



# Automotive Supply Chain Development Program Grant Agreement

**Parties**

*Commonwealth and the Grantee*

*Commonwealth*

**THE COMMONWEALTH OF AUSTRALIA REPRESENTED  
BY THE DEPARTMENT OF INNOVATION, INDUSTRY,  
SCIENCE AND RESEARCH**

**ABN**

**74 599 608 295**

*Grantee*

**ABN**

**Date of this deed**

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# Operative provisions

## 1 Interpretation

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1.1 Italicised words that are not defined in this clause 1 have the meaning given in schedule 1.

1.2 Unless the contrary intention appears:

**advisers** means:

- (a) the financial or legal advisers of a party; and
- (b) the respective officers and employees of those financial or legal advisers.

**agreement material** any *material* created on or following the *commencement date* for the purpose of or as a result of the *Grantee* performing its obligations under this *agreement*.

**approved financial institution** means a deposit taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia.

**budget** means the budget of planned eligible expenditure (by *financial year*) for the *project* as described further in schedule 3.

**business day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or the notice is received.

**confidential information** means information that is by its nature confidential and:

- (a) is designated by a party as confidential and is described in Item 4 of Schedule 1; or
- (b) a party knows or ought to know is confidential,

but does not include:

- (c) information in the public domain other than due to a breach of this agreement.

**Department** means the Department of Innovation, Industry, Science and Research or any successor.

**financial year** means the 12 month period beginning 1 July of one year and ending 30 June of the following year.

**Grantee's contribution** means the cash contribution to be made by the *Grantee* to the *project*, as set out in schedule 3.

**GST** has the same meaning as in the *GST Act*.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**insolvency event** means:

- (a) in the case of a natural person - that person is or becomes of unsound mind or a person whose person or estate is liable to be dealt with under any law relating to mental health; or
- (b) in the case of any person (including a natural person) - that person is insolvent under administration or insolvent or having a controller appointed (each as defined in the *Corporations Act 2001* (Cth)), or being in receivership, in receivership and management, in liquidation, in professional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or similar effect happen under the laws of any jurisdiction.

***intellectual property rights*** means all intellectual property rights, including:

- (a) copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered

***material*** includes property, information, software, hardware, documented methodology or process, documentation or other material in whatever form, including reports to be provided to the *Grantee* under this deed.

***Ministerial Guidelines*** means the ministerial guidelines for the Program, as amended from time to time.

***moral rights*** has the meaning in Part IX of the *Copyright Act 1968* (Cth).

***payment date*** means the date on which a *progress payment* is or is proposed to be paid.

***personal information*** has the meaning in section 6 of the *Privacy Act 1988* (Cth).

***planned outcomes*** mean the planned results or outcomes of the *project* as described in the *project plan*.

***pre-existing material*** means *material* owned by a party before execution of this agreement.

***Program*** means the Automotive Supply Chain Development Program.

***Program funding*** means the funding made available by the Parliament of the Commonwealth of Australia for the *Program* in any given *financial year*.

***program objectives*** means the objectives of the *Program* set out in Schedule 2.

***progress payment*** has the meaning given in clause 3.2.

***project*** means the project described in schedule 2.

**project period** means the period from the *commencement date* to the *completion date*.

**project plan** means the plan set out in schedule 2.

**Secretary** means the secretary of the *Department* from time to time under Part 7 of the *Public Service Act 1999* (Cth).

**third party material** means *material* owned by a third party that is:

- (a) included, embodied in or attached to the *agreement material*; or
- (b) used in undertaking the *project*.

1.3 Unless the contrary intention appears:

- (a) a person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
- (b) a *Grantee* may be either a sole grantee, a number of grantees or a grantee who is a member and agent of a consortium. Where the *Grantee* is a member of a consortium, references in this agreement to the *Grantee* include each other member of the consortium, where the context permits;
- (c) where the *Grantee* comprises two or more persons, an agreement, representation or warranty by, or in favour of, the *Grantee* binds or is for the benefit of them jointly and each of them individually; any other reference to the *Grantee* includes a reference to any one or more of those persons;
- (d) a reference to a consortium member (or the consortium) is a reference to any one or more of those members;
- (e) the singular includes the plural and vice versa;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.4 Headings are inserted for convenience of reference only and are not to be used in the interpretation of this agreement.

1.5 Where the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or a public holiday in the place in which the act, matter or thing is to be done then the act, matter or thing will be done on the next day which is not a Saturday, Sunday or a public holiday.

1.6 A reference to this agreement includes these terms and conditions and the schedules.

## 2 Warranties

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### Eligibility criteria

- 2.1 The *Grantee* warrants that, at the date of execution of this agreement, all eligibility criteria set out in the *Ministerial Guidelines* relevant to the *grant* are satisfied.

### Continuing obligation

- 2.2 The *Grantee* warrants that, at the date of execution of this agreement and on each day until the *completion date*:
- (a) the *Grantee* has the power to enter into and perform its obligations under this agreement;
  - (b) it holds all such necessary licences, permits or registrations as are required under any legislation to undertake the *project*;
  - (c) if the *Grantee* is a trustee, it enters into this agreement personally and in its capacity as trustee and has the power to perform its obligations under this agreement;
  - (d) all information provided by the *Grantee* to the *Commonwealth* from time to time under or in connection with this agreement (including the *Grantee's* application for the *grant*, and information contained in any report required under this agreement), is true and correct and not misleading in any material respect; and
  - (e) the *Grantee* is not aware after making all reasonable inquiries of any conflict of interest or other circumstances which adversely affects or might adversely affect the performance of the *project* in accordance with this agreement or the *Grantee's* compliance with any obligations under this agreement.

### Notice of breach

- 2.3 If the *Grantee* becomes aware of a breach of warranty, the *Grantee* must immediately notify the *Commonwealth* of that breach.

## 3. Payment of Grant

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### Payment of Grant

- 3.1 The *Commonwealth* agrees to pay the *grant* to the *Grantee* in accordance with schedule 3 and this agreement, subject to sufficient *Program funding* being available on the relevant *payment date* and the *Grantee* otherwise complying with this agreement.

### Progress payments

- 3.2 The *grant* will be paid in instalments in accordance with schedule 3 ('**progress payments**') by direct credit to the bank account established by the *Grantee* under clause 4.5.

- 3.3 The *Grantee* is not entitled to any *progress payment* if at the *payment date* for that payment:
- (a) the *Grantee* has not made progress on the *project* which is satisfactory to the *Commonwealth*, or completed the requirements corresponding to that *progress payment* in schedule 3;
  - (b) the *Commonwealth* has terminated, or is entitled to terminate, this agreement under clause 9; or
  - (c) the *Grantee* may reasonably be considered to be in default of any of its obligations under this agreement, including by not submitting all reports due under this agreement in the form and content satisfactory to the *Commonwealth*.
- 3.4 The *Commonwealth* may by notice to the *Grantee* request the *Grantee* to provide any information the *Commonwealth* reasonably requires for the purposes of determining any of the matters described in clause 3.3. The *Grantee* must provide information requested under this clause within 10 days of the *Commonwealth's* request. For the avoidance of doubt, the *Commonwealth* is not obliged to make a *progress payment* until it has received, and is satisfied with, the information requested under this clause.

#### **Expenditure**

- 3.5 Without limiting any other provision of this agreement, the *Grantee* must comply with schedule 2 in relation to expenditure of the *grant*.

#### **No obligation**

- 3.6 The *Grantee* acknowledges that the *Commonwealth* is not obliged to make any payment in excess of the *grant*.

## **4 Conduct of Project**

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#### **Conduct of project**

- 4.1 The *Grantee* must carry out the *project*:
- (a) from the *commencement date* and complete the *project* during the *project period*;
  - (b) with the aim at all times of achieving the *planned outcomes*; and
  - (c) in accordance with applicable law, the *Ministerial Guidelines*, the *program objectives*, schedule 2, the *project plan* and the *budget*.

#### **Project delay**

- 4.2 The *Grantee* must notify the *Commonwealth* as soon as practicable, and in any event in its next report due under this agreement, if it reasonably believes that it will not complete the *project* by the *completion date*.
- 4.3 When notifying the *Commonwealth* under clause 4.2, the *Grantee* must specify:
- (a) the reason for the delay;
  - (b) the action the *Grantee* proposes to take to address the delay;

- (c) the anticipated new date for completion of the *project*; and
- (d) the expected effect (if any) the delay will have on the *project* and the *planned outcomes*.

4.4 Without limit to any of its other rights or remedies, upon receiving a notice under clause 4.2, the Commonwealth may in its discretion agree to vary the *completion date* for the *project* in accordance with clause 14.1(b).

### **Bank Account**

4.5 The *Grantee* must establish a separate account, in its own name and which it solely controls, with an *approved financial institution* for the purposes of the *project*. Details sufficient to identify this account must be provided to the *Commonwealth* on or before the date of this agreement.

4.6 The *Grantee* must ensure:

- (a) all *progress payments* are paid into this account;
- (b) the account is not used for any purpose not connected with the *project*.

4.7 The *Grantee* agrees to promptly provide the *Commonwealth* and the relevant *approved financial institution* with an authority enabling the *Secretary*, or any person authorised by the *Secretary*, to obtain any details relating to use of the account, on request.

### **Reporting**

4.8 The *Grantee* must give the *Commonwealth* reports in accordance with schedule 2.

4.9 If in the *Commonwealth's* opinion either the form or content of a report is not satisfactory, or is not adequate for the *Commonwealth's* purposes, the *Grantee* must submit a revised report satisfactory to the *Commonwealth*, within 28 days of receiving a notice from the *Commonwealth* requiring it to do so.

### **Records to be kept**

4.10 The *Grantee* must keep records to the *Commonwealth's* satisfaction in accordance with the requirements of schedule 2.

4.11 The *Grantee* must ensure all records required to be kept under clause 4.10 are retained at a location reasonably accessible to the *Commonwealth* for at least seven years after the *completion date*. If the *Grantee* is not in possession of any such record, the *Grantee* must immediately notify the *Commonwealth* of the location of the record, on request.

### **Inspection and audit**

4.12 At all reasonable times and on reasonable notice, the *Grantee* must allow the *Commonwealth*, the Auditor-General, the Privacy Commissioner and any person authorised in writing by the *Commonwealth*, the Auditor-General, or the Privacy Commissioner access to its premises to inspect and copy any records required to be kept under clause 4.10.

4.13 The *Grantee* must ensure the *Commonwealth*, the Auditor-General, the Privacy Commissioner and any authorised person has access to the premises

of any person on whose premises *project* activities are undertaken, or any records that are required to be kept under clause 4.9 are stored, on terms equivalent to clause 4.12.

4.14 The *Grantee* must give the *Commonwealth*, the Auditor-General, the Privacy Commissioner and any authorised person all necessary facilities and assistance to enable them to conduct a review under clauses 4.12 or 4.13.

### **Evaluation**

4.15 The *Grantee* agrees to cooperate in any evaluation of the *Program* undertaken by or on behalf of the *Commonwealth*, including by completing survey forms relating to the *project* or the *Program* at any time up to five years after the *completion date*, at the request of the *Commonwealth* or any third party engaged by the *Commonwealth* to undertake a *Program* evaluation.

### **Subcontracting**

4.16 Without limiting the *Grantee's* responsibility for compliance with this agreement, the *Grantee* may engage subcontractors to undertake work in relation to the *project* (but not any subcontractor named as not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth)).

## **5 Confidentiality and Privacy**

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5.1 Except as provided in this clause 5 or schedule 1, the parties to this agreement may not disclose each other's *confidential information* to a third party without prior written consent.

5.2 The obligations on each party under clause 5.1 will not be taken to have been breached to the extent that the *confidential information* of the other party:

- (a) is disclosed by a party to its *advisers* or employees solely in order to comply with obligations, or to exercise rights, under this agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this agreement;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of Parliament;
- (e) is shared by Commonwealth with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- (f) is disclosed by the Commonwealth to the Auditor-General, Ombudsman, or Privacy Commissioner; or
- (g) is required by law to be disclosed.

5.3 Before a party discloses the *confidential information* of the other party under clause 5.2, the disclosing party must notify the person receiving the information that it is *confidential information* of the other party.

5.4 Notwithstanding any other provision of this agreement, the Commonwealth may disclose the provisions of this agreement except those provisions the parties have agreed to keep confidential and have specified in Schedule 1.

- 5.5 The *Grantee* agrees to be treated as a “contracted service provider” within the meaning of the *Privacy Act 1988* (Cth) and will:
- (a) use or disclose *personal information* obtained during the course of conducting the *project* under this agreement, only for the purposes of this agreement; and
  - (b) carry out and discharge the obligations contained in the Information Privacy Principles (‘**IPPs**’) as if it were a Commonwealth agency under the *Privacy Act 1988* (Cth).
- 5.6 The *Grantee* will ensure that:
- (a) any subcontract entered into for the purpose of fulfilling its obligations under this agreement contains provisions to ensure that subcontractors have the same obligations as the *Grantee* under this clause, including this clause 5.6; and
  - (b) each subcontractor complies with those provisions.

## **6 Intellectual property**

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- 6.1 This clause 6 does not affect the ownership of the *intellectual property rights* in any *pre-existing material* or *third party material*.
- 6.2 The *Grantee* must obtain all necessary *intellectual property rights* and *moral rights* permissions before making any *third party material* available for the *project* or this agreement.
- 6.3 All *intellectual property rights* in the *agreement material* vest in the *Grantee* on creation.
- 6.4 To the extent that the Commonwealth needs to use any of:
- (a) the *pre-existing material* or *third party material* provided by the *Grantee*, or
  - (b) *agreement material*
- in connection with the *project* or *Program*, the *Grantee* grants to, or must obtain for, the *Commonwealth* a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that *material*.
- 6.5 The *Commonwealth* may provide *Commonwealth material* to the *Grantee* for the purpose of the *project* and the *Grantee* must ensure that the *Commonwealth material* is used only for the purposes of the *project* and strictly in accordance with any conditions or directions specified by the *Commonwealth*.
- 6.6 The *Grantee* warrants that, to the best of its knowledge after having made reasonable enquiry that:
- (a) the *Commonwealth’s* use of the *pre-existing material*, *third party material* and *agreement material* (“*warranted materials*”) in accordance with this agreement will not infringe *the intellectual property rights* or *moral rights* of any person; and
  - (b) it has (or will have at the relevant time) the necessary rights to vest the *intellectual property rights* and grant the licences as provided for in this clause 6.

- 6.7 The *Grantee* indemnifies the Commonwealth and its officers, agents, employees and contractors against any claim, loss, expense or liability (including legal expenses on a solicitor/own client basis) arising out of or in connection with a claim by a third party that the *Grantee's* performance of this agreement, or the use of the *agreement material* by the Commonwealth as permitted under this agreement, infringes their *intellectual property rights* or *moral rights*.
- 6.8 The *Grantee* indemnifies the *Commonwealth* against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the *agreement material*, or exercise of any intellectual property rights of a third party, by the *Commonwealth* (or any person authorised by the *Commonwealth*) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's *intellectual property rights*, and against all loss, liability and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.

## **7 Acquittal of Grant**

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- 7.1 The *Grantee* must repay to the *Commonwealth* on request any *progress payment* or part thereof (together with interest calculated under clause 13.2) received by the *Grantee* and to which the *Grantee* was not entitled under this agreement at the time of payment.
- 7.2 Subject to clause 7.3, if for any reason, the *Grantee* does not spend any part of the *grant* paid to the *Grantee* in full, in accordance with this agreement and the *budget*, so that the *Grantee* has surplus funds remaining by the due date for an instalment of the *grant* ('**Excess**'), the *Commonwealth* may at its discretion at any time:
- (a) by notice to the *Grantee* reduce that instalment by the amount of the **Excess** and reduce the total *grant* payable to the *Grantee* by the amount of the **Excess**; or
  - (b) send the *Grantee* a repayment notice. If the *Grantee* does not repay the *Commonwealth* the **Excess** within the period specified in the repayment notice, the *Grantee* must also pay the *Commonwealth* interest on the **Excess**, calculated in accordance with clause 13.2. The amount of the **Excess** set out in the repayment notice, and the interest owed under this clause, will be recoverable by the *Commonwealth* as a debt due to the *Commonwealth* by the *Grantee*.
- 7.3 However, the *Commonwealth* may not take action under clause 7.2 in respect of the final instalment of the *grant* until the *Commonwealth* has received the final report referred to in schedule 2, and considered that report.

## **8 Release, indemnity and insurance**

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### **Release**

8.1 The Commonwealth does not endorse any particular risks taken by the Grantee in the course of its business and, accordingly, the *Commonwealth* accepts no liability as a result of the *Commonwealth's* promotion of the *Program*, its funding of the *project* or involvement in this agreement. The *Grantee* releases the *Commonwealth* from all loss, liability and expense incurred by the *Grantee* arising out of or in connection with the *Program*, the *project* or any decisions made by the *Grantee* in the course of its business.

### **Indemnity**

8.2 The *Grantee* indemnifies the Commonwealth and its officers, agents, employees and contractors against any claim, loss, expense or liability (including legal expenses on a solicitor/own client basis) arising out of or in connection with:

- (a) any negligent act or omission or fraud of the *Grantee* or its directors, employees, agents or contractors (and their personnel); or
- (b) any breach of this agreement by the *Grantee*.

8.3 The Grantee's liability to indemnify those indemnified under clause 8.2 will be reduced proportionately to the extent that any negligent act or omission of those indemnified contributed to the loss.

8.4 The Commonwealth need not incur expense or make payment before exercising a right of indemnity under this clause 8.

### **Insurance**

8.5 The *Grantee* must have and maintain in connection with the *project*:

- (a) Workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) Public liability insurance for \$10,000,000 or more per claim; and
- (c) Professional indemnity insurance for \$1,000,000 or more per claim.

8.6 The *Grantee* must, on request by the *Commonwealth*, provide to the Commonwealth documentation from its insurers certifying that the *Grantee* holds the insurance required under clause 8.5.

## **9 Termination**

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9.1 The *Commonwealth* may immediately terminate this agreement by notice to the *Grantee* if:

- (a) an *insolvency event* occurs in relation to the *Grantee*;
- (b) the *Grantee* breaches any warranty contained in clause 2;
- (c) the *Grantee* fails to complete the *project* by the *completion date*, or the *Commonwealth* considers that the *Grantee* is unlikely to complete the *project* by that date;

- (d) the *Grantee* commits any breach in respect of which this agreement provides (other than clause 9.2) that a notice of termination may be given;
- (e) the *Grantee* commits any breach which the *Commonwealth* reasonably considers is not capable of remedy; or
- (f) the *Grantee* has acted in a manner to reduce benefits that were expected to be generated by the project, including the *planned outcomes*.

9.2 The *Commonwealth* may terminate this agreement by notice to the *Grantee* if the *Grantee* is in breach of this agreement, that breach is capable of being remedied and the *Grantee* fails to remedy the breach within 28 days of receiving notice from the *Commonwealth* requiring it to do so (or within any longer period specified in the notice).

9.3 The *Commonwealth* may terminate this agreement for convenience at any time, by notice to the *Grantee*.

9.4 In the event of termination of this agreement:

- (a) the parties are relieved from future performance of this agreement, without prejudice to any right of action that has accrued at the date of termination (including any right of the *Commonwealth* to recover any *progress payment* (or part thereof) under this agreement);
- (b) the *Grantee* must give to the *Commonwealth* all outstanding reports due under this agreement;
- (c) the *Commonwealth* may (acting reasonably) by notice to the *Grantee*, require the *Grantee* to repay the *grant* or so much of the *grant* as the *Commonwealth* determines, plus interest calculated in accordance with clause 13.2. To avoid doubt, this notice may be issued on or after the date of termination; and
- (d) in the case of termination under clause 9.3, the *Commonwealth* will compensate the *Grantee* for any reasonable costs incurred as a direct result of the termination, but excluding:
  - (i) any loss of profits, redundancies or the cost of terminating any subcontract; and
  - (ii) any amount which would result in the amounts paid or payable to the *Grantee* under this *agreement* to exceed the total amount of the *grant*.

## 10 Acknowledgement and Public Statements

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### Grantee's acknowledgement

10.1 The *Grantee* must acknowledge the *grant* and the *Program* in any public statements about the *project* made during the *project period* and for up to 5 years after the *completion date*.

### Publicly-available information

- 10.2 The name of the *Grantee*, any *consortium members*, and the amount and purpose of the *grant*, are publicly-available information, which may be published by the *Commonwealth*. The *Grantee* and any *consortium members* consent to such publication by signing this agreement.

## Publication

- 10.3 The *Commonwealth* may also include in press releases, general announcements about the *grant* and in the *Department's* annual report, the following information:
- (a) the name of the *Grantee*, the *consortium* and any *consortium member*;
  - (b) the amount and purpose of the *grant*; and
  - (c) the title and a description of the *project*.

## 11 Goods and Services Tax

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- 11.1 Unless otherwise indicated, any consideration specified for a supply under this agreement does not include any amount of *GST*.
- 11.2 The *Grantee* warrants that it is registered for *GST* and will notify the *Commonwealth* immediately if it ceases to be registered.
- 11.3 Subject to this clause, all taxes, duties (including stamp duty) and government charges imposed or levied in Australia or overseas in connection with this agreement will be borne by the *Grantee*.
- 11.4 If *GST* is imposed by law on a supply by one party ('**Supplier**') to another ('**Recipient**') under or in connection with this agreement, the *Recipient* must pay to the *Supplier* an additional amount equal to the *GST* imposed (without deduction or set-off) in addition to the consideration the *Recipient* is required to provide the *Supplier* for the supply in question.
- 11.5 If a party has a claim under or in connection with this agreement for a cost on which that party must pay *GST*, that claim is for the cost plus all *GST* on that cost (except any *GST* for which that party is entitled to an input tax credit).
- 11.6 When refunding or repaying to the *Commonwealth* any amount for a taxable supply, the *Grantee* must also pay to the *Commonwealth* the amount of *GST* that was paid by the *Commonwealth* to the *Grantee* and which was attributable to that amount. Any refund or repayment must be accompanied by an Adjustment Note (as that term is defined in the *GST Act*).
- 11.7 If *GST* is imposed on any supply made by the *Grantee* to the *Commonwealth* under this agreement in return for all or any part of the consideration, the *Commonwealth* may issue a "recipient created tax invoice" to the *Grantee* for the supply in question and the *Grantee* must not issue a tax invoice for that supply.

## 12 Notices

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- 12.1 Any communication to be given or served pursuant to this agreement must be in writing and addressed and signed as the case may be, as specified in item 5 of schedule 1.

12.2 A notice given in accordance with clause 12.1 takes effect upon receipt and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second *business day* after the date of posting (or on the seventh *business day* after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice,

but if the delivery, receipt or transmission is not on a *business day* or is after 5.00pm on a *business day*, the notice is taken to be received at 9.00am on the next *business day*.

### **13 Right of Commonwealth to recover money**

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13.1 An amount notified to the *Grantee* as owing to the *Commonwealth* in accordance with this agreement is a debt due to the *Commonwealth* and is recoverable by the *Commonwealth* without further proof of the debt being necessary.

13.2 If the *Commonwealth* requires interest to be paid by the *Grantee* in connection with any amount notified as owing under this agreement, the amount of interest will be calculated:

- (a) at the Commonwealth 10 year bond rate from time to time (as published by the Australian Financial Review) plus 2%;
- (b) on a daily compounding basis upon the amount specified in the notice that is required to be repaid or reimbursed; and
- (c) from and including the date (or dates) of payment of the amount to the *Grantee*, up to but excluding the day on which the *Grantee* repays the total amount specified in the notice as owing to the *Commonwealth*, without any set-off, counter-claim, condition, abatement, deduction or withholding.

13.3 Where the *Grantee* owes a debt to the *Commonwealth* under this agreement, the *Commonwealth* may in its absolute discretion:

- (a) require the *Grantee* to repay the amount of the debt, within 28 days of receipt of notice of the debt; or
- (b) deduct the amount of the debt notified to the *Grantee* from any future *progress payment*, or any other amount due from the *Commonwealth* to the *Grantee*.

13.4 Nothing in this clause 13 affects the right of the *Commonwealth* to recover from the *Grantee*, either under this agreement or otherwise at law, the whole of any debt owed by the *Grantee*, or any balance that remains after deduction under clause 13.3(b).

## 14 General

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- 14.1 A provision of, or a right created under, this agreement may not be:
- (a) waived except in writing signed by the party granting the waiver; or
  - (b) varied except in writing signed by the parties.
- 14.2 The *Grantee* may not assign any of its rights or obligations under this agreement without the prior consent of the *Commonwealth*.
- 14.3 This agreement and the transactions contemplated by this agreement are governed by the law in force in the Australian Capital Territory.
- 14.4 Subject to clause 14.5, unless expressly stated otherwise in this agreement, obligations under this agreement terminate 5 years after the *completion date*.
- 14.5 Clauses 4.8, 4.9 (Reporting), 4.10, 4.11 (Records to be kept), 4.12, 4.13, 4.14 (Inspection and Audit), 4.15 (Evaluation) 5 (Confidentiality and privacy), 6 (Intellectual property) 7 (Acquittal of grant), 8 (Release, indemnity and insurance), 9 (Termination), 10 (Acknowledgement and public statements), 11.6 (GST) 13 (Right of Commonwealth to recover money), 14.3 and 14.8 (General) survive expiry or termination of this agreement.
- 14.6 This agreement may be executed in counterparts. All executed counterparts constitute one document.
- 14.7 This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- 14.8 The *Grantee* must not represent itself, and must ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the *Commonwealth*, or as otherwise able to bind or represent the *Commonwealth*.

## Schedule 1 - Details

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- Item 1 - *commencement date* means the date of execution of this agreement.
- Item 2 - *completion date* means (date of completion of project).
- Item 3 - *grant* means the amount of (insert amount of grant).
- Item 4 – *confidential information*

*[Insert each party's Confidential Information, including any Agreement provisions or Schedules that are to be kept confidential. The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item]*

*Note that the Department must report the Confidential Agreement Provisions in accordance with the Senate Order on Departmental and Agency Contracts, including providing a statement of reasons for the confidentiality.]*

- Item 5 - notice details for the purposes of clause 12.1 are as follows:

*Commonwealth's* address for notices is:

Manager, Automotive Policy Section

Department of Innovation, Industry, Science and Research

GPO Box 9839

Canberra ACT 2601

*Grantee's* address for notices is:

## Schedule 2 - Program and Project Details

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### 1 Objectives of the Program

1.1 The objective of the *Program* is to assist the automotive components sector enhance its capabilities and better integrate into local and global supply chains.

### 2 The project and project plan

#### 2.1 The *project* is:

[*The project description should be taken from the application*]

#### 2.2 The *project plan* is:

[*The project plan must specify the eligible activities to be undertaken and the Supplier Development Plan*]

### 3 Reports

[*Progress reports will assist in monitoring the use of the funds and whether the milestones are being/will be met. The content and frequency of progress reports will depend on the length, complexity and milestones of the project. The information on the content of progress reports is intended as a guide only.*]

#### Progress reports

3.1 The *Grantee* must provide a progress report on [insert dates]. Each progress report must include:

- (a) the name of the *Grantee* and all subcontractors;
- (b) the *project* title;
- (c) the period to which the report relates;
- (d) a statement of the *grant* funds received and spent;
- (e) the amount of *grant* funds remaining in the bank account referred to in clause 4;
- (f) a description and analysis of the progress of the *project*, including:
  - (i) the milestones achieved during the period and reasons why any milestones have not been met, the effect this will have on the *project* and the action the *Grantee* proposes to take to address this;
  - (ii) whether the *project* is proceeding in accordance with *the budget* and, if it is not, an explanation of why the *budget* is not being met, the effect this will have on the *project* and the action the *Grantee* proposes to take to address this;
  - (iii) progress on achieving the *planned outcomes*;
  - (iv) any major issues or developments which have arisen and the effect they will have on the *project*; and

- (v) any proposed changes to the *project*; and
- (g) a certificate from the CEO, CFO or other appropriate senior officer of the *Grantee* certifying that all *grant* funds were spent for the purpose of the *project* and in accordance with this agreement and that the *Grantee* has complied with the agreement.

### Final report

3.2 Within 6 weeks of the *completion date* or earlier completion of the *project*, the *Grantee* must submit a final report to the satisfaction of the *Commonwealth*. The final report must contain the following information:

- (a) a comparison of the results and stated outcomes for the *project*;
- (b) details of the extent to which the *project* achieved its *planned outcomes*;
- (c) any highlights, breakthroughs or difficulties in undertaking the *project*;
- (d) conclusions and recommendations (if any) arising from the *project*;
- (e) details of any unexpended funds provided by the Commonwealth under this agreement;
- (f) financial statements (including details of expenditure of the *grant*) for the *project*;
- (g) an independent auditor's statement verifying expenditure for the *project*; and
- (h) a certificate from the CEO, CFO or other appropriate senior officer of the *Grantee* certifying that all *grant* funds were spent for the purpose of the *project* and in accordance with this agreement and that the *Grantee* has complied with the agreement.

### Ad hoc reports

3.3 The *Grantee* must provide the *Commonwealth* with any other report or information concerning the conduct or management of the project requested by the *Commonwealth* from time to time, promptly on request.

## 4 Project Records

4.1 The *Grantee* must keep to the *Commonwealth's* satisfaction all records (including original receipts, invoices and bank statements) necessary to provide a complete, accurate, detailed record and explanation of:

- (a) all expenses incurred or accrued on or in respect of the *project* at any given point in time;
- (b) *project* activities and progress of the *project*;
- (c) the conduct and management of the *project*;

- (d) any amounts of *GST* paid by the *Grantee* in respect of any supply made to the *Commonwealth* under this agreement; and
- (e) any other records relating to the *project* or compliance with this agreement which are reasonably required by the *Commonwealth* from time to time.

SAMPLE

## **Schedule 3 - Payment, Budget and Expenditure**

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### **1 Payment**

1.1 The *grant* will be paid as follows:

*[Insert payment schedule]*

### **2 Budget**

2.1 The parties agree that the *budget* is as follows:

*[insert itemised budget]*

For the purposes of the grant the following is not eligible expenditure:

*[If there is no ineligible expenditure then delete the above, otherwise, list the items that have been deemed ineligible. Do not show amounts]*

### **3 Expenditure**

3.1 Without limiting any other provision of this agreement, the *Grantee* must:

- (a) only expend the *grant* on actual expenditure incurred by the *Grantee*; and
- (b) only expend the *grant* in accordance with this agreement, the *project plan* and the *budget*.

## Signing page

### **Executed as an agreement:**

**Signed** for and on behalf of the **Commonwealth of Australia** as represented by the **Department of Innovation, Industry, Science and Research** by its duly authorised delegate in the presence of

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

\_\_\_\_\_  
Signature of delegate

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Position of delegate (print)

**Executed** by the *Grantee* in accordance with Section 127 of the Corporations Act 2001 in the presence of

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary/sole director and sole company secretary (Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/sole director and sole company secretary (print)

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

\_\_\_\_\_  
Name of witness (print)