Template

# Funding Agreement (short form)

## Introduction

This Funding Agreement (short form) template has been developed to support compliance with the Grants Administration Guide issued under a Premier’s Memorandum.

As a template, it is expected that it will need modification to a greater or lesser extent to suit the particular funding arrangement. It is recommended that you obtain legal assistance in the use and adaptation of the Agreement for particular projects.

The guide notes in this template are to assist agencies and do not constitute legal advice.

The Agreement assumes that funding will be provided for a single project, subject to satisfactory performance. If funding is to be provided to a single agency for multiple projects either a separate Agreement should be concluded for each project or this agreement should be modified. Be aware that changes to clause numbering may affect internal cross-referencing of clauses.

## How the document works

The Activity Schedule must be completed and if necessary tailored to the specifics of the funded project. To assist, Guidance has been provided and is set out as shown below. This does not constitute legal advice.

## Guidance and additional conditions

Guidance is provided in text boxes for ease of reference.

Guidance

<insert> Insert information where there are <insert> instructions. Use F11 to navigate to insert points.

[additional conditions] Add additional conditions as needed to the relevant item entry in the Activity Schedule.

## Steps to complete the document

Guidance boxes

Step 1: Read all and consider instructions, content and [additional conditions] where appropriate.

Step 2: Delete all from the final document.

Guidance boxes

|  |  |
| --- | --- |
| <insert agency name, if required> |  |
| Funding Agreement (short form)  <insert funded Activity Title> |  |
|  | |

We agree to provide You with the Funding for the Activity, and You agree to accept and use the Funding for the Activity, on the terms of this Agreement.

This Agreement is made up of the parts stated in the General Terms.

Activity Schedule

| Agreement Parties | | |
| --- | --- | --- |
| **Agency**  (We, Us, Our) | Name: | <insert full legal Agency name>  **Guide Note**: If the Agency is a Government Department or other non-corporate agency which falls within the Crown, the Agency may be named as: “**The Crown in right of the State of New South Wales, acting through [name of agency]**”.  If the Agency is a statutory corporation, body corporate, or other corporate entity, the Agency is to be named as that entity. If the Agency is a statutory corporation or body corporate, check that the Agency has the statutory power to enter into this agreement. Insert ABN in all cases. |
|  | ABN: | <insert> |
|  | Address: | <insert> |
|  | Tel: | <insert> |
|  | Email: | <insert> |
|  | Contact: | <insert> |
| **Recipient**  (You, Your) | Name: | <insert full legal Recipient name> |
|  | ABN: | <insert> |
|  | Legal entity status: | Company  Incorporated Association  Unincorporated Partnership  Individual  Other: <specify>  **Guide Note:** The Recipient must be a legal entity/entities.  A **business name** is not a legal entity. It is a name under which an entity trades. Where you are dealing with a business name, the party should be the individual owner of the business name.  A **trust** is not a legal entity.  Check the details of a company or business (including the entity’s name, ABN and currency of registration) by conducting a free ASIC search at: <https://connectonline.asic.gov.au>. A free Australian Business Number search is available at [www.abr.business.gov.au](http://www.abr.business.gov.au/).  A **partnership** is not a legal entity separate from the individual partners unless it is incorporated. If the partnership is small, enter the Recipient Name entry as <full names of all partners> as partners trading as <name of partnership>. Otherwise, enter the Recipient Name entry as <The partnership trading as [name of partnership].> |
|  | Trustee of a trust: | The Recipient [is] [is not] entering into this Agreement as a trustee of a trust.  **Guide Note:** If the Recipient is entering into this Agreement as a trustee of a trust, the Recipient Name entry would generally be [name of trustee] as trustee of [name of trust]. |
|  | Business Name: | <insert> |
|  | Address: | <insert> |
|  | Tel: | <insert> |
|  | Email: | <insert> |
|  | Contact: | <insert> |

| Activity | |
| --- | --- |
| Funding Program: | <insert name and, if relevant, year of program> |
| Activity: | <insert name and description of funded activity> |
| Activity Objectives: | <insert purpose/goals for the Activity> |
| Activity Period: | Start Date: <insert start date, eg date of execution of this Agreement by last party to execute>  End Date: <insert> |
| Activity Plan: | <If applicable, a plan may be incorporated by reference or attached as an attachment to the Activity Schedule.> <If incorporated by reference, insert <[plan title or other document identification details], incorporated by reference>  <If attached, insert [plan title or other document identification details, attached to this Activity Schedule. Alternatively, if relevant, refer to the application for Funding, e.g. <As described in Your application for the Funding> |

| Funding and payment | |
| --- | --- |
| Funding | The total amount of the Funding is $<amount> GST excl.) |
| Payment | Recipient Created Tax Invoices [will] [will not] be issued by the Agency in respect of the Funding.  **Guide Note**: If the Agency will issue RCTIs for the Funding, this should be specified here. If it is specified that RCTIs will not be issued, the General Terms and Conditions require the Recipient to issue a tax invoice in order to claim an amount for GST.  This agreement does not contemplate payment of instalments in arrears.  Subject to this Agreement, the Funding will be paid in accordance with the below Payment Plan.  <sample plan>   |  |  |  |  |  | | --- | --- | --- | --- | --- | | Milestone/ condition precedent to payment | Expected date for payment | Amount (GST excl.) | GST | Amount  (GST incl.) | |  |  |  |  |  | | Total Amount: |  |  |  |  |   Payment will be made by direct transfer to Your nominated account:  Account Name:  Account Number:  BSB Number:  Bank Name: |
| Contribution | <Specify any financial contribution the Recipient must make toward the Activity and any timeframe in which it must be made> |

| Reports |
| --- |
| |  |  |  | | --- | --- | --- | | Report | Due Date | Form/Content | | Progress report | Every [6th] month and on request. | A brief written report by an authorised officer on progress of the Activity. | | Annual Financial Acquittal | Within one month after the end of each financial year in which the Funding is paid. | A brief written report by an authorised officer on the outcomes of the Activity.  A signed statement by an authorised officer verifying that the Funding has been spent in accordance with this Agreement, plus any receipts for expenditure of the Funding. | | Final report | Within one month after the End Date. | A signed statement by an authorised officer verifying that the Funding has been spent in accordance with this Agreement, plus any receipts for expenditure of the Funding. Note that the Final Report also includes a financial acquittal component. | |

| Funding Acknowledgement | |
| --- | --- |
|  | <Insert any specific requirements as to the form and content of the acknowledgement of Funding in any publications, advertising and promotional materials.> |

| Additional Conditions | |
| --- | --- |
|  | <Insert any required additional conditions. Sample follows:>  **AC1**: You must provide Us with a copy of the following Activity Material, in the format that We reasonably specify, at the times stated below:   |  |  | | --- | --- | | **Activity Material** | **Due Date** | |  |  | |  |  |   **AC2**: You must comply with the following NSW Government policies and guidelines in Your conduct of the Activity.   * <insert>   **AC3**: You must undertake the Activity in accordance with Your application for the Funding.  **AC4:** You must undertake the Activity in accordance with Our reasonable directions.  AC5:Indemnities (optional)  (a) The Recipient must indemnify and keep indemnified the Agency and its officers, employees, and agents from and against any claim, loss or damage arising in connection with this Agreement.  (b) The Recipient’s obligation to indemnity the Agency under this Clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Agency, its officers, employees or agents contributed to the relevant loss or damage. |

| Execution  **Guide Note:** Executing the Agreement as a Deed supports its legal enforceability if no consideration is provided in exchange for the Funding. It is suggested that higher value grants be executed as deeds. The below execution page is set up for execution of the Agreement as a Deed and contains various sample execution clauses for the Recipient, depending upon its legal status. The appropriate clause may be chosen, and the others deleted.  If executing the Agreement as an agreement, replace the below reference to “Executed as a Deed” with “Executed as an Agreement” and replace “Signed, sealed and delivered” in each execution clause with “Executed”. The signature block for the witness may also be deleted. Note clause 16.11 permitting electronic signature and exchange. | |
| --- | --- |
| **Executed as a Deed**: |  |
| **Signed, sealed and delivered** for and on behalf of <insert full legal name of agency> by its duly authorised officer, <insert authorised officer name and position>, but not so as to incur personal liability. |  |
|  | Signature |
| In the presence of: |  |
| Name of witness | Signature of witness |
| Date: |  |

[Alternatives 1A and 1B - where Recipient is a corporation]

**Guide Note:** Alternatives 1A and 1B provide for execution by a company not using its common seal. If the company has a sole director who is also sole company secretary, then the signature of that sole director and secretary will suffice (alternative 1B). Otherwise, two directors or one director and one company secretary should sign (alternative 1A). The names of directors can be checked by conducting a paid ASIC Search at <https://connectonline.asic.gov.au>.

| **Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).  By: <insert name and position of director 1>. |  |
| --- | --- |
|  | Signature |
| And by <insert name and position of director 2 or company secretary>. |  |
|  | Signature |
| Date: |  |

| **Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).  By: <insert name and position of sole director/secretary> who states that s/he is the sole director and sole secretary of <Company name>. |  |
| --- | --- |
|  | Signature |
| Date: |  |

[Alternative 2 - where Recipient is an individual]

| **Signed, sealed and delivered** by <insert name of individual>. |  |
| --- | --- |
|  | Signature |
| In the presence of: |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |
| Date: |  |

[Alternative 3 - where Recipient is a partnership]

**Guide Note:** A partner may only execute a deed on behalf of a partnership if s/he has been authorised by deed to do so. (A partner may execute an agreement on behalf of a partnership if there is evidence of an agreement as between the partners authorising the executing partner to do so.) In the absence of the requisite authority, all partners should be asked to sign.

| **Signed, sealed and delivered** by <insert name and position of partner authorised to sign on behalf of the partnership> for and on behalf of <insert partnership name> who is authorised to sign on behalf of the partnership.  By: <insert name and position> |  |
| --- | --- |
| On: <insert date> | Signature |
| In the presence of: |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |

[Alternative 4 - where Recipient is an incorporated association]

| **Signed, sealed and delivered** by <insert name and ABN/other registration number of the incorporated association> in accordance with its constitution and any requirements for execution contained in the statute that establishes the incorporated association.  By: |  |
| --- | --- |
| Print name and position of authorised signatory  On: <insert date> | Signature |
| In the presence of: |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |
|  |  |
| And by:  Print name and position of authorised signatory 2 |  |
| At: <insert location>  On: <insert date> | Signature |
| In the presence of |  |
| Name of witness who is not a party to this Agreement. | Signature of witness |

Short Form Funding Agreement General Terms

# Agreement scope

## This Agreement is made up of:

### the Activity Schedule;

### these General Terms;

### any document referenced in the Activity Schedule.

## Any inconsistency between the above will be resolved in the above order of precedence.

# Activity

## You must undertake the Activity in accordance with this Agreement including:

### conduct the Activity within the Activity Period, in a way that promotes the Activity Objectives, with due care and in accordance with Your Activity Plan;

### comply with applicable laws, Funding Program conditions and any notified NSW Government policies and guidelines;

### ensure You obtain all required licences and approvals to conduct the Activity;

### not subcontract or vary the Activity without Our prior approval; and

### if applicable, complete the Activity by the End Date.

# Funding and payment

## You must:

### use the Funding only for the Activity and during the Activity Period; and

### make any required Contribution toward the costs of the Activity within any agreed timeframe.

## Provided You comply with this Agreement, We will pay the Funding to You in accordance with its terms.

# Taxes, duties and charges

## It is Your responsibility to pay all taxes, duties and government charges imposed in connection with this Agreement.

## If GST is payable on any supply You make under this Agreement and You are registered for GST, then, on receipt of a correctly rendered tax invoice (or in conjunction with the issue of a recipient created tax invoice (RCTI) if applicable and agreed) We will pay You an amount equal to the GST payable, in addition to and at the same time that the consideration for the supply is provided under this Agreement.

## If the Activity Schedule specifies that RCTIs will issue in respect of the Funding, You agree that:

### We will issue You with an RCTI; and

### You will not issue a tax invoice,

in respect of any taxable supply that You make under this Agreement.

## You must immediately notify Us if Your GST registration changes.

## If, for any reason, We pay You an amount which is more than the GST imposed on a particular supply by You to Us, You must immediately repay Us the excess or We may set off the excess against any other amounts due to You.

# Withholding and repayment

## We may, by notice, withhold payment of any Funding if We reasonably believe that You have not complied or are unlikely to comply with this Agreement, or that Your actions will damage Our reputation or that of the Funding Program.

## In addition to repayment of unspent Funding on termination, We may require You to repay any Funding within no less than twenty (20) business days of notice from Us to do so if:

### You have incorrectly claimed the Funding or We have overpaid You;

### You have not spent the Funding in accordance with this Agreement; or

### the Funding is unspent at the end of the Activity Period.

## If You do not make any required repayment of Funding by the due date We may recover the amount as a debt due to Us without the need for further proof.

# Acknowledgment

## You must acknowledge the Funding in any public statements about the Activity or the Funding, using the form of acknowledgement (if any) stated in the Activity Schedule.

## You may only use Our logo or the NSW Government logo with Our prior approval and in accordance with the NSW Government’s Brand Guidelines, as notified from time to time.

## If requested, You must use Your best efforts to ensure We have the opportunity to participate in media coverage or other promotion of the Activity.

## You must promptly remove Our acknowledgement and logo from any material relating to the Activity if We reasonably request it.

# Reports

## You must comply with any requirements stated in the Activity Schedule for Reports including acquittals.

## If We do not accept a Report as satisfactory, You must submit a revised Report within ten (10) business days of Our request.

# Records and audit

## You must keep complete and accurate records of the Activity and expenditure of the Funding and any Contribution (including invoices and receipts) for the Activity Period plus six (6) months thereafter and make them available to Us on request.

## We may audit expenditure of the Funding, and You must cooperate in any audits including by permitting reasonable access to, and copying of, Your records and providing reasonable assistance to the auditor. Any such audit will be at Our expense.

# Intellectual Property

## You grant to Us a permanent, non-exclusive, irrevocable, royalty-free, licence (including the right to sub-license) to use, reproduce, communicate, publish, adapt and modify, for non-commercial, government purposes, all material You provide to Us under this Agreement.

# Confidentiality and privacy

## Neither of us may disclose the other’s confidential information without prior written consent unless the disclosure is:

### required or authorised by law, Parliament, Our responsible Minister or this Agreement;

### required to perform this Agreement;

### required by Us for a governmental purpose including research and analysis, monitoring, evaluation and reporting; or

### to the recipient party’s professional advisers for the purpose of advice, or to its insurer for the purpose of claim management.

## You must deal with personal information consistently with the information protection principles under the *Privacy and Personal Information Protection Act 1988* and must not cause Us to breach that Act.

## You must immediately notify Us if You become aware of a breach of privacy.

# Adverse events

You must promptly notify Us of anything likely to have an adverse impact on the Activity (for example, a delay) and, in consultation with Us, take available steps to lessen that impact.

# Insurance

You must maintain adequate insurance for the Activity Period and provide certificates of currency on request.

# Disputes

Except in the case of urgent, interlocutory proceedings, neither of us must begin legal proceedings in relation to a dispute without first trying for no less than ten (10) business days to negotiate a resolution.

# Termination for cause

## We may terminate this Agreement by notice if We are reasonably satisfied that You have:

### breached this Agreement and We consider that the breach cannot be remedied or You have not remedied the breach within ten (10) business days of receipt of a notice from Us to do so;

### acted in a way that will cause damage to Our reputation or to the reputation of the Funding Program; or

### provided false or misleading information in Your Funding application.

# On termination

Unless otherwise agreed, You must, within ten (10) business days of termination, repay any unspent Funding and provide any Reports, or other agreed material then due or that We reasonably request.

# General

## This Agreement does not make You Our employee, agent or partner.

## This Agreement may only be varied in writing, signed by both of us.

## You must not sub-contract or transfer this Agreement to another party without Our prior consent.

## A notice under this Agreement:

### must be in writing and delivered to the other party at its address or email address as specified in the Activity Schedule or as that party otherwise directs.

### is taken to be delivered:

#### if by hand or by registered post, on delivery to the address for service and a signature received as evidence of delivery;

#### if by post (other than registered post), on the sixth (6th) business day after posting; and

#### if by email, on receipt by the sender of confirmation of delivery (by confirmation of delivery notification from an email server or a written acknowledgement from the recipient)

provided that, if delivery or receipt is on a non-business day or is later than 5pm (Sydney, NSW time) it will be taken to be delivered at 9am on the next business day.

## This Agreement may be executed in any number of counterpart copies which taken together will form one agreement.

## Clauses 5 (Withholding and repayment), 7 (Reports), 8 (Records and audit), 9 (Intellectual Property), 10 (Confidentiality and privacy), 13 (Disputes), 15 (On termination), this clause 16.6 and any other clause of this Agreement that of its nature survives expiry or termination shall survive the expiry or termination of this Agreement.

## This Agreement is governed by the laws of NSW and the parties submit to the jurisdiction of the courts of that State.

## Electronic Signature and Exchange Permitted

### In relation to the electronic exchange of documents:

#### Parties may exchange executed counterparts of this Agreement, or any other document required to be executed under this Agreement, by delivery from one Party to the other Party by emailing a pdf (portable document format) copy of the executed counterpart to that other Party as an attachment to an email or by transmitting the executed counterpart electronically via a secure digital platform such as DocuSign (“Electronic Delivery”); and

#### Electronic Delivery of an executed counterpart will constitute effective delivery of the executed counterpart as if the original had been received, from the date and time that the email was sent, provided that the sending Party does not receive a delivery failure message within a period of 24 hours of the email being sent.

(b) Electronic signatures complying with a law applicable in New South Wales will be deemed original signatures for the purposes of this Agreement and any such digital, scanned or electronically applied signature is to be treated in all respects as having the same effect as an original signature