



Department of Jobs, Precincts and Regions

# GRANT AGREEMENT

**Neighbourhood Activity Centre Renewal Fund**

**[PROJECT TITLE]**

**THE STATE OF VICTORIA**

as represented by its

**DEPARTMENT OF JOBS, PRECINCTS AND REGIONS**

AND

**[RECIPIENT]**

## TABLE OF CONTENTS

<b>DATE</b> .....	<b>3</b>
<b>PARTIES</b> .....	<b>3</b>
<b>BACKGROUND</b> .....	<b>3</b>
<b>GRANT TERMS &amp; CONDITIONS</b> .....	<b>4</b>
1. DEFINITIONS & INTERPRETATION.....	4
2. TERM OF AGREEMENT .....	8
3. PAYMENT OF GRANT .....	8
4. PROJECT.....	8
5. WITHHOLDING OR REFUND OF GRANT .....	9
6. LOCAL JOBS FIRST POLICY .....	10
7. WORKING FOR VICTORIA.....	12
8. SOCIAL PROCUREMENT POLICY.....	12
9. REPORTS .....	12
10. ACCOUNTS AND AUDIT .....	13
11. GST.....	13
12. PUBLICITY .....	13
13. INDEMNITY.....	14
14. INSURANCE .....	14
15. CONFIDENTIALITY.....	14
16. COMPLIANCE WITH LAWS.....	14
17. NOTICES .....	15
18. DUTIES & TAXES .....	15
19. GENERAL .....	15
<b>Schedule 1 -GRANT DETAILS</b> .....	<b>18</b>
<b>PART A – Project Particulars</b> .....	<b>18</b>
<b>PART B – Reporting Requirements</b> .....	<b>20</b>
<b>PART C – Payment Terms</b> .....	<b>21</b>
<b>SCHEDULE 2 – WORKING FOR VICTORIA</b> .....	<b>23</b>
<b>ANNEXURE A – Statutory Declaration</b> .....	<b>26</b>
<b>ANNEXURE B – Audit Opinion – Capital Expenditure</b> .....	<b>28</b>

## GRANT AGREEMENT

### DATE

### PARTIES

This Agreement is made between and binds the following parties:

Name: The Crown in right of the State of Victoria (**State**) as represented by its Department of Jobs, Precincts and Regions (**Department**)

Address: 121 Exhibition Street,  
Melbourne VIC 3000

### AND

Name: [insert Recipient name] (**Recipient**)

ABN: [insert ABN]

Address: [insert address]

### BACKGROUND

- A. The State acting through the Department may make payment from monies appropriated by Parliament for the purposes of the economic development of Victoria.
- B. The Recipient desires to carry out the Project and has applied for a Grant through the Neighbourhood Activity Centre Renewal Fund to assist it with the Project.
- C. In consideration of the Department providing the Grant to the Recipient for the purposes of the Project, the Recipient agrees to be bound by the terms of this Agreement.
- D. This Agreement is legally binding upon the Recipient and the State.

## GRANT TERMS & CONDITIONS

### 1. DEFINITIONS & INTERPRETATION

#### 1.1 Definitions

If used in this Agreement, unless the context requires otherwise:

**Accounts** means accounts, records and supporting data in relation to the Project;

**Agreement** means this Grant Agreement including the Grant Details and all annexures;

**Audit Opinion** means an audit opinion which must be prepared in the form set out in Annexure B of this Agreement (or such other form approved by the Department) by a person who is not an officer or employee of the Recipient and:

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

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Victoria (being a public holiday appointed under the *Public Holidays Act 1993* (Vic));

**Capital Expenditure** means expenditure on buildings, plant, equipment, tools or other items of a capital nature but does not include any recurrent or other costs which are not capitalised;

**Change of Control** means, in relation to the Recipient, a change in the effective control of the Recipient by way of a change to the:

- (a) control of the composition of the Recipient's board of directors; or
- (b) control of more than half of the voting power of the Recipient;

**Commencement Date** means the date, if any, set out in the Grant Details;

**Completion Date** means the date set out in the Grant Details;

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

**Contract Manager** means the person (however described) appointed by the Department as its representative for all communication and liaison with the Recipient for the purposes of this Agreement, and as notified by the Department to the Recipient from time to time;

**Due Date** means the date for the delivery of the Payment Deliverables by the Recipient as set out in Part C (Payment Terms) of the Grant Details;

**Employees** means full time or part time employees of the Recipient with respect to whom Victorian payroll tax is payable. For the purpose of calculating the number of employees:

- (a) figures must be based on payroll details as at the last pay day in each month throughout the period of the calculation; and

- (b) part-time employees are to be included on a pro rata basis by reference to their working hours (on a full time equivalent employee basis). Employees working in excess of standard full time hours shall only be counted as one employee;

**Evidence** means evidence to the satisfaction of the Department;

**Facility** means the facility or facilities at the Project Site;

**Grant** means any funds paid or to be paid by the Department to the Recipient, in accordance with the terms of this Agreement;

**Grant Amount** means the amount set out in the Grant Details;

**Grant Details** means the details of the Grant and the Project attaching to and forming part of this Agreement set out in Schedule 1 to this Agreement;

**GST** has the meaning given in the GST Law;

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999*;

**Guidelines** means the Local Jobs First Supplier Guidelines, available at [www.localjobsfirst.vic.gov.au](http://www.localjobsfirst.vic.gov.au);

**ICN** means the Industry Capability Network Victoria of Level 11, 10 Queens Road Melbourne Vic, 3004 ACN 007 058 120;**Intellectual Property** includes business names, copyrights, and all rights in relation to inventions, patents, registered or unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**IRN Form** means the form submitted by the Recipient to the ICN via the VMC in accordance with clause 6.3;**Insolvency Event** means the occurrence of any of the following:

- (a) a liquidator, provisional liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the Recipient or any asset of the Recipient;
- (b) a distress, attachment or other execution is levied or enforced upon or against any assets of the Recipient and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within ten (10) Business Days;
- (c) an order is made for the administration, dissolution or winding up of the Recipient, or an application to the courts is made (and is not stayed or dismissed within twenty (20) Business Days after being made), or a resolution is passed for the administration, dissolution or winding up of the Recipient other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the Department;
- (d) the Recipient ceases or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the Department;
- (e) the Recipient enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a Solvent reconstruction or amalgamation on terms approved by the Department;
- (f) an inspector is appointed under any Law related to companies to investigate all or any part of the affairs of the Recipient in relation to a possible contravention by the Recipient of that Law and the appointment:
  - (i) is not withdrawn within ten (10) Business Days; and

- (ii) in the reasonable opinion of the Department, may have a material adverse effect;
- (g) the Recipient is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);
- (h) for a registered corporation under the *Corporations Act 2001* (Cth), a step taken under section 601AA, 601AB or 601AC of the *Corporations Act 2001* (Cth) to cancel its registration; or
- (i) in relation to an entity subject to the laws of any jurisdiction other than a jurisdiction in Australia, something having substantially similar effect to any of the things described in paragraphs (a) to (h) occurs in connection with that entity under the laws of that jurisdiction;

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

**Local Jobs First Commissioner** means the person appointed under s 12 of the *Local Jobs First Act 2003*;

**Local Jobs First Policy** means the policy of the Victorian Government made under s 4 of the *Local Jobs First Act 2003*;

**Local Jobs First Policy Commitment** means the commitments of the Recipient as set out in clause 6, and includes the Recipient's commitments as set out in the Reference Letter;

**Payment Deliverables** means each of the documents and other deliverables set out in the Grant Details, required to be delivered to the Department prior to payment of any Grant instalment;

**Payment Terms** means the schedule of Grant instalment set out in the Grant Details;

**Project** means the project described in the Grant Details;

**Project Expenditure** means the sum of Capital Expenditure and other Project related non-capitalised expenditure incurred or to be incurred by the Recipient on the Project but does not include internal costs, resources or salaries;

**Project Outcomes** means the expected outcomes of the Project, as specified in the Grant Details;

**Project Site** means the site or sites in Victoria where the Project is to be undertaken;

**Recipient Commitments** means each of the commitments, if any, given by the Recipient in respect of the Project and/or this Agreement set out in the Grant Details;

**Recipient Contribution** means the funding or in-kind contributions to be provided by the Recipient directly in connection with the Project as set out in the Budget Breakdown section in Part D – *Work Activities* of the Grant Details;

**Reference Letter** means the letter provided by the ICN to the Recipient after the Recipient has consulted with ICN regarding opportunities for local industry for the Project;

**Refund Event** means each of the events, if any, set out in the Grant Details;

**Report** means each report to be provided by the Recipient as set out in the Grant Details;

**Required Insurances** means each of the insurances, if any, set out in the Grant Details;

**Responsible Department** has the same meaning given to the term "Department" in s 3(1) of the *Local Jobs First Act 2003*;

**Responsible Minister** means the Minister with responsibility for administering the *Local Jobs First Act 2003*;

**Solvent** has the meaning given in the *Corporations Act 2001* (Cth);

**Statutory Declaration** means a Statutory Declaration in the form annexed to this Agreement (or such other form as may be approved in writing by the Department) and declared by a Director of the Recipient (or such other person as may be approved in writing by the Department);

**Tax Invoice** has the same meaning as specified in the GST Law;

**Victorian Local Jobs First Management Centre (VMC)** means the online system developed to manage the application of the Local Jobs First Policy by suppliers (including Recipients) and Government agencies;

**Works** means any works to be undertaken as part of the Work Activities; and

**Work Activities** means the scope of activities to be undertaken as part of the Project including any Works as specified in Part D – *Work Activities* of the Grant Details.

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) monetary references are references to Australian currency;
- (b) the clause and sub-clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its sub-clauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender (including neutral pronouns) include any other gender;
- (f) a reference to the word "include" or "including" is to be interpreted without limitation;
- (g) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (h) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (i) if the Recipient consists of more than one person those persons shall be jointly and severally bound under this Agreement;

- (j) a reference to the Department includes any duly authorised officer or agent and its successor Government department and all references to the Department will be read and construed as references to the State;
- (k) a reference to a clause or sub-clause is a reference to a clause or sub-clause of this Agreement;
- (l) any uncertainty or ambiguity in the meaning of a provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision; and
- (m) where this Agreement refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

## **2. TERM OF AGREEMENT**

- 2.1 This Agreement will commence on the date of this Agreement and continue until the Recipient has completed all its obligations under this Agreement to the satisfaction of the Department unless terminated earlier by the Department.

## **3. PAYMENT OF GRANT**

- 3.1 Subject to and in accordance with the terms of this Agreement, the Department will advance to the Recipient the Grant Amount in the instalments specified in the Payment Terms.
- 3.2 Each Grant instalment is conditional upon the Recipient having provided to the Department each relevant Payment Deliverable including all Payment Deliverables applicable to any previous Grant instalment.
- 3.3 The Recipient must apply the Grant and any interest derived by the Recipient from Grant monies paid to the Recipient solely for the purposes of the Project.
- 3.4 If the Recipient fails to achieve any of the Payment Deliverables as specified in the Grant Details the Department is not obliged to advance any Grant instalment but may, in its absolute discretion, at the request of the Recipient, agree to a variation of this Agreement to enable an adjusted Grant instalment to be advanced having regard to:
  - (a) the amount of Project Expenditure incurred by the Recipient on the Project; or
  - (b) any other factors the Department deems appropriate.
- 3.5 Any amount advanced by the Department under clause 3.4 may be calculated as the Department deems appropriate in its absolute discretion.
- 3.6 The Department may, in its absolute discretion, extend any of the dates for the provision of the Payment Deliverables.

## **4. PROJECT**

- 4.1 The Recipient must commence the Project by the Commencement Date and must complete the Project including all Work Activities by the Completion Date. The Department may in its absolute discretion extend the Commencement Date or the Completion Date.



4.2 If the Recipient has not commenced the Project by the Commencement Date, the Department may by written notice immediately terminate this Agreement.

4.3 The Recipient must:

- (a) exercise due care, skill and judgment in performing the Project;
- (b) procure suitably experienced, qualified and licensed tradespersons (where applicable) to undertake any Works and ensure that such Works are completed in accordance with all applicable compliance standards and building codes;
- (c) obtain all applicable and relevant permits and approvals required in respect of any Works to be undertaken as part of the Project;
- (d) perform the Project in a timely manner in accordance with the Payment Deliverables and other Project milestones, if any;
- (e) ensure that it has sufficient funds in addition to the Grant to complete the Project on the scope proposed;
- (f) remain responsible for all Project cost over-runs;
- (g) cooperate with the Department at all times;
- (h) fulfil each of the Recipient Commitments; and
- (i) achieve the Project Outcomes.

4.4 The Recipient must promptly advise the Department if:

- (a) there is or may be a delay to the Project; or
- (b) there is any change to the scope, estimated cost or other aspect of the delivery of the Project.

## **5. WITHHOLDING OR REFUND OF GRANT**

5.1 Where the Department is of the opinion that the Recipient:

- (a) has failed to fulfil or has breached any of its obligations under this Agreement;
- (b) has not or is unlikely to perform or complete the Project in the manner contemplated in this Agreement;
- (c) has engaged or may engage in any conduct which affects or may adversely affect the goodwill or reputation of the Recipient, the Project, the Department, a Minister, or the State; or
- (d) is subject to an Insolvency Event,

the Department may, in its absolute discretion:

- (e) withhold, suspend or cancel payment of the Grant;
- (f) seek a refund of the whole or part of the Grant previously paid; and/or
- (g) by written notice immediately terminate this Agreement.

5.2 Where the Department is of the opinion that continued association with the Project, or the Recipient may bring a Minister, the Department or the State into disrepute the Department may in its absolute discretion:

- (a) withhold, suspend or cancel payment of the Grant; and/or
  - (b) by written notice immediately terminate this Agreement.
- 5.3 If, without the prior written consent of the Department, the Recipient:
- (a) is subject to a Change of Control; or
  - (b) has undertaken a restructuring of its business or change to its legal status which has or may in the reasonable opinion of the Department adversely affect its ability to carry out its obligations under this Agreement,
- the Department may, in its absolute discretion:
- (c) withhold, suspend or cancel payment of the Grant; and/or
  - (d) by written notice immediately terminate this Agreement.
- 5.4 Where the Department is of the opinion that a Refund Event has occurred, the Department may, in its absolute discretion:
- (a) by written notice immediately terminate this Agreement; and/or
  - (b) by written notice require the refund in whole or in part of any amount of the Grant previously advanced together with interest at a rate of 2% per annum above the rate fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983* calculated from the date of the payment of the Grant to the date of refund.
- 5.5 Any amount of the Grant not expended or legally committed for expenditure by the Recipient in accordance with this Agreement, must be refunded to the Department within thirty (30) days of the Completion Date or, in the event of termination, within seven (7) days of the date of termination, unless otherwise approved in writing by the Department.

## **6. LOCAL JOBS FIRST POLICY**

- 6.1 This clause 6 does not apply unless Item 8 in Part A – Project Particulars of Grant Details states that it applies.
- 6.2 To the extent the Local Jobs First Policy applies to the Project, the Recipient must comply with the Local Jobs First Policy, the Local Jobs First Policy Commitments and this clause 6.
- 6.3 Interaction Reference Number**
- (a) The Recipient must comply with this clause 6.3 as a condition precedent to it becoming entitled to payment of the Grant under this Agreement.
  - (b) To maximise opportunities for local business within the Project, within sixty (60) days of the Contract Manager's request, the Recipient must prepare and submit an IRN Form through the VMC setting out:
    - (i) details of the Project; and
    - (ii) the services or activity likely to be required to deliver the Project.

- (c) When contacted by the ICN, the Recipient must consult with ICN in respect of opportunities for local businesses to deliver the services and activity required under this Agreement.
- (d) The Recipient acknowledges and agrees that ICN will, if required:
  - (i) review and contribute to planning for the Project; and
  - (ii) participate in meetings regarding the Project.
- (e) Within twenty (20) Business Days of entering into this Agreement, the Recipient must:
  - (i) provide the IRN to the Contract Manager; and
  - (ii) inform the Contract Manager of any opportunities for local business agreed with ICN. For this purpose, the Recipient may provide the Contract Manager with a copy of the Reference Letter.

#### **6.4 Record Keeping and monitoring**

- (a) The Recipient must prepare and maintain records demonstrating its compliance with any Local Jobs First Policy Commitments.
- (b) The Recipient must monitor its compliance with any Local Jobs First Policy Commitments.
- (c) The Recipient acknowledges and agrees that the Responsible Department and the Department may consult with the ICN in respect of the Recipient's compliance with any Local Jobs First Policy Commitments.
- (d) The obligations of the Recipient set out in this clause 6.4 are in addition to and do not derogate from any other obligations of the Recipient under this Agreement.

#### **6.5 Use of Information**

- (a) The Recipient acknowledges and agrees that any information provided to the Department or the Responsible Department by the ICN in accordance with clause 6.4 may be:
  - (i) included in the Department's report of operations under Part 7 of the *Financial Management Act 1994* in respect of the Department's compliance with the Local Jobs First Policy in the financial year to which the report of operations relates;
  - (ii) provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the Local Jobs First Policy during that year; and
  - (iii) may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.

#### **6.6 Local Jobs First Commissioner**

- (a) The Recipient acknowledges that:

- (i) it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the *Local Jobs First Act 2003*;
- (ii) it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the *Local Jobs First Act 2003*;
- (iii) its failure to comply with the compliance notice referred to in this clause 6.6(a) may result in the issue of an adverse publicity notice by the Responsible Minister under s 29 of the *Local Jobs First Act 2003*; and
- (iv) the Local Jobs First Commissioner may:
  - (A) monitor and report on compliance with the Local Jobs First Policy; and
  - (B) request the Department to conduct an audit in relation to the Recipient's compliance with the Local Jobs First Policy.
- (b) The Recipient acknowledges that the Commissioner may recommend that the Department take enforcement proceedings against the Recipient if the Recipient has failed to comply with the Local Jobs First Policy by:
  - (i) applying to a court to obtain an injunction; or
  - (ii) taking action available under this Agreement.

## **7. WORKING FOR VICTORIA**

Schedule 2 to this Agreement does not apply unless Item 9 in Part A – Project Particulars of Grant Details states that it applies.

## **8. SOCIAL PROCUREMENT POLICY**

Schedule 3 to this Agreement does not apply unless Item 10 in Part A – Project Particulars of Grant Details states that it applies.

## **9. REPORTS**

9.1 The Recipient must provide to the Department:

- (a) each of the Reports at the times specified in the Grant Details; and
- (b) such other information as the Department may request from time to time in relation to the Project, the Recipient's activities and the expenditure of the Grant.

9.2 All Intellectual Property created in relation to the Project or in any Reports, documents or other material created for the purposes of or as a consequence of the Recipient performing or complying with its obligations under this Agreement, vest in the Recipient on creation.

- 9.3 The Recipient hereby grants to the Department a world-wide, non-exclusive, royalty free, (including the right to sub-licence), to reproduce, publish, adapt, modify or otherwise use for non-commercial purposes the Reports and any documents and other materials provided by the Recipient under this Agreement.
- 9.4 The Recipient warrants that any Intellectual Property used by it in connection with the Project and this Agreement (including any documents and other materials prepared for the purposes of the Project and this Agreement) are the sole property of the Recipient or the Recipient is legally entitled to use such Intellectual Property and is able to grant the licence under clause 9.3.

## **10. ACCOUNTS AND AUDIT**

- 10.1 The Recipient must, within its accounting systems, account for the Grant and all Project Expenditure separately from other funds of the Recipient.
- 10.2 The Recipient must keep or cause to be kept proper Accounts in accordance with generally accepted accounting principles and as required by Law.
- 10.3 The Department will be entitled to audit all Project Expenditure and for that purpose the Recipient must:
- (a) permit access to, inspection and copying of its Accounts by the Department or any person duly authorised by the Department;
  - (b) assist the Department in the conduct of the audit, including by answering any enquiries by the Department; and
  - (c) permit the Department to inspect the Project Site and Project Assets.
- 10.4 The Recipient must, if required, provide the Auditor General of Victoria with access to its Accounts.

## **11. GST**

- 11.1 Each payment under this Agreement will be increased by an amount equal to any GST payable with respect to the Taxable Supply for which the payment is made provided that with each relevant claim for payment, the Recipient submits a valid Tax Invoice. The total amount of monies paid under this Agreement will be increased to include the total amount of GST payable.
- 11.2 For the purposes of this Agreement, "Taxable Supply" means the obligations of the Recipient under the terms of this Agreement.

## **12. PUBLICITY**

- 12.1 The Recipient must cooperate with the Department in relation to all publicity associated with the Grant.
- 12.2 The Department may publicise the benefits accruing to the Recipient and/or the State associated with the provision of the Grant and the State's support for the Project. The Department may include the name of the Recipient and/or the Grant Amount in any publicity material and in the Department's annual report.
- 12.3 If requested by the Department, the Recipient must ensure that the State's support (except the Grant amount) for the Project is acknowledged on all promotional materials and appropriate signage consistent with the Guidelines

for Victorian Government Advertising and Communications (available at [www.dpc.vic.gov.au](http://www.dpc.vic.gov.au)) or as otherwise specified by the Department.

### **13. INDEMNITY**

13.1 The Recipient indemnifies the Department, its officers, employees, and agents against any:

- (a) cost or liability incurred by the Department;
- (b) loss of or damage to the Department's property; or
- (c) loss or expense incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on an indemnity basis and the cost of time spent, resources used, or disbursements paid by the Department;

arising from:

- (d) any act or omission by the Recipient, or any of the Recipient's employees, agents, volunteers, contractors or subcontractors in connection with the Project or this Agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
- (e) any breach by the Recipient of this Agreement; or
- (f) the use by the Department of the Reports or other material provided under this Agreement, including any claims by third parties about the ownership or right to use Intellectual Property in the Reports or material,

except to the extent that the Department or its officers, agents or employees has caused or contributed to such cost, loss, damage, or liability.

### **14. INSURANCE**

14.1 The Recipient must maintain each of the Required Insurances, if any, described in the Grant Details.

### **15. CONFIDENTIALITY**

15.1 The Recipient must not disclose or permit the disclosure of any of the Department's Confidential Information without written permission from the Department, except:

- (a) to the Department or the State;
- (b) where required under this Agreement including to the Recipient's legal and financial advisers on a confidential basis;
- (c) where the information disclosed is already in the public domain other than due to a breach of this Agreement; or
- (d) where the disclosure is required by Law.

### **16. COMPLIANCE WITH LAWS**

16.1 The Recipient must comply with all Laws including all applicable Commonwealth and Victorian equal opportunity, anti discrimination, affirmative action and privacy legislation.

## 17. NOTICES

17.1 Any notice, approval, consent or other communication from one party to another under this Agreement, must be in writing addressed to the other party and signed by an authorised officer on behalf of the party giving it and must be delivered by hand, post, courier or email.

17.2 Notices will be deemed to have been given if:

- (a) mailed, three (3) Business Days after posting;
- (b) delivered, on the date of delivery;
- (c) emailed, on receipt by the send of confirmation of receipt, except that a notice that is delivered or emailed after 5:00pm will be deemed to be received on the next Business Day.

## 18. DUTIES & TAXES

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

## 19. GENERAL

19.1 **(Entire Agreement)** This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

19.2 **(Severance)** Each provision of this Agreement (and each part thereof) will, unless the context requires otherwise, be read and construed as a separate or severable provision so that if any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part thereof, will be severed and the remainder will be read and construed as if the severable provision or part thereof, had never existed.

19.3 **(Waiver)** A waiver by one party of a breach of this Agreement does not constitute a waiver in respect of any other breach of this Agreement, and a party's failure to enforce a provision of this Agreement must not be interpreted to mean that the party no longer regards that provision as binding. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

19.4 **(Variation)** No agreement or understanding varying or extending this Agreement will be legally binding upon either party unless in writing signed by both parties.

19.5 **(Assignment)** The Recipient must not transfer or assign its rights or novate its obligations under this Agreement without the prior written consent of the Department.

19.6 **(Counterparts and electronic signatures)** This Agreement including any variations may be executed in counterparts. All counterparts together will constitute one instrument and will be effective when counterparts have been signed by each of the parties and delivered to the other party. Each party agrees that the electronic signatures, whether digital or encrypted are intended to authenticate and have the same force and effect as manual signatures.

Delivery of a copy of this Agreement or any other document contemplated under this Agreement, bearing an original manual or electronic signature by electronic email in portable document format (pdf) or similar format intended to preserve the original graphic and pictorial appearance of a document or through the use of electronic signature software will have the same effect as physical delivery of the paper document bearing an original signature.

- 19.7 **(Negation of Employment, Partnership & Agency)** The Recipient must not represent itself, and must ensure that its employees, partners, agents or sub-contractors do not represent themselves, as being the Department's or the State's employees, partners or agents.
- 19.8 **(No Further Funding)** Nothing in this Agreement is to be construed as creating any obligation, commitment or undertaking by the State or the Department to provide additional funding or assistance beyond that provided in this Agreement.
- 19.9 **(Survival)** Each of clauses 5, 6, 7, 8, 10, 13 and 15 will survive the expiration or earlier termination of this Agreement.
- 19.10 **(Governing Law & Jurisdiction)** This Agreement will be governed by the laws of the State of Victoria and the parties submit themselves to the jurisdiction of the courts in the State of Victoria.



**Executed as an Agreement.**

**SIGNED** by *[insert name and title of person signing on behalf of the Department]* Department of Jobs, Precincts and Regions for and on behalf of the **State of Victoria** )  
)  
)  
)  
)  
)  
)

←

\_\_\_\_\_

←

\_\_\_\_\_

Date

**SIGNED** for and on behalf of *Insert CITY COUNCIL (ABN Insert)* by its authorised representative: )  
)  
)  
)

←

\_\_\_\_\_  
Signature of authorised representative

By executing this Agreement including by electronic signature, the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of the Recipient

\_\_\_\_\_  
Name of authorised representative (print)

Date

\_\_\_\_\_  
Position title of authorised representative

## Schedule 1 -GRANT DETAILS

### PART A – Project Particulars

Item 1	<b>Grant Amount:</b> (Clause 3)	An amount up to [\$.....] (exclusive of GST)
Item 2	<b>Project:</b> (Clause 4)	[insert description]
Item 3	<b>Project Outcomes:</b> (Clause 4)	[insert description of the expected Project Outcomes i.e. new jobs, new manufacturing facility, new production line etc.]
Item 4	<b>Commencement Date:</b> (Clause 4.1)	[Insert date]
Item 5	<b>Completion Date:</b> (Clause 4.1)	[Insert date]
Item 6	<b>Recipient Commitments:</b> (Clause 4.3)	<p>The Recipient must:</p> <ul style="list-style-type: none"> <li>• <b>(Completion of Project)</b> complete the Project and all Work Activities in accordance with this Agreement by the Completion Date.</li> <li>• <b>(Project Expenditure)</b> spend at least [#] of Project Expenditure on the Project by the Completion Date.</li> <li>• <b>(Recipient Contribution)</b> provide at least [#] funding or in-kind contribution towards the Project.</li> </ul>
Item 7	<b>Refund Events:</b> (Clause 5.4)	<p>The Recipient fails to-</p> <ul style="list-style-type: none"> <li>• <b>(Failure to Complete)</b> complete the Project and all Work Activities in accordance with this Agreement by the Completion Date.</li> <li>• <b>(Project Expenditure)</b> to spend at least [\$#] of Project Expenditure on the Project by the Completion Date.</li> <li>• <b>(Recipient Contribution)</b> provide at least [#] funding or in-kind contribution towards the Project.</li> </ul>

<p><b>Item 8</b></p>	<p><b>Local Jobs First Policy – Does clause 6 apply?</b> (Clause 6)</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If nothing stated, clause 6 does not apply.</i></p>
<p><b>Item 9</b></p>	<p><b>Working for Victoria - Does Schedule 2 apply?</b> (Clause 7)</p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>If nothing stated, Schedule 2 does not apply.</i></p>
<p><b>Item 10</b></p>	<p><b>Social Procurement Framework – Does Schedule 2 apply?</b> (Clause 8)</p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If nothing stated, Schedule 3 does not apply.</i></p>
<p><b>Item 11</b></p>	<p><b>Required Insurances</b> (Clause 14.1)</p>	<p>The Recipient must, at a minimum, for the term of this Agreement, maintain each of the following:</p> <ul style="list-style-type: none"> <li>• public liability insurance to a value appropriate for the Project; and</li> <li>• insurance against any loss or damage to the Project infrastructure for full replacement cost.</li> </ul>

## **PART B – Reporting Requirements**

The Recipient must provide the following Reports to the Department, in a form and substance satisfactory to the Department, as follows:

- ***Project Plan***

The completed Project Plan must be provided at the time specified in Part C (Payment Terms) of these Grant Details in the form provided.

Evaluation data to be collected :

- Perceptions of local business operators - pre and post project
- Difference between pedestrian activity – pre and post project
- Difference between community satisfaction levels – pre and post project

- ***Project Progress Report***

The Project Progress Report must be provided at the time specified in Part C (Payment Terms) of these Grant Details in form provided. In addition, Evidence is to be provided of project progress.

- ***Project Final Report***

The Final Report must be provided at the time specified in Part C (Payment Terms) of these Grant Details in the form provided.

## PART C – Payment Terms

Each Grant instalment will be paid within thirty (30) days of receipt by the Department of each of the Payment Deliverables set out below in form and substance satisfactory to the Department.

Payment Deliverables must be provided no later than the relevant Due Date as described below.

Payment Deliverables	Instalment Amount	Due Date
<p><b>Instalment 1:</b></p> <ul style="list-style-type: none"> <li>• <b>(Executed Grant Agreement)</b> executed Agreement;</li> <li>• <b>(Tax Invoice)</b> a valid Tax Invoice; and</li> <li>• <b>(Project Plan)</b> submission of a project plan in respect of (insert title) project.</li> </ul>	<p><b>[\$#]</b> (exclusive of GST) 40% of Grant Amount</p>	<p><b>[insert date]</b> Within 10 Business Days of receiving the letter of offer and draft agreement</p>
<p><b>Instalment 2:</b></p> <ul style="list-style-type: none"> <li>• <b>(Tax Invoice)</b> a valid Tax Invoice; and</li> <li>• <b>(Project Progress Report – (insert project title))</b> submission of Project Status Report –(insert project title).</li> </ul>	<p><b>[\$#]</b> (exclusive of GST) 20% of Grant Amount</p>	<p><b>[insert date]</b> Within 6 months of execution of the agreement</p>
<p><b>Instalment 3:</b></p> <ul style="list-style-type: none"> <li>• <b>(Project Final Report)</b> submission of the Final Project Report –in respect of the (insert project title) project;</li> <li>• <b>(Statutory Declaration)</b> a Statutory Declaration (in the form set out as Annexure A) confirming that the Recipient has incurred Capital Expenditure of at least \$ (insert funded amount) on the (insert project title) Project; and</li> <li>• <b>(Audit Opinion – Capital Expenditure)</b> an Audit Opinion (in the form provided in Annexure B), to the Department’s satisfaction, evidencing at least \$ (insert full project cost) of Capital Expenditure on the Project.</li> </ul>	<p><b>[\$#]</b> (exclusive of GST) 40% of Grant Amount</p>	<p><b>[insert date]</b> Within 45 days of the completion of the project/s.</p>
<b>Total</b>	<p><b>[\$#]</b> (exclusive of GST)</p>	

## Part D – Work Activities

### WORK ACTIVITIES

- A. The Parties acknowledge that the COVID-19 pandemic is posing unprecedented challenges to the delivery of critical community services.
- B. To support the community the Recipient agrees to undertake the Project which includes the Work Activities described below.

#### *The Work Activities and Timelines*

The Recipient will deliver, as a minimum, the activities listed below, bearing in mind that the Agreement is valid for 12 months:

Work Activities	Timelines
<ul style="list-style-type: none"> <li><i>Insert description of activities under the Project</i></li> </ul>	

### BUDGET BREAKDOWN

Activity Income	Amount	Activity Expenditure	Amount
Amount requested from this Fund	[insert amount]	Project Planning	[insert amount]
Grant (State) other than this Fund	[insert amount]	Project Professional Advice	[insert amount]
Grants (Commonwealth)	[insert amount]	Project Management	[insert amount]
Contributions (Your organisation)	[insert amount]	Contingencies Escalations and Allowances	[insert amount]
Contributions (Local business)	[insert amount]	Project Construction	[insert amount]
Other Income	[insert amount]	Other Expenses	[insert amount]
<b>Total Income</b>	<b>\$(insert amount)</b>	<b>Total Expenditure</b>	<b>\$(insert amount)</b>

## SCHEDULE 2 – WORKING FOR VICTORIA

### 1 DEFINITIONS

In this Schedule:

**Employee** means any person employed by a Recipient where that person is employed:

- (a) during the term of this Agreement; and
- (b) through the Working for Victoria platform.

**In the First Instance** has the meaning given in clause 2(b) of this Schedule 2 and includes compliance by the Recipient with its obligations under clause 2(b) of this Schedule 2.

**Working for Victoria** means the Working for Victoria initiative implemented by the Victorian Government, as amended from time to time, accessible at <https://www.vic.gov.au/workingforvictoria>.

**Working for Victoria platform** means the online platform used by the Victorian Government to assist businesses to employ Victorian jobseekers, including people who have lost their jobs as a result of coronavirus (COVID-19). The platform provides access to a labour pool and recruitment services including jobs matching. Access the Working for Victoria platform at <https://www.vic.gov.au/workingforvictoria>.

### 2 SOURCING NEW EMPLOYEES

- (a) If, at any time during the term of this Agreement, the Recipient needs to employ new employees to perform work relating to the Recipient's obligations under this Agreement, such employees must, In the First Instance, be sourced from a pool of jobseekers who have registered on the Working for Victoria platform.
- (b) To satisfy its obligations to source new employees from a pool of jobseekers on the Working for Victoria platform In the First Instance, the Recipient must, prior to advertising the job opportunity elsewhere, or recruiting or employing from sources which are not the Working for Victoria platform:
  - (i) maintain an open job opportunity on the Working for Victoria platform for a minimum of five consecutive Business Days, or until a suitable jobseeker is identified and an offer is made to an Employee, whichever period is shorter; and
  - (ii) either employ through the Recipient's normal recruitment procedures, any suitable jobseekers sourced from the Working for Victoria platform as Employees or determine (acting reasonably) that no jobseekers from the Working for Victoria platform who applied for the job opportunity are suitable for the work.
- (c) The Recipient must ensure that any subcontracts entered into by the Recipient, or by Subcontractors of any tier, in relation to Work Activities under the Agreement, contain clauses requiring Subcontractors of any tier to:
  - (i) recruit new employees from a pool of jobseekers sourced from the Working for Victoria platform In the First Instance, when the Subcontractor requires new employees, to the extent that it applies to work performed under the subcontract;
  - (ii) comply with this Schedule 2 as if references the Recipient were references to the Subcontractor;
  - (iii) provide all necessary information to the Recipient so that the Recipient can fulfil its reporting obligations under this Schedule 2; and

- (iv) permit the Department or its authorised representative to exercise its verification and inspection rights under clause 4 of this Schedule 2.
- (d) The Recipient acknowledges and agrees that:
  - (i) its obligations under this Schedule 2 apply during the term of this Agreement, any extensions to the term and until all of its reporting obligations as set out in clause 3 of this Schedule 2 are fulfilled;
  - (ii) posting a job opportunity on the Working for Victoria platform is not a reflection on the qualifications, suitability or experience of jobseekers or Employees, or the Victorian Government's or the Department's views of jobseekers or Employees;
  - (iii) the Victorian Government and the Department do not make any guarantees, warranties, representations or endorsements regarding the qualifications, suitability or experience of jobseekers or Employees from the Working for Victoria platform, or the quality or type work or services performed by an Employee selected from the Working for Victoria platform;
  - (iv) it is its responsibility alone to verify the qualifications, suitability and experience of jobseekers to undertake the work or services required of the jobseeker;
  - (v) it is its responsibility alone to enter into an employment relationship with each Employee selected from the Working for Victoria platform and to supervise that Employee. Neither the Victorian Government or the Department will be a party to any legal relationship (including but not limited to an employment relationship) with any Employee by virtue of the Working for Victoria platform or this Agreement; and
  - (vi) the Employee will be paid an amount no less than the applicable award rate, or the site rate, whichever is higher.

### **3 REPORTING**

- (a) The Recipient must prepare and maintain records demonstrating its compliance with Working for Victoria and this Schedule 2.
- (b) The Recipient must provide to the Superintendent:
  - (i) quarterly reports demonstrating its progress towards implementing Working for Victoria, or provide an explanation why employees were not sourced from Working for Victoria; and
  - (ii) a final report demonstrating its progress towards implementing Working for Victoria prior to or at the date of completion of the Project, or provide an explanation why employees were not sourced from Working for Victoria.
- (c) The Recipient must ensure that such reporting and other related information is accurate, complete and:
  - (i) in a form satisfactory to the Department (acting reasonably);
  - (ii) provided to the Superintendent at the end of the following months: September, December, March and June; and
  - (iii) includes all supporting information reasonably required by the Department to verify the contents of such reporting.

### **4 VERIFICATION OF RECIPIENT'S COMPLIANCE WITH WORKING FOR VICTORIA**



- (a) The Recipient agrees that the Department will have the right to inspect its records in order to verify compliance with Working for Victoria and this Schedule 2.
- (b) The Recipient must:
  - (i) permit the Department, or its duly authorised representative, from time to time during ordinary business hours and upon reasonable notice, to inspect, verify and make copies at the Department's expense of all records maintained by the Recipient for the purposes of this Agreement at the Recipient's premises, or provide copies of those records to the Superintendent at the Department's request;
  - (ii) permit the Department, or its duly authorised representative, from time to time to undertake a review of the Recipient's performance in accordance with this Schedule 2; and
  - (iii) ensure that its employees, agents and Subcontractors give all reasonable assistance to any person authorised by the Department to undertake such audit or inspection as described in (i) and (ii) above.
- (c) The Recipient acknowledges and agrees that the Department and its duly authorised representative are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Recipient's compliance with Working for Victoria.
- (d) The obligations set out in this clause 4 are in addition to and do not derogate from any other obligation under this Agreement.

## **5 USE OF INFORMATION**

- (a) The Recipient acknowledges and agrees that the statistical information contained in the reports demonstrating its compliance with implementing Working for Victoria:
  - (i) will be shared between the department and other government departments for combined reporting purposes; and
  - (ii) may be disclosed in the circumstances authorised or permitted under the terms of this Contract, in accordance with Victorian Government policy, or as otherwise required by Law.
- (b) The Recipient agrees and acknowledges that all information accessed by it through the Working for Victoria platform is subject to the terms and conditions of that platform, and it is a condition of this Agreement that the Recipient complies with those terms and conditions.

## ANNEXURE A – Statutory Declaration

### Statutory Declaration

The person making the declaration is required to read the following paragraph aloud in the presence of the authorised statutory declaration witness (unless that person has a disability which prevents the person from doing so):

“I, [full name of person making declaration] of [address], declare that the contents of this statutory declaration are true and correct.”

I, [insert name, address and occupation], make the following statutory declaration under the *Oaths and Affirmations Act 2018*:

1. I am a Director of [insert name of Recipient] (**Recipient**).
2. The Recipient has complied with all of its obligations under the Grant Agreement dated [insert date] (**Agreement**) between the Recipient and the State of Victoria.
3. The Recipient has incurred [\$/#] of Project Expenditure as at [insert date] in accordance with the terms of the Agreement.
4. The Recipient has provided or procured at least [\$/#] in In-kind Contributions towards the Project as at [insert date] in accordance with the terms of the Agreement.
5. The Recipient has achieved the Project Outcomes as specified in the Agreement.\*
6. The accounts relating to the Project as attached to this Statutory Declaration are true and correct.\*\*

AND I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

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

**I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:**

..... on / / 20

A person authorised under section 30(2) of the *Oaths and Affirmations Act 2018* to witness the signing of a statutory declaration [include full name and personal or professional address of authorised statutory declaration witness in legible writing, typing or stamp \*\*\*].

*\*only required for final instalment.*

*\*\*Note: The Project accounts should, at a minimum, itemise the Capital Expenditure and, in relation to each item, describe the nature of expenditure, the amount and the connection to the Project.*

*\*\*\* Note: The person making the declaration as well as the authorised witness must initial each page of the statutory declaration if the declaration is comprised of more than one page, which includes any exhibits to the declaration.*

DRAFT

## ANNEXURE B – Audit Opinion – Capital Expenditure

*[To be on the letterhead of the accounting firm]*

Department of Jobs, Precincts and Regions  
121 Exhibition Street  
Melbourne VIC 3000

### **[Name of Recipient]**

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

### **Scope**

We have conducted an independent audit in accordance with Australian Auditing Standards of the attached *[insert description of relevant Recipient document audited – may be statement by Recipient’s chief financial officer]* provided by the Recipient which specifies an amount of \$[\*] of Capital Expenditure, in order to express an opinion on it for the purposes of the Agreement.

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

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

### **Audit Opinion**

We confirm that in our opinion, the Recipient, has incurred \$[\*] in Capital Expenditure (as defined in the Agreement) in accordance with the terms of the Agreement.

Signed .....

Dated: .....

Print Name:

Position:

*[Name of the Accounting Firm]*