Department of Creative Industries,
Tourism, Hospitality and Sport

Program Agreement

Standard Terms

Clubgrants Category 3 Infrastructure Grants Program

OFFICE OF RESPONSIBLE GAMBLING
2026

NOTES:
THESE STANDARD TERMS ARE INCORPORATED BY REFERENCE INTO THE PROGRAM AGREEMENT SCHEDULE BETWEEN THE DEPARTMENT AND THE GRANTEE IN ADDITION TO:

- THE PARTICULARS
- SPECIFIC CONDITIONS
- ANY OTHER DOCUMENTS AGREED BY THE PARTIES

Version	Change	Date Approved
1.0	First version	2021
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2.1	Reviewed and updated	2026

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Standard Terms

Interpretation

1. Definitions and Interpretation

1.1 Definitions

In this Agreement except where a contrary intention appears:

Activity means the activity(s) described in **Schedule 1 – Particulars**

Application means the Application submitted for the Grant annexed at **Schedule 2 – Application**.

Agreement means this agreement and incorporates these Standard Terms, any Specific Conditions, nominated Schedules and Annexures and any other documents specified in the Agreement.

Authorised Representative means any authorised representative of the Department or the Grantee as the context requires and as advised from time to time.

Budget refers to the budget for expenditure of the Grant set out in the Application.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Claim means any claim, right, demand, liability, action, suit, proceeding, charge, cost (including reasonably incurred legal costs on a full indemnity basis), loss, damage and expense of any kind, including those arising out of the terms of any settlement.

Commencement Date has the meaning given in the **Schedule 1 – Particulars**.

Confidential Information of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

(a) is by its nature confidential;

(b) has been designated as confidential by a party;

(c) is capable of protection at law or equity as confidential information; or

(d) is derived or produced partly from the Confidential Information, but does not include information that:

  (i) is in the public domain; or

  (ii) is independently known or developed by the party receiving the information other than as a result of a breach of this Agreement or any other obligation of confidentiality owed by or to any other person.

Correctly Rendered Invoice means an invoice rendered in accordance with clause 9.

Date of Completion means the date by which an Activity must be completed as set out in **Schedule 2 – Application**

Department means the party named as the "Department" in the Agreement, its successors and assigns. A reference to "we", "our" or "us" is a reference to the Department.

Financial Year means the period commencing on 1 July and ending on 30 June the following year.

Force Majeure Event means an event beyond the reasonable control of the parties that prevents the completion of the Project. Such an event, may without limiting generality include any of the following events or occurrences:

(a) acts of God, including fire, tidal wave, cyclone, earthquake, landslide, mudslide; or

(b) war, revolution or other state of armed hostility of a like nature; or

(c) insurrection, an act of terrorism, civil disturbance or riot; or

(d) collisions or accidents which constitute a major catastrophe an example being an aircraft crash; or

(e) a declared epidemic or pandemic, or other major health crisis; or

(f) state or national government declared emergency; or

(g) state-wide or national strike, lock out or other industrial disputation,

but in each case only to the extent that:

(h) the affected party is without fault in causing or contributing to or compounding the effects of the relevant event; and

(i) the event or its effects could not have been prevented by reasonable precautions.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW) and its regulation.

Grant means the amount of money exclusive of GST provided to you under this Agreement as more particularly described in the Schedule.

Grantee means the party named as the "Grantee" in the Agreement. A reference to "you" or "your" is a reference to the Grantee.

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

Insolvency Event means, in respect of the Grantee, being in liquidation or provisional liquidation, receivership, bankruptcy (protective or otherwise) or under enforced administration, being unable to pay its debts as and when they fall due or otherwise insolvent, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors or any analogous event. However, an Insolvency Event expressly excludes where the Grantee:

(a) enters into voluntary administration; or

(b) a managing controller (which includes a receiver and manager) is appointed over the whole or substantially the whole of the Grantee's property; or

(c) publicly announces that it will be making an application to enter into a scheme of arrangement for the purpose of avoiding being wound up in insolvency.

Instalment means that part of the Grant which the Department may pay to you in the amounts and on the dates set out in **Schedule 1 – Particulars**.

Intellectual Property Rights or **IP Rights** includes:

(a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and

(b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include Moral Rights.

Milestone means the milestones as set out in the **Schedule 1**

Moral Rights has the same meaning as in the *Copyright Act 1968* (Cth).

Notice means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication to be given under this Agreement.

Personal Information means personal information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW), being information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Payment Terms means the period within which a correctly rendered invoice must be paid by the Department and any other terms of payment as stated in **Schedule 1 – Particulars.**

Personnel means officers, employees, volunteers, agents, contractors and subcontractors engaged by You to perform Your obligations under this Agreement.

Privacy Legislation means the *Privacy and Personal Information Protection Act 1998* (NSW), *Health Records and Information Privacy Act 2002* (NSW), and *Privacy Act 1988* (Cth) and includes any directions, regulations, codes of practice and principles made under these Acts.

Program means the program specified in **Schedule 1 – Particulars**.

Project means the Project as outlined in the **Schedule 1 – Particulars**.

Project Material means material created as part of or in performance of the Project including any documents, collateral, data, or deliverables.

Report means a report required to be provided under **Schedule 3 – Reporting Requirements**.

Specific Conditions means the particular conditions related to the Program as set out in item 14 of **Schedule 1 – Particulars**.

Standard Terms means these 'Standard Terms'.

Term means the term of this Agreement including any extension periods set out in **Schedule 1 – Particulars**.

Unspent Payment means Grant money paid to you that is unspent at the end of the Term and includes any Grant amount that is committed but unspent.

1.2 Interpretation

Unless the context requires otherwise, in this Agreement:

1.2.1 words in the singular include the plural and vice versa;

1.2.2 where any time limit pursuant to this Agreement falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;

1.2.3 a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;

1.2.4 a reference to a Schedule or Annexure is a reference to a Schedule or Annexure to the Agreement;

1.2.5 headings are for convenience only and do not affect the interpretation of this Agreement;

1.2.6 the meaning of general words is not limited by specific examples introduced by "including" or "for example" or similar expressions;

1.2.7 references to persons include bodies corporate, government agencies, non-government agencies and vice versa;

1.2.8 references to the parties include references to respective directors, officers, employees and agents of the parties;

1.2.9 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

1.2.10 nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it;

1.2.11 where an expression is defined, any other grammatical form of that expression has a corresponding meaning; and

1.2.12 a reference to 'A$', '$A', 'dollar' or '$' is a reference to Australian currency.

Term

2. Term

This Agreement commences on the Commencement Date and continues for the Term unless terminated earlier in accordance with its terms and conditions or at law.

What we agree

3. Parts of the Agreement and order of Precedence

3.1 The Agreement consists of the following parts in order of precedence:

3.1.1 these Standard Terms;

3.1.2 the Schedules; and

3.1.3 any other attachments.

3.2 Subject to clause 3.3, if there is any ambiguity in or inconsistency between the various parts of the Agreement, the ambiguity or inconsistency will be resolved by applying the order of precedence referred to above.

3.3 The Specific Conditions will not prevail over any provision in the Standard Terms unless it is expressly stated in the Specific Conditions that such terms are to prevail.

4. Agreement

4.1 We agree to pay you the Grant amount for the purposes of the Project and will pay each Instalment in accordance with this Agreement.

4.2 In consideration for receiving the Grant, you agree to:

4.2.1 comply with the terms of this Agreement;

4.2.2 undertake or ensure the undertaking of the Project in accordance with the Application, and the objectives of the Program;

4.2.3 apply the Grant only for the Project and in accordance with the Budget;

4.2.4 provide the Reports when specified in this Agreement;

4.2.5 comply with all Commonwealth, State and local government laws that are relevant to the Project, this Agreement, or your registration as an organisation; and

4.2.6 comply with our policies, guidelines and reasonable directions.

4.3 You are liable for the obligations of any third party you engage who must perform obligations in relation to the Project and must ensure that the third party performs its Project obligations on terms of substantial equivalence to the terms of this Agreement as applicable to those obligations.

4.4 Where your Project includes meeting objectives involving children or young people, you must comply with the provisions of the:

4.4.1 *Children and Young Persons (Care and Protection) Act 1998* (NSW),

4.4.2 *Ombudsman Act 1974 (*NSW),

4.4.3 *Child Protection (Working with Children) Act 2012* (NSW); and

any other laws which apply to child protection and identifying your child protection responsibilities, as required by law and establishing systems for ensuring that you meet your child protection responsibilities.

Personnel and subcontractors

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5. Personnel

5.1 You are solely responsible for:

5.1.1 all Personnel employed or otherwise supported from the Grant or engaged in relation to the Agreement; and

5.1.2 the payment of all wages entitlements, superannuation, payroll and any other tax and associated costs applicable to the Personnel

5.2 You agree to use appropriately trained, qualified and experienced Personnel who hold all legally required authorisations, accreditations, permits and clearances necessary to carry out their roles in relation to the Project

5.3 Before any Personnel undertake any function or role in relation to the Project, you must:

5.3.1 ensure that such Personnel are not prohibited or disqualified under any law from being employed or engaged to undertake such a role or function, or are not otherwise undesirable to work with children or vulnerable persons where the Personnel may have contact with children or vulnerable persons; and

5.3.2 have regard to whether any national criminal record check or other probity check of the Personnel is relevant to and may impact on the suitability of the Personnel to perform their function or role in relation to the Project

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6. Subcontractors

6.1 In this clause 6, “subcontract” includes entering into a joint venture, partnership or agency relationship.

6.2 You acknowledge and agree:

6.2.1 that subcontracting of any part of this Agreement does not in any way reduce your responsibilities as set out in this Agreement;

6.2.2 you are liable for any subcontractor’s acts and omissions as if they were Your own;

6.2.3 that any subcontract You enter into with a subcontractor in relation to the Project must be consistent with this Agreement; and

6.2.4 to ensure that all subcontractors comply with the terms of this Agreement as if they were a party to it.

About the Payment

7. Payment

7.1 We will pay the Grant amount as set out in Schedule 1.

7.2 Unless otherwise specified you acknowledge and agree that:

7.2.1 the Grant amount is capped at the amount set out in **Schedule 1 – Particulars**;

7.2.2 we are unable to provide additional or ongoing funds for the Project; and

7.2.3 the Grant is non-recurrent.

7.3 We will pay the Grant in Instalments in accordance with the Payment Terms upon completion of a Milestone provided that:

7.3.1 we receive from you a Correctly Rendered Invoice;

7.3.2 the Milestones and Activities have been completed in accordance with the requirements of this Agreement; and

7.3.3 you provide evidence of compliance with this Agreement, as required under clause 15 (Reporting Requirements) and **Schedule 3 – Reporting Requirements**.

7.4 Notwithstanding clause 7.1, the payment of an Instalment does not constitute an admission that the performance of the Project is in conformity with this Agreement and will not be deemed to release you from your obligations under this Agreement.

8. GST

8.1 Unless otherwise defined in this Agreement, words or expressions used in this clause have the same meaning as defined in the GST Law.

8.2 Unless otherwise indicated all amounts referred to in this Agreement are exclusive of GST.

8.3 If:

8.3.1 despite any other provision of this Agreement, GST is imposed on a supply you make to the Department under this Agreement; and

8.3.2 the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

8.3.3 the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner, payment is otherwise payable under this Agreement in relation to that supply.

8.4 You must be registered under the GST Law at the time of making any supply under this Agreement on which GST is imposed.

8.5 If you are not registered under the GST Law as required under clause 8.4, you will not be entitled to receive any additional amount as provided under this clause 8.

8.6 If for any reason the Department pays you an amount under this clause 8 which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

9. Correctly Rendered Invoice

9.1 All invoices must be clearly addressed as provided in **Schedule 1 - Particulars** and be emailed to the officer nominated in those particulars.

9.2 A tax invoice is correctly rendered if it:

9.2.1 is sent to us to the address and in the manner instructed

9.2.2 the words “Tax Invoice” is prominently displayed;

9.2.3 your name, ABN, address and contact details including telephone and email;

9.2.4 tax invoice date and reference number;

9.2.5 your EFT payment details including bank name, BSB, account number, account name

9.2.6 the name of the Project, the Instalment payable and the Activities to which the Instalment relates; and

9.2.7 the total amount requested with GST breakdown.

10. Withholding, Suspension, Changes to payments and repayment

10.1 We may change the amount of the Grant (or any Instalment) by issuing you with a Notice setting out the details of the changes.

10.2 Where you notify the Department of any Project delays in accordance with clauses 11 or 12, or changes to the Project or Activities we may on application by you:

10.2.1 allow you to allocate the Grant to the changed Project or Activities; and/or

10.2.2 change the amount of an Instalment or the Grant setting out the details of the changes.

10.3 If you are not complying with this Agreement, the Department may withhold or suspend payment of an Instalment until you comply with your obligations in accordance with this Agreement.

10.4 If the Department withholds or suspends the payment of an Instalment you must continue to perform your obligations under this Agreement.

10.5 You must repay within 28 days of a Notice being sent:

10.5.1 any payment spent in breach of this Agreement;

10.5.2 all Unspent Payments;

10.5.3 any overpayment; and

10.5.4 any interest earned on any Instalment required to be repaid.

10.6 Where you have failed to comply with this Agreement, the Department will calculate the amount of repayment you must make with regard to the extent you have failed to complete the Activities or the Project.

10.7 The Department may set off the amount of any overpayment or claim for repayment against any future Instalment.

10.8 Any repayment the Department claims from you under this clause 10 will be a debt due and owing by you to the Department.

Managing delays

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11. Delays

11.1 In performing your obligations under this Agreement, you must meet all Milestones by the Date of Completion and other times for performance specified in this Agreement.

11.2 You must promptly notify the Department if:

11.2.1 there is a delay in the commencement of the Project including any decision to defer the commencement of the Project;

11.2.2 there is an actual or potential delay and the causes of the delay; or

11.2.3 if the Project is not progressing in accordance with this Agreement including where the scope or the times for completion of Activities have materially changed or where the Project is suspended for any reason.

11.3 You must

11.3.1 undertake all reasonable steps to overcome or mitigate the effects of the delay;

11.3.2 report to the Department on the steps being undertaken to overcome or mitigate the effects of the delay; and

11.3.3 comply with all reasonable requests made by the Department to prevent or rectify the delay.

11.4 You are responsible for all costs and expenses incurred by us as a result of any delay or the preventing or rectifying of any delay.

12. Force Majeure

12.1 A party will not be liable for a failure to perform, or any delay in performing, any obligation under this Agreement to the extent that the failure or delay arose from a Force Majeure Event for as long as the Force Majeure Event continues to prevent the performance provided that the party took all reasonable precautions against the Force Majeure Event and made all reasonable efforts to mitigate the consequences.

12.2 If a party is affected by a Force Majeure Event, that party must immediately notify the other party (including by providing reasonable details about the fact or circumstance giving rise to that Force Majeure Event and its actual and predicted impact).

12.3 If you are prevented by a Force Majeure Event from performing any obligation for more than 20 Business Days, then the Department may, in its sole and absolute discretion, by notice to you, terminate this Agreement.

12.4 You will not be entitled to be paid any Instalment that relates to any Activities for so long as you are prevented or delayed from performing those Activities because of a Force Majeure Event.

Maintaining records and reporting

13. Financial accounting and records

13.1 You must keep financial accounts and records relating to the Project so as to enable:

13.1.1 all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Agreement;

13.1.2 unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and

13.1.3 a comparison of the income and expenditure against the Budget; and

13.1.4 if requested by us and if the amount of the Grant is greater than $20,000, the audit of those records in accordance with Australian Auditing Standards.

13.2 You must provide financial statements of income and expenditure in respect of the Grant ('**Statements**') to the Department within 60 Business Days after the completion of the Activity or the termination of this Agreement, whichever is the earliest.

13.3 The Statements must include a definitive statement by an independent qualified accountant as to whether:

13.3.1 the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and

13.3.2 the Grant was expended for the Project and in accordance with this Agreement.

14. Audit and rights of access to such records:

14.1 You:

14.1.1 must maintain and retain complete and accurate records (including as required under clause 13) with respect to your performance of the Project (the '**Records**'), for a minimum of seven (7) years after expiry or termination of this Agreement;

14.1.2 authorise the Department for the purposes of this Agreement, to undertake itself or appoint external auditors (including representatives from the Office of the Auditor General of NSW) ('**Auditors**') to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any records you hold including under this clause 14, and allow any such Records to be copied; and

14.1.3 provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause 14.

15. Reporting requirements

15.1 You agree to provide the Department with written reports in the format, at the times and containing the information specified in **Schedule 3 – Reporting Requirements** and **Annexure A - Reports**.

15.2 You must also provide any other information the Department reasonably requires from time to time concerning the Project.

15.3 If any Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.

16. Evaluation and Cooperation

16.1 The Department may, in addition to general evaluation requirements under **Schedule 3 – Reporting Requirements,** engage third party suppliers to provide services to the Department in relation to the Project, the Grant and/or this Agreement, including to evaluate the performance of your obligations under this Agreement.

16.2 You agree to:

16.2.1 work and coordinate your activities with such third party suppliers at all times;

16.2.2 provide such assistance and information to such third party suppliers as may be required by the Department from time to time; and

16.2.3 comply with all directions given by such third party suppliers.

Material and Information

17. Intellectual Property

17.1 Intellectual Property in all Project Material vests in you, unless otherwise stated in the Specific Conditions.

17.2 Subject to any Intellectual Property provisions in the Specific Conditions, you hereby grant the Department a world-wide, non-exclusive, perpetual, transferable, royalty-free and sublicensable licence to use, copy and modify the Project Material (including all Intellectual Property and other rights in the Project Material) for any purpose.

17.3 You must hold, or obtain, consents from all relevant authors for: the use and adaptation of the Project Material by the Department and the Department's sub-licensees, without restriction; and the use, reproduction, communication and adaption of the Intellectual Property in all Project Material by the Department, in accordance with the licence granted by this Agreement, for the purpose of this Project.

18. Confidential Information

18.1 Each party as the recipient of Confidential Information ("Recipient") must in relation to the Confidential Information of the other party ("Discloser"):

18.1.1 keep it confidential;

18.1.2 not copy it or any part of it that is in material form other than as strictly necessary for the purposes contemplated by this Agreement and must mark any such copy 'Confidential – ([Name of Discloser]);

18.1.3 implement and maintain suitable security practices to protect against unauthorised copying, use and disclosure of the Confidential Information;

18.1.4 immediately notify the Discloser if the Recipient becomes aware of any unauthorised copying, use or disclosure in any form; and

18.1.5 cooperate with the Discloser in any reasonable action it takes to protect the Confidential Information.

18.2 The Recipient must promptly:

18.2.1 comply with any request by the Discloser to return or destroy any or all copies of Confidential Information; and

18.2.2 upon expiry or termination of this Agreement, return to the Discloser all Confidential Information provided to it by the Discloser,

except that the Recipient may in good faith keep one copy of Confidential Information in safe custody on a confidential basis where needed for the purpose of determining any continuing legal obligations.

18.3 A Recipient may disclose Confidential Information, on exceptional basis, to only those of its employees, directors, officers, subcontractors, agents and legal, financial or other professional advisers who have a need to know the information for the purposes of this Agreement, provided that, prior to the disclosure, the Recipient:

18.3.1 ensures that those persons are made aware of the confidential nature of the Confidential Information; and

18.3.2 are subject to equivalent obligations of confidentiality as contained in this Agreement.

18.4 A Recipient may disclose Confidential Information to the extent that it is required to be disclosed by law, provided that:

18.4.1 the Recipient must, to the extent reasonably practicable, give prior notice to the Discloser of the proposed disclosure with full details of the circumstances and the information to be disclosed;

18.4.2 the Recipient must postpone any disclosure required by law for as long as the Recipient is able to, without prejudicing the Recipient's own position; and

18.4.3 the Recipient acknowledges that the Discloser, at its cost and expense, is entitled to make representation to the relevant court, tribunal or other body seeking or ordering disclosure as to whether the Confidential Information should be disclosed.

19. Privacy

19.1 You must:

19.1.1 ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Agreement is used only for the purposes of this Agreement and is protected against loss and against unauthorised access, use, modification or disclosure or against other misuse;

19.1.2 not disclose any such Personal Information without the prior written consent of:

(a) the individual to whom the Personal Information relates; or

(b) the Department,

unless otherwise required or authorised by law;

19.1.3 comply with the Privacy Legislation when doing any act or engaging in any practice in relation to Personal Information as if it were an agency directly subject to that Act; and

19.1.4 include equivalent requirements regarding Personal Information (including this clause 19) in any subcontract entered into in relation to the Activities under this Agreement.

20. Disclosure of Information

20.1 You acknowledge that, under the GIPA Act, the Department may be required to publicly disclose information about this Agreement at https://tenders.nsw.gov.au. None of the disclosure obligations require the disclosure of:

20.1.1 the commercial-in-confidence provisions of a contract;

20.1.2 any matter that could reasonably be expected to affect public safety or security; or

20.1.3 information which would be exempt from disclosure if it were the subject of an application under the GIPA Act.

20.1.4 You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.

21. Acknowledgement and Publicity

21.1 You agree to acknowledge the funding support You receive from the Department in any publications, advertising and promotional materials in the form and manner as may be stated in the Schedule or as reasonably requested by us from time to time.

21.2 You agree to notify us before making any press or other announcements or releases relating to the Agreement, or is required to be made by law.

21.3 You agree not to use Our logo or trademarks without Our prior written approval.

21.4 You acknowledge that the Department or the NSW Government may publicise the awarding of the Funds at any time after they are awarded, including:

21.4.1 Your name;

21.4.2 the amount of the Grant provided;

21.4.3 the title and brief description of the Project; and

21.4.4 any results or outcomes arising from the Grant.

Dealing with Risk

22. Insurance

22.1 Subject to clause 22.2, You agree to take out and maintain adequate insurance policies with a reputable insurer(s):

22.1.1 To comply with Your legal obligation and cover Your business and operational risk in relation to this agreement; and

22.1.2 for the Term, except for those policies providing cover on a 'claims made' basis which You agree to maintain for the Term and a period of at least six (6) year thereafter.

22.2 Without affecting Your obligations under clause 22.1, You agree to effect and maintain any insurance stated in the **Schedule 1 – Particulars** on the terms stated in that Schedule.

22.3 If We request, You agree to give us satisfactory evidence of the insurances policies You are required to effect and maintain under the Agreement.

22.4 You agree to immediately notify us of any event which affects or may affect Your compliance with this clause 22.

23. Indemnity

23.1 You agree to indemnify, and keep indemnified, the Department against any Claim that may be made or brought by any person against the Department arising out of or in connection with:

23.1.1 any unlawful, negligent, reckless or deliberately wrongful act or omission by You in relation to this Agreement;

23.1.2 a breach or claimed breach by You of a third party's Intellectual Property Rights or Moral Rights that relates to the Agreement; or

23.1.3 any death, personal injury, or loss of or damage to property relating Your performance of the Agreement

23.2 Your liability to indemnify the Department under clause 23.1 will be reduced proportionally to the extent that any unlawful, negligent or deliberately wrongful act or omission on the part of the Department caused or contributed to the Claim.

23.3 You must notify us immediately if You become aware of any Claim or likely Claim against you relating to the Agreement

Expiry and Termination of the Agreement

24. Termination

24.1 Unless terminated earlier, this Agreement will end on the earlier of:

24.1.1 the completion of the Project and the respective parties' obligations in accordance with the requirements in this Agreement; and

24.1.2 the expiration of the Term.

24.2 Where a party has breached this Agreement

24.2.1 the other party may give a Notice in writing to that party requiring it to rectify that breach within 30 days of receiving that Notice; and

24.2.2 if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Agreement immediately by giving a further Notice in writing.

24.3 The Department may terminate this Agreement immediately by Notice in writing if:

24.3.1 you breach a provision of this Agreement in a manner that, in the Department's opinion, is not capable of remedy; or

24.3.2 you suffer an Insolvency Event.

24.4 The Department may terminate this Agreement at any time on providing at least 30 days prior Notice in writing.

24.5 If this Agreement is terminated under clause 24.4:

24.5.1 you will:

(a) stop all Activity for the Project in accordance with the Notice;

(b) comply with any reasonable directions given to you by the Department; and

(c) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination, including those arising from affected contracts; and

24.5.2 the Department will only be liable for Instalments already made under this Agreement before the date the termination or reduction takes effect and for no other loss you may incur as a result of the early termination.

Other Legal Matters

25. Dispute Resolution

25.1 If a dispute arises in relation to this Agreement ('**Dispute**'), a party must comply with this clause 25 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.

25.2 A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute ('**Dispute Notice'**) in accordance with the requirements of clause 26 (Notices).

25.3 Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative of that party, who:

25.3.1 does not have prior direct involvement in the Dispute; and

25.3.2 has authority to negotiate and settle the Dispute.

25.4 If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received, the party which gave the Dispute Notice under clause 25.2 must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.

25.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.

25.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

26. Notices

26.1 A notice will be written in English and signed by an authorised representative of a party.

26.2 A notice or other communication is properly given or served by a party if that party:

26.2.1 delivers it by hand;

26.2.2 posts it; or

26.2.3 transmits it by electronic mail or by any other electronic means,

to the Grantee's address for notices in **Schedule 1 – Particulars.**

27. Survival

27.1 The following clauses survive termination or expiry of this Agreement:

27.1.1 clause 17 (Intellectual Property);

27.1.2 clause 18 (Confidential Information);

27.1.3 clause 19 (Privacy);

27.1.4 clause 23 (Indemnity);

27.1.5 clause 24 (Termination);

27.1.6 clause 26 (Notices);

27.1.7 any clause that is expressed to survive the termination or expiry of this Agreement in the Specific Conditions; and

27.1.8 any other clause including in the Specific Conditions which by its nature is intended to survive this Agreement.

28. General

28.1 Conflict of Interest:

You:

28.1.1 must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Agreement;

28.1.2 you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises; and

28.1.3 you must take all reasonable efforts to ensure that personnel, beneficiaries and subcontractors abide by this clause.

28.2 Cost

Each party will bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

28.3 Entire Agreement

This Agreement supersedes all prior contracts, obligations, representations, conduct and understandings related to the Project as provided by this Department.

28.4 Variation

The Agreement may only be varied by a written document executed by both Parties.

28.5 Relationship of the parties

28.5.1 This Agreement does not create a relationship of agency, partnership, and/or employment between the parties.

28.5.2 You must not represent itself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.

28.6 Waiver

28.6.1 Any waiver by the Department of a breach of this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

28.6.2 If the Department fails to exercise any of its rights under this Agreement, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect stop a party from relying on the terms of this Agreement to their full force and effect.

28.7 Severability

If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, it is severed from the Agreement without affecting the remaining parts of the Agreement.

28.8 Further assurances

Each part agrees to promptly executed all documents and do all other things reasonably necessary or desirable to give effect to the arrangements under this Agreement.

28.9 Assignment:

28.9.1 We may assign Our rights, or delegate or novate Our rights and obligations, under the Agreement to any New South Wales Government department, agency or public body created or authorised by law to administer Our functions or discharge Our role without Your consent. You agree to execute any documents We require to give effect to such arrangements.

28.9.2 You must not assign or novate your obligations or interests under this Agreement, without the prior written consent of the Department.

28.10 Counterparts

This Agreement may be executed in one or more counterparts, both by electronic or inked signature, each of which will be deemed an original and all of which together will constitute one and the same Agreement. Signed originals may be exchanged in hardcopy, via facsimile, or .pdf file by email and any such form will be deemed an original.

28.11 Governing law

This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts in that State, and any courts competent to hear appeals from those courts.