information tabled could include names of recipients, the amount of financial support and the name of the project/activity. This information, including outcomes resulting from the grant funding, may be shared by the Department without the need to seek prior approval from the Recipient.

## **9. RELATIONSHIP**

The Parties acknowledge and agree that nothing in this Agreement may be construed to make either of them a partner, agent, employee or joint venture of the other.

The Recipient will not by virtue of this Agreement be or for any purpose be deemed to be, an employee, partner, or agent of the Department or the State, nor shall the Recipient have any power or authority to bind or represent the State.

The Recipient must not represent itself, and must ensure that its employees, contractors (at any tier), or agents do not represent themselves, as being an employee, partner or agent of the Department or the State or as otherwise able to bind or represent the Department or the State.

## **10. DEFAULT**

### **10.1 Event of Default**

The State and the Recipient agree that it is an Event of Default if:

- (a) progress of the Project is not, in the opinion of the Responsible Officer or the State, satisfactory;
- (b) the Recipient breaches an obligation under this Agreement which cannot be remedied;
- (c) the Recipient breaches any remediable obligation under this Agreement and that breach is not remedied within the reasonable period of time specified in the State's written notice to the Recipient requiring the breach to be remedied;
- (d) a representation or warranty made or taken to be made by or on behalf of the Recipient under or in connection with this Agreement is found or is notified by the Recipient to be materially incorrect or misleading when made or taken to be made;
- (e) an undertaking given to the State by the Recipient or another person in connection with this Agreement is breached or not wholly performed within the period specified in the undertaking or, if no period is specified, within five Business Days from the date of the undertaking;

- (f) a person is appointed under legislation to investigate or manage any part of the affairs of the Recipient;
- (g) in the reasonable opinion of the State the reputation of the Department or State is likely to be, damaged by any act or omission of, or any conduct by, the Recipient; or
- (h) the State and the Recipient have mutually agreed to the termination of this Agreement.
- (i) If the State believes that the Recipient will or is likely to breach the Agreement, the State may withhold payment of the Grant.
- (j) an Insolvency Event occurs in respect of the Recipient.

## **10.2 Suspension During Breach**

Whilst a Party is in breach of this Agreement, the other Party may suspend the performance of its obligations under this Agreement.

## **11. CONSEQUENCES OF EVENT OF DEFAULT**

If an Event of Default occurs during the Term, the State may terminate this Agreement with written notice to the Recipient, whereupon:

- (a) The State shall cease to be liable for any unpaid amount of the Grant;
- (b) the State, in its absolute discretion, may by notice in writing to the Recipient, demand that part or all of the Grant which has been disbursed is due and payable by the Recipient to the State; and
- (c) if the State makes a demand under clause 0, the Grant or the part thereof demanded is due and payable by the Recipient to the State in immediately available funds within 20 Business Days after the date of the notice is received by Recipient.

## **12. INSURANCE**

### **12.1 Insurance must be obtained**

The Recipient must obtain and maintain (or procures the obtaining and maintenance of) during the Term:

- (a) insurance in respect of workers' compensation in accordance with statutory requirements;
- (b) insurance to cover the full replacement value of the Assets purchased with Grant monies;
- (c) public liability insurance in the minimum amount of \$10,000,000 per claim; and
- (d) where the Recipient is providing professional services, professional indemnity insurance in the minimum amount of \$5,000,000 per claim, or as otherwise agreed by the Department

with:

- (i) an Australian Prudential Regulatory Authority approved insurer; or
- (ii) an overseas insurer with a Standard and Poor's, or any other internationally recognised financial rating Agency, with a credit rating of at least A minus (A-); or
- (iii) an insurer established under either Commonwealth or State law.

## **12.2 Undertakings in Relation to Insurance**

The Recipient must:

- (a) pay or ensure the payment of all premiums and amounts necessary for effecting and keeping up the Insurance before the same are due and obtain a receipt upon payment;
- (b) if requested, provide or arrange to be provided to the State, as soon as practicable after the Recipient receives it, a copy of any certificate of currency of the Insurance;
- (c) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective any Insurance;
- (d) provide written notice to the State of any enforced, conducted or settled claims related to this Project under any policy of Insurance;
- (e) comply with the requirements of the Insurer in relation to the Insurance at all times so as to prevent the invalidation of the policy or policies of Insurance and not to do, permit, or suffer to be done any act, matter, thing, or other circumstance which might prejudice the Insurance or reduce the obligations of the Insurer; and not at any time reduce the amount of the Insurance or transfer or change the same to any other insurer without providing written notice to the State.

## **13. INDEMNITY**

- (a) The Recipient hereby agrees to indemnify and keep indemnified the Department and the State, and to hold the Department and the State, and their respective officers, employees and agents harmless against all damages, losses, liabilities, cost and expenses (including legal fees) claimed, suffered or incurred by the Department or the State or any of their respective officers, employees and agents whether before or after the date of this Agreement to the extent directly caused by any:
  - (i) breach of an obligation of this Agreement by the Recipient;
  - (ii) negligent or other wrongful or unlawful act or omission of the Recipient or any of its officers, employees, agents or contractors (at any tier); or
  - (iii) breach of a State or Commonwealth law relevant to the Agreement by the Recipient or any of its officers, employees, agents or contractors (at any tier).
- (b) This indemnity is reduced to the extent that the indemnified party caused or contributed to the liability or damage.

- (c) This indemnity survives expiration or termination of this Agreement.

#### **14. REPAYMENT AND RETENTION OF THE FUNDING**

- (a) If the cost to the Recipient in carrying out the Project is less than the amount estimated at the time of application, the amount of the Grant for reimbursement will be adjusted as set out in the Guidelines.
- (b) At the Claim Expiry Date, or the expiration or termination of this Agreement (whichever occurs first):
  - (i) the State will retain any unpaid part of the Grant for which the Recipient has not:
    - (A) submitted a valid claim for payment in accordance with this Agreement; or
    - (B) committed or will not use in accordance with this Agreement.
  - (ii) the Recipient must remit to the Department within 20 Business Days any part of the Grant which the Department has paid and for which:
    - (A) the Recipient has not submitted a valid claim for payment in accordance with this Agreement; or
    - (B) has not been used or committed in accordance with this Agreement.

#### **15. LIMITATION OF LIABILITY**

The Department and the State shall not have any responsibility or liability for the success or otherwise of the Project. The Department and the State shall not be liable for any losses suffered by the Recipient in undertaking the Project. If the Grant is insufficient for the Recipient to properly meet all of its obligations, then the Recipient is solely responsible for funding any shortfall.

#### **16. CONFIDENTIALITY**

- (a) Each Party must treat as confidential the Confidential Information and must ensure that its Personnel keep confidential the Confidential Information.
- (b) Each Party must not, and must ensure that its Personnel do not, at any time, directly or indirectly record, disclose to any person (who is not a Party), use, copy, transmit or exploit the Confidential Information for any purpose, without the prior written consent of the other Party.
- (c) Each Party must:
  - (i) only access and use the Confidential information for the Purposes;
  - (ii) only create, or cause or permit to be created, a document that reproduces, is based on, utilises or relates to Confidential Information if that creation is solely for, and is necessary for, the Purposes; and



- (iii) only disclose Confidential Information:
    - (A) to a Specified Person solely for the Purposes and where such disclosure is necessary for the Purposes; or
    - (B) with the prior written consent of the Discloser.
- (d) The obligations of a Party under clauses 16(a), (b) and (c) will not be taken to have been breached where the Confidential Information:
  - (i) is or becomes generally available other than by breach of this Agreement by that Party or any breach of any legal or equitable obligation by anyone else;
  - (ii) is required to be disclosed by a Party by any written law or valid court order; or
  - (iii) is required to be disclosed under a provision of a statute in operation in the Commonwealth of Australia or the State, by law or by the rules of any stock exchange or listing authority; or
  - (iv) in the case of the State or the Department, it is required to disclose any such information by virtue of an order, request or direction given to it by or on the part of the government of the State or the Parliament of the State or a committee of it; or
  - (v) the Parties agree in writing to disclose the information.
- (e) If the Recipient must make a disclosure as described in clause 16(d)(ii) or (iii), it must:
  - (i) disclose only the minimum of that Confidential Information that is required to comply with the applicable law;
  - (ii) disclose the information to the person that the Recipient must disclose it to, and no one else; and
  - (iii) use its reasonable endeavours to provide the State with prior written notice of the disclosure, and the extent of the proposed disclosure.
- (f) Any minister of the government of the State may be required to disclose any Confidential Information in response to a Parliamentary request, question or direction.
- (g) A Party must immediately notify the other Party of any unauthorised record, disclosure, use, copying, transmission or exploitation of the Confidential Information of which a Party becomes aware, and must take all reasonable steps which the other Party may reasonably require in relation to such unauthorised record, disclosure, use, copying, transmission or exploitation.

## 17. TRUSTS

If the Recipient enters into this Agreement as trustee of a trust:

- (a) the Recipient does so both for itself and as trustee of the trust, and in this Agreement, each reference to the Recipient has effect as a reference in each capacity.
- (b) the Recipient warrants to the State that:
  - (i) the Recipient is the only trustee of the trust;
  - (ii) no action has been taken or proposed to remove the Recipient as trustee of the trust;
  - (iii) the Recipient has power under the trust deed to enter into this Agreement and the Recipient has entered into this Agreement for the benefit of the beneficiaries of the trust;
  - (iv) the Recipient has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under this Agreement;
  - (v) the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Recipient has a right to be indemnified out of those assets;
  - (vi) the Recipient is not in default under the trust deed;
  - (vii) no action has been taken or is proposed to terminate the trust;
  - (viii) the Recipient has complied with the Recipient's obligations in connection with the trust; and
  - (ix) the State's rights under this Agreement rank in priority to the interests of the beneficiaries of the trust.
- (c) the Recipient must:
  - (i) at the State's request, exercise the Recipient's right of indemnity from the assets of the trust and the beneficiaries of the trust in respect of obligations incurred by it under this Agreement;
  - (ii) comply with the Recipient's obligations as trustee of the trust;
  - (iii) not, without the consent of the State, do anything which:
    - (A) effects the retirement, removal or replacement of the Recipient as trustee of the trust;
    - (B) could restrict the Recipient's right of indemnity from the assets of the trust in respect of obligations incurred by the Recipient under this Agreement;
    - (C) could restrict the ability of the Recipient to comply with the Recipient's obligations under this Agreement; and
    - (D) effects a variation of the trust deed, the termination of the trust or the resettlement of the trust.

## **18. ENTIRE AGREEMENT**

This Agreement constitutes the full and complete understanding between the Parties in relation to its subject matter and supersedes all prior negotiations, understandings and agreements with respect thereto.

## **19. VARIATION**

Any modification, amendment or other variation to this Agreement must be in writing and duly executed by both Parties.

## **20. COSTS**

Each Party agrees to bear its own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and of other related documentation.

## **21. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law in force in Western Australia. Each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals there from in relation to any legal action, suit or proceeding arising out of or with respect to this Agreement.

## **22. FORCE MAJEURE**

If any Party is prevented from or delayed in performing an obligation by any event or occurrences beyond its reasonable control, such as weather or oceanic conditions or related issues indirectly or directly affected by weather or oceanic events, and promptly acts to mitigate the event or occurrence, the obligation is suspended during the period the event or occurrence continues and any further period which is reasonable in the circumstance. However, if the event or occurrence extends for more than six months, then either Party can lawfully terminate this Agreement without any further obligations accruing to any Party.

## **23. NOTICES**

### **23.1 Notices**

A notice or other communication that may or must be given under or in connection with this Agreement, to be valid and effective, must:

- (a) be in writing;
- (b) be given by an Authorised Officer of either Party; and
- (c) be:
  - (i) sent by prepaid ordinary post to, or left at the address of, the addressee at the address set out in Schedule 2; or
  - (ii) sent by email to the email address of the addressee set out in Schedule 2.
- (d) Each Party may change its addresses or addressee for receipt of notices by giving written notice of the change to the other Party.

### **23.2 Receipt of Notices**

A notice or other communication takes effect from the time it is received, unless a later time is specified in the notice or communication. For the purposes of this clause 22, a letter, facsimile or email is taken to be received:

- (a) in the case of a letter sent by post, on the third Business Day after posting;
- (b) in the case of an email, on production of a printed copy of the sent email which shows that the entire email, including all attachments, was sent to the email address of the addressee set out in Schedule 2; and
- (c) A notice or other communication which is received after 5.00 pm on a day is taken to be received on the next Business Day after that day.

### **23.3 Address for Service**

The Parties' addresses for service are set out in Schedule 2.

## **24. WAIVER**

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by each Party.
- (b) A waiver by either Party pursuant to clause 24(a) will not prejudice that Party's rights in respect of any subsequent breach of this Agreement by the other Party.
- (c) Subject to clause 24(a), any failure by either Party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party will not be construed as a waiver of rights under this Agreement.

## **25. PARTIES' RIGHTS**

A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

## **26. EXECUTION**

This Agreement may be executed in counterparts by the respective Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

## SCHEDULE 1 – KEY TERMS

### ITEM 1 – GRANT

The total amount of the Grant is a maximum of **Recommended Amount** (exclusive of GST) payable as outlined in Item 6 of this Schedule 1.

For clarity, under the **Round Name** payment is calculated at **X** percent of non-GST eligible expenditure as defined in the Guidelines up to the above maximum grant amount approved.

### ITEM 2 – CLAIM EXPIRY DATE

All claims for grant payment under this agreement must be submitted by **Expiry Date** which is the Claim Expiry Date.

### ITEM 3 – PROJECT

The purpose of the Grant is to provide financial assistance to support the undertaking of the Project.

The Project is:

**Specific Purpose**

### ITEM 4 – REPORTING

The Recipient must submit a detailed written report in accordance with clause 8.2 of the Agreement at the time intervals of:

- (a) 6 months from the Claim Expiry Date; and
- (b) 12 months from the Claim Expiry Date.

### ITEM 5 – TERM

The Term commences on the Execution Date and ends 12 months after the Claim Expiry Date.

### ITEM 6 – PAYMENT SCHEDULE

Instalment	Milestone	Completion Date	Performance Measure and Required Evidence	Grant Instalment
1	Completion of the Project	<b>Expiry Date</b>	Provision of relevant supplier invoices and evidence of payment of those invoices to the satisfaction of the Department	<b>X%</b> of actual expenditure provided the total grant funding does not exceed <b>Recommended Amount</b>

## **ITEM 7 – ACCOUNT DETAILS**

Payment of the Grant instalments will be by electronic funds transfer to the following Recipient bank account:

Name of Bank:

Account Name:

BSB:

Account Number:

## SCHEDULE 2 – NOTICE DETAILS

### Notice Addresses

State and Department

Registered Mail:	Level 11, 1 William Street, Perth WA 6000
Email:	lcf@jtsi.wa.gov.au

Recipient

Registered Mail:	
Email:	

**Executed** by the parties hereto on the date first hereinbefore mentioned.

Signed for and on behalf of the State of Western Australia, acting by and through its Department of Jobs, Tourism, Science and Innovation by a duly authorised signatory:

ANDREW MOLINI  
Director, Local Industry Participation  
Department of Jobs, Tourism, Science and Innovation  
Date:

\_\_\_\_\_  
Executed by the Recipient:

Signed by:

(ABN: in accordance with section 127 of  
the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director/sole director\*

\_\_\_\_\_  
Signature of director / company secretary\*

\_\_\_\_\_  
Name of director/sole director\* (print)

\_\_\_\_\_  
Name of director / company secretary\*  
(print)

*\*cross out inapplicable position*

Date .....

**The payment to the Recipient will be via electronic funds transfer to the account details provided by the Recipient in Item 7 of Schedule 1. By signing this agreement you are also certifying that the account details are true and correct.**