

**2018**

**STATE OF WESTERN AUSTRALIA**

**-and-**

**[NAME OF GRANTEE]**

---

**GRANT AGREEMENT**

**[INSERT NAME OF THE GRANT AND THE PROGRAM NAME]**

---

State Solicitor's Office  
Commercial and Conveyancing  
141 St Georges Terrace  
PERTH WA 6000  
Telephone: (08) 9264 1888  
SSO Ref:

## Table of Contents

RECITALS.....	3
OPERATIVE PART .....	3
1 DEFINITIONS AND INTERPRETATION .....	3
1.2 Interpretation .....	6
2 GRANT .....	7
3 NO DISPOSAL OF PROPERTY .....	7
4 MAINTAIN PROPERTY .....	7
5 INSURANCE .....	7
6 ACCESS TO INFORMATION .....	8
7 RECORDS .....	8
8 WARRANTIES .....	8
9 TERMINATION .....	8
10 STATE MAY INSPECT .....	9
11 COMPLY WITH LAWS .....	9
12 INCIDENT REPORTING .....	9
13 CONTACT PERSONS .....	9
14 STATE MAY ACT .....	10
15 ACQUITTAL .....	10
16 TERM OF AGREEMENT .....	10
SCHEDULE.....	11
1. Purpose.....	11
2. Detailed Description of Project .....	11
2.1. Project Description.....	11
2.2. Project Outcome.....	11
2.3. Project Timeframe .....	11
2.4. Project Budget.....	11
3. Manner in which Funding is to be Paid .....	12
3.1. Payment of the Grant.....	12
4. Special Conditions .....	13
EXECUTION OF THIS AGREEMENT .....	15

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

BETWEEN:

**THE STATE OF WESTERN AUSTRALIA** via the Department of Regional Development, acting through the Director General, of 140 William Street, Perth WA 6000 ("Department")

-and-

**[NAME OF GRANTEE]**

("Grantee")

## RECITALS

- A. The State is making and the Grantee is accepting a grant of money for the latter to **[Enter the Purpose of the Grant]**.
- B. The Grant is made subject to terms, conditions and warranties set out in this Agreement

## OPERATIVE PART

### 1 DEFINITIONS AND INTERPRETATION

In this Agreement, unless repugnant to the context:

**Agreement** means this agreement, including its recitals and any schedules or annexures.

**Auditor** means a person who is an approved auditor for the purposes of the *Local Government Act 1995* or a Registered Company Auditor and who is independent of the Recipient.

**Business Day** means a day when banks are open for business in Perth, Western Australia.

**Dispose** includes transfer, agree to transfer, lease, agree to lease or otherwise part with possession.

**Grant** means the grant described in clause 2.1.

**Insolvency Event** means the happening of any of the following 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 of 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 if 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;
- (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 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 Corporations 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 that event;
- (i) a person dies, ceases to be of full legal capacity or otherwise become 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.

**Leveraged Funding** is the additional cash funding obtained for the Project from other sources.

**Laws** the written laws (including subsidiary legislation) applying in and to the State of Western Australia.

**Obligation** means obligation under this Agreement.

**Party** means each of the State or the Grantee as the context requires, and **Parties** means both of them.

**Project** means the initiative or activities funded for the Purpose described in the Schedule.

**Property** means the property purchased with the Grant. Such property may, or may not, be described in the Schedule.

**Purpose** means the purpose of carrying out the Project.

**Warranty** means every express or implied warranty.

**Schedule** means any schedule to, and forming part of, this Agreement.

**Special Conditions** means any conditions specified as such in the Schedule.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a public authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;
- (g) a reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the State or the Grantee;
- (h) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, this Agreement;
- (i) all the provisions in any schedule, attachment or appendix to this Agreement are incorporated in, and form part of, this Agreement and bind the parties hereto;
- (j) headings are included for convenience and do not affect the interpretation of this Agreement;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) no rule of interpretation is to be applied to disadvantage the State or the Grantee on the basis that it was responsible for preparing this Agreement;
- (m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (n) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;

- (o) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;
- (p) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day; and
- (s) where the time for performing an obligation or exercising a right is expressed by reference to a period of one or more months before or after a specified date (the reference date) that time period will be determined by calculating the number of months specified from the reference date, with the period expiring on the date which is the equivalent date to the reference date, or if there is no such date in the final month, the last day of that final month.
- (t) a reference to a monetary amount means that amount in Australian currency.

## **2 GRANT**

- 2.1 The State shall make a grant of \$ [Enter Amount of Approved funding under this Agreement] to the Grantee in accordance with the Schedule.
- 2.2 The Grantee must use the Grant for the Purpose(s) set out in the Schedule.

## **3 NO DISPOSAL OF PROPERTY**

The Grantee may not Dispose of or encumber the Property without the State's prior written consent which may be given conditionally. Any condition if imposed by the State hereby becomes a term of this Agreement and consequently must be complied with.

## **4 MAINTAIN PROPERTY**

The Grantee must keep the Property in good, clean, tidy and secure order, state, repair and condition.

## **5 INSURANCE**

The Grantee must effect and maintain replacement and reinstatement insurance for the Property (whether existing now or in the future) for their full replacement/reinstatement value and in respect of all the usual risks associated with such Property. Such insurance must be with an insurer, and on terms and

conditions, wholly acceptable to the State. The Grantee must not do or suffer the doing of anything which would void or vitiate any insurance policy, or cause monies otherwise payable thereunder not to be paid out in full.

## **6 ACCESS TO INFORMATION**

If the State requires from the Grantee information or documentation relating in any way to this Agreement, the Grant, or the Property, the Grantee must promptly oblige. All information and documentation so provided hereunder must be accurate, complete, up-to-date and in no way misleading or deceptive.

## **7 RECORDS**

The Grantee must keep accurate, complete and up-to-date written records of all expenditure made, income received (including other grants) and liabilities incurred (including loans incurred) in respect of this Agreement or the Property. Such records must be made available to the State upon request.

## **8 WARRANTIES**

8.1 The Grantee warrants that there is no legal or other impediment preventing it from entering into or performing this Agreement. Without limitation to the previous sentence, the Grantee warrants that its constituent documents allow it to enter into and perform this Agreement.

8.2 The Grantee warrants that every statement or representation made or given by or on behalf of it (in connection with this Agreement, the Grant or the Property) is true and correct in all material respects.

8.3 Every Warranty made under or by virtue of this Agreement is repeated regularly during the period of this Agreement.

## **9 TERMINATION**

9.1 If and when:

- (a) the Grantee repudiates this Agreement; or
- (b) breaches this Agreement and fails properly to remedy the breach within a reasonable period of time (having regard to the nature and seriousness of the breach, and its ease of remediation) after having received a written notice from the State requesting the Grantee to remedy the breach;
- (c) a material Warranty given by the Grantee is or becomes untrue;
- (d) an Insolvency Event occurs to or in respect of the Grantee; or
- (e) the Grantee regularly breaches this Agreement,

then the State may terminate this Agreement.



9.2 If this Agreement is terminated under clause 9.1, or terminated unlawfully by the Grantee, the Grantee must promptly remit to the State all monies paid to the Grantee under this Agreement.

## 10 STATE MAY INSPECT

The State may at any time and from time to time have access to and inspect the Property, the Grantee's headquarters or premises, the Grantee's financial and other records and other facilities of the Grantee with a view to determining if and to what extent (if any) this Agreement is being complied with by the Grantee. The Grantee shall do all that is necessary to facilitate the exercise of the State's rights under this clause 10.

## 11 COMPLY WITH LAWS

The Grantee must ensure that it and its staff comply with all Laws in connection with this Agreement, the Property and all activities thereon.

## 12 INCIDENT REPORTING

If any damage, destruction, accident, mishap or crime happens to, on or in respect of the Property or any person thereon, the Grantee must promptly and in writing notify the State, providing all relevant details.

## 13 CONTACT PERSONS

If a Party has to notify the other Party under this Agreement, the proper addressees shall be as follows:

### The State

<b>Name:</b>	
<b>Job Title:</b>	
<b>Phone:</b>	
<b>Facsimile:</b>	
<b>Email:</b>	
<b>Postal Address:</b>	
<b>Street Address:</b>	

### The Grantee

<b>Name:</b>	
<b>Job Title:</b>	
<b>Phone:</b>	
<b>Facsimile:</b>	
<b>Email:</b>	
<b>Postal Address:</b>	

<b>Street Address:</b>	
------------------------	--

## **14 STATE MAY ACT**

- 14.1 If the Grantee fails or refuses to perform an obligation under its part under this Agreement or otherwise breaches this Agreement, the State itself may do all that is necessary to ensure the fulfilment of that obligation, or the rectification of the breach (as the case may be), and the cost to the State in doing so shall be a debt payable to the State by the Grantee on demand.
- 14.2 Neither clause 14.1 nor clause 9 shall prevent or prejudice the operation of the other.

## **15 ACQUITTAL**

The Grantee is to provide to the State a report (the Acquittal) at the completion of the Project or the conclusion of this Agreement (whichever occurs first), which shall include:

- (i) a financial report (certified by the Chief Financial Officer or Accountable Officer of the Grantee and audited by an Auditor) certifying that the Grant was used for the Project and confirming the amount spent; such certification to address the issues itemised in this Schedule; and
- (ii) a project report as per this Schedule, showing how and to what extent the Grant was spent and the extent to which the Milestones and outcomes were achieved.

Note – the Acquittal is to be submitted within three (3) months after the completion of the Project.

## **16 TERM OF AGREEMENT**

- 16.1 Clause 4 enure for a term of 5 years after the date when the Grant has fully been paid to the Grantee.
- 16.2 All other clauses enure from the date of this Agreement's execution to when the Grantee lawfully (and in accordance with this Agreement) Disposes of the Property to a third party or the time the Grantee has properly complied with its Obligations. The previous sentence is subject to those provisions of this Agreement that expressly or impliedly survive expiration of this Agreement.

## SCHEDULE

### 1. Purpose

(The Purpose of the Grant relates to what precisely the Grant is to be used for. For example, the Purpose of the Grant could be to meet the costs of construction, salaries or to meet the operating costs of the Project or to meet the cost of purchasing and implementing equipment.)

### 2. Detailed Description of Project

#### 2.1. Project Description

*(Describe the Project or Projects being undertaken. Be as detailed as is sensible given the amount of Funding involved.)*

#### 2.2. Project Outcome

*(Provide a clear statement of the outcomes that the Project(s) aims to achieve. List the key outputs and benefits to be achieved by the Recipient in undertaking the Project. Note that the outcomes resulting from the Project should be consistent with what you have stated in your Business Case. The performance measures should show how you intend to measure the effectiveness of the outputs/outcomes)*

The outcomes/outputs and the performance measures of the Project are as follows:

#### 2.3. Project Timeframe

*(Specify the Project timeframe, including key activities and Milestones. Note that the key activities and Milestones are Obligations to be undertaken by the Recipient. The table is provided as a guide.)*

The Grantee agrees to commence the Project within six (6) months after execution of the Agreement and to finalise the Project within six (6) months after the Project Completion Date noted in the table below.

Main Activities / Milestone	Milestone Date
<b>Project Completion Date</b>	

#### 2.4. Project Budget

*(Specify the total Project Budget including the Royalties for Regions Funding. The table is provided as a guide.)*

Item of Expenditure	Budget (\$'000)	Source of Funds
<b>Total Budget</b>		

### 3. Manner in which Funding is to be Paid

After this Agreement has been executed by both Parties, the State will authorise the payment of the Grant to the Grantee in the manner described in item 2.1 of this Schedule.

The transfer of the Grant will be subject to an assessment, with the State being satisfied with the results of the assessment, of actual Project expenditure and material cash at bank balances of the Grant previously paid and available to the Grantee.

#### 3.1. Payment of the Grant

(Specify the timing for the use of the Grant. The details and timing should explain the payment triggers. The table 2.1 is optional where multiple payments are planned. Where there is a single payment, table 2.1 of this Schedule is not applicable.)

Deliverable	Payment details and timing	Amount \$'000
	•	
	•	
	•	
	•	
<b>Total Payment</b>		

The Grant will be made available as a conditional grant specifically for the delivery of the Project outlined in this Schedule.

The Grantee will forward an invoice to the State for the amount of the Grant outlined in this Schedule. The payment will be processed by the State and the payment to the Grantee will then be electronic funds transferred to:

<b>Account name:</b>	
<b>BSB:</b>	
<b>Account number:</b>	

The State through its internal process may raise a recipient-created tax invoice (RCTI) for the Funding amount identified in this Schedule. The terms of the RCTI are governed by the following:

- (a) The Grantee warrants that it has an Australian Business Number and is registered for GST.
- (b) The Grantee will immediately notify the State in writing of any change to the Grantee's registration.
- (c) The State warrants that it is registered for GST.
- (d) The State will immediately notify the Grantee in writing of any change to the State's Registration.
- (e) If any supply is made by the Grantee after the date of this Agreement in connection with the Grant, the State may issue a RCTI in respect of the supply and the Grantee will not issue a tax invoice in respect of that supply.
- (f) The Grantee and the State may agree that the provisions of the agreement to use recipient-created tax invoices will not apply in respect of a particular supply, in which case the Recipient will issue a tax invoice in respect of that supply.
- (g) The State or the Grantee may terminate agreement to use RCTIs at any time by giving written notice to the other Party.

In this Agreement the terms "supply", "registered", "tax invoice", "recipient-created tax invoice" and "GST" have the same meaning as in the GST Act and "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999*.

#### 4. Special Conditions

(Specify any additional conditions, if any, that the Project is subject to. Note that conditions already exist in the body of the Agreement and include insurance, governance, audit and reporting requirements. Extra conditions may include additional project reporting, requirements for regular project update meetings, governance requirements such as Steering Committees, or implementation of specific guidelines. Leveraged Funding (6.1) is a standard Special Condition for Agreements. Any additional conditions should be entered after Leveraged Funding.)

##### 4.1. Leveraged Funding

- (a) The Recipient shall secure the Leveraged Funding as follows:

Source of Leveraged Funding	Amount (\$)

Source of Leveraged Funding	Amount (\$)

- (b) Despite anything expressed or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to prove to the Department that it has secured the Leveraged Funding which is to be applied to the Project. For any shortfall in that Leveraged Funding which the Recipient must secure, the Department may reduce the amount it is to pay the Recipient under this Agreement by the amount of such shortfall.
- (c) The Recipient must apply the Leveraged Funding to the Project.

**EXECUTION OF THIS AGREEMENT**

**EXECUTED** by the Parties as an Agreement.

**SIGNED** for and on behalf of the **STATE** )  
**OF WESTERN AUSTRALIA** by [Enter )  
name of Signatory] of the **[ENTER** )  
**AGENCY NAME]** in the presence of: )  
)

\_\_\_\_\_  
Signature of State witness

\_\_\_\_\_  
Full name and position of State witness

The signature block for the Grantee will need to be revised based on the nature of the Grantee and the authorisation needed to execute the Agreement.

Signed for and on behalf of [enter name of the Grantee]

The Common Seal of [enter name of the Grantee] was hereto duly affixed in the presence of:

\_\_\_\_\_  
Signature

Director/Board Member/  
Office Holder

\_\_\_\_\_  
Print full name of Authorised Person

\_\_\_\_\_  
Print the position of the Authorised Person

\_\_\_\_\_  
Signature

Director/Board Member/  
Office Holder

\_\_\_\_\_  
Print full name of Authorised Person

\_\_\_\_\_  
Print the position of the Authorised Person

**Note:** The Agreement is signed by the Recipient after the final version of the Agreement has been agreed between Parties to the Agreement.