



FUNDING DEED OF AGREEMENT

Between

THE STATE OF QUEENSLAND
acting through the
**Department of Infrastructure, Local Government
and Planning**

and

(Organisation)

**RELATING TO FINANCIAL ASSISTANCE AVAILABLE UNDER
DEPARTMENTAL FUNDING PROGRAMS**

FUNDING DEED OF AGREEMENT

THIS FUNDING DEED OF AGREEMENT is made on <Date>

BETWEEN: The State of Queensland acting through the DEPARTMENT OF INFRASTRUCTURE, LOCAL GOVERNMENT AND PLANNING ("the Department") of Level 12, 1 William Street BRISBANE QLD 4000

AND: <Organisation title> ("the Organisation") of < Street Address >

BACKGROUND:

- A. The Department administers a wide range of funding programs which aim to strengthen communities, support local governments and other organisations in serving their communities and improve social, economic and environmental infrastructure across Queensland.
- B. The Organisation may apply to the Department for funding under a number of those funding programs and may be successful in its applications.
- C. The Department and the Organisation enter into this Funding Deed of Agreement to provide terms and conditions under which the Department will offer and the Organisation will accept Approved Funding under the funding programs.
- D. As the Department is required by law to ensure accountability of public money and to be accountable for all Approved Funds provided by it to the Organisation, the Organisation agrees to expend and acquit all the Approved Funding it may receive from the Department pursuant to the operation of the Funding Deed of Agreement, Funding Program Guidelines and as approved in writing by the Department.

AGREEMENT:

1 DEFINITIONS, INTERPRETATION and SCOPE

1.1 Definitions

In this Agreement, unless the context indicates otherwise:

“Acknowledgment Guidelines” means the funding acknowledgment guide as published on the Department’s website.

“Acquittal Period” is 30 days from the Funding Period End Date.

“Allocation-based Funding Program” means a Funding Program where an applicant meets the criteria as specified in the relevant Funding Program Guidelines and is not required to complete an application.

“Application-based Funding Program” means a Funding Program where an applicant meets the criteria as specified in the relevant Funding Program Guidelines and is required to complete an application for the relevant Funding Program.

“Approved Funding” or **“Approved Funds”** means the maximum amount of monies specified in a Formal Advice of Funding Approval, to be provided by the Department to the Organisation during the Funding Period(s) for the sole purpose of the delivery of an Approved Project(s) under a Funding Program(s).

“Approved Project(s)” means:

- projects to be undertaken by the Organisation under an Allocation-based Funding Program; or
- the project(s) approved by the Department under an Application-based Funding Program as described in a Formal Advice of Funding Approval.

“Background Intellectual Property” means Intellectual Property owned or controlled by the Organisation, including but not limited to Intellectual Property developed prior to or independently of an Approved Project(s), which the Organisation determines, in its sole discretion, to make available for the carrying out of an Approved Project(s).

“Business Day” or **“Business Days”** means a weekday or weekdays on which banks are open for business in Brisbane.

“Certificate of Expenditure Form” means the certificate of expenditure form completed in accordance with the template published on the Department’s website.

“Confidential Information” includes all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form this information is communicated (whether by electronic means, in an electronic storage device, in writing or orally) and includes the interpretation, analysis and application of general information in the public domain.

“Eligible Expenditure” means the expenditure on items directly related to the delivery of an Approved Project(s) and as detailed in the relevant Funding Program Guidelines.

“Eligible Project Cost” is the total project cost, less funding contributions from other sources and costs that are ineligible for funding under the relevant program guidelines.

“Estimated Project Commencement Date” means the date the Approved Project(s) is expected to commence as advised in writing by the Organisation.

“Estimated Project Completion Date” means the date that the Approved Project(s) is expected to be completed.

“Eligible Organisation” means the Party that is eligible under a Funding Program to receive Approved Funding as defined in Funding Program Guidelines.

“Final Project Report” means the final project report completed in accordance with the template published on the Department’s website.

“Formal Advice of Funding Approval” means the letter from the Minister (or the person delegated to exercise the power):

- providing details of the Approved Funds under an Allocation-based Funding Program; or
- advising the project/s is/are approved and providing details of the Approved Funds for the Approved Project(s) under an Application-based Funding Program.

“Funding Deed of Agreement” means this document and all schedules and attachments to it.

“Funding Period” commences on the date of Formal Advice of Funding Approval and ends on 12 months (or as approved otherwise) from this date.

“Funding Period End Date” is 12 months from date of Formal Advice of Funding Approval or as otherwise advised by the Department

“Funding Program(s)” means the Department’s Funding Program(s) under which Approved Funding has been provided.

“Funding Program Guidelines” means the guidelines for a Funding Program, as advised by the Department from time to time.

“Goods and Services Tax” or “GST” means an amount of GST payable under the *A New Tax System (Goods and Services Tax) Act 1999* and *A New Tax System (Goods and Services Tax Imposition – General) Act 1999* or otherwise imposed by the Commonwealth Government.

“GST Amount” means the amount calculated by multiplying the GST exclusive amount of the financial assistance as a taxable supply, payable under the terms of this Agreement, by the rate of GST applicable from time to time.

“Ineligible Expenditure” means the expenditure on items not directly related to the delivery of an Approved Project(s) and as detailed in the relevant Funding Program Guidelines.

“Intellectual Property” includes all copyright (including any future copyright), moral rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as a result of the use of the Approved Funding in an Approved Project(s).

“Moral Rights” has the meaning given to that term in the *Copyright Act 1968 (Commonwealth)*.

“Organisation” means the Party in receipt of Approved Funding.

“Party” or “Parties” means a party or parties to this Funding Deed of Agreement.

“Payment” means the first and subsequent payments of Approved Funding as advised in writing by the Department.

“Payment Schedule” means the schedule of payments in accordance with nominated timeframes as detailed in the Funding Program Guidelines or as advised in writing by the Department.

“Personal Information” means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“Project Site” means the parcel(s) of land on which an Approved Project(s) will be improved, constructed or developed as specified in the Formal Advice of Funding Approval.

“Recipient Created Tax Invoice” means a tax invoice that may be issued by the Department as the recipient of a taxable supply.

“Special Conditions” means any special conditions relevant to the Approved Project as advised in writing by the Department (if applicable).

“Sub-agreement” means an agreement entered into between each Party under a previous Head Agreement with cross references to that previous Head Agreement.

“Tax Invoice or Invoice” means a document requesting payment for goods or services and detailing the supplier's name, the goods and services provided, the date these were provided, the amount due, the goods and services tax amount due, the terms of trade and the date of the invoice.

“Unexpected Event” means any circumstance beyond the reasonable control of a Party which results in that Party being unable to perform an obligation on time, and includes, but is not limited to:

- a) natural events like fire, storm, flood, landslide, washaway or earthquake;
- b) national emergency;
- c) terrorist act;
- d) war; or
- e) an order of any Court.

1.2 Interpretation

In this Funding Deed of Agreement:

- a) a reference to this Funding Deed of Agreement or other instrument includes any variation or replacement of the Funding Deed of Agreement or instrument;
- b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of the statute, ordinance, code or law;
- c) the singular includes the plural and vice versa;
- d) the word “person” includes a firm, body corporate, unincorporated association or authority;
- e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- f) a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the *Corporations Act 2001* and, where not inconsistent with those accounting standards, generally accepted principles and practices in Australia consistently applied by an incorporated body or as between incorporated bodies and over time;
- g) a reference to anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two (2) or more of them collectively and to each of them individually;
- h) a reference to the Department or any other government department or entity (“Existing Entity”) includes a reference to any department or other government entity (“New Entity”) established or constituted in lieu of the Existing Entity, and with (as nearly as possible) the powers and responsibilities of the Existing Entity;
- i) if an act prescribed under this Funding Deed of Agreement, to be done by a party on or by a given day, is done after 5.00pm on that day, the act is deemed to be done on the following day;
- j) the monetary amounts stated in this Funding Deed of Agreement are exclusive of GST;
- k) reference to “\$” or “dollars” means Australian dollars;
- l) headings do not affect the interpretation of this Funding Deed of Agreement; and
- m) a reference to a website by address or location is a reference to a website located at a replacement address or location.

1.3 SCOPE OF FUNDING DEED OF AGREEMENT

1.3.1 This Funding Deed of Agreement records the terms and conditions under which the Organisation will accept the Approved Funding.

1.3.2 The Organisation acknowledges that the agreement between the Parties consists only of this Funding Deed of Agreement, the relevant Funding Program Guidelines, the Formal Advice of Funding Approval, written approvals and requirements of the Department and the applications of the Organisation for Approved Funding (if applicable), but in the event of any inconsistencies, the documents shall be interpreted in the following order of preference:

- a) this Funding Deed of Agreement;
- b) the relevant Funding Program Guidelines;
- c) Formal Advice of Funding Approval;
- d) written approvals and requirements of the Department as notified formally to the Organisation in writing;
- e) the Organisation’s application(s) for Approved Funding (where applicable).

2 TERM OF FUNDING DEED OF AGREEMENT

2.1 This Funding Deed of Agreement commences on the date the last Party signs this Funding Deed of Agreement, and continues until it is terminated under Clause 12 of this Funding Deed of Agreement.

3 NO ASSURANCE OF FUNDING

3.1. This Funding Deed of Agreement does not warrant that the Department will offer the Organisation Approved Funding under any Funding Program(s).

- 3.2. The Organisation acknowledges that receipt and retention of the Approved Funds is conditional upon the Organisation:
- a) expending the Approved Funds on the Approved Project(s) only;
 - b) using the Approved Funding only for Eligible Expenditure and not for Ineligible Expenditure (where applicable);
 - c) not being in breach of any other funding arrangement with the Department; and
 - d) complying with all clauses of this Funding Deed of Agreement subject to the operation of any competing relevant legislative obligations.

4 OBLIGATIONS OF THE ORGANISATION

4.1. Application-based Funding Programs

The following obligations apply to an Approved Project(s) under an Application-based Funding Program:

Project commencement

- 4.1.1. The Organisation is not to commence works on the Approved Project, unless prior written approval has been obtained from the Department. Works are considered to have commenced once actions incurring physical changes to the Project Site have been instigated.
- 4.1.2. The Organisation is not to make claims for payments until it has received the Formal Advice of Funding Approval and a current project management plan has been received by the Department in accordance with section 4.1.3.

Project management plan

- 4.1.3. Within one (1) month of the date of Formal Advice of Funding Approval (or such further time as approved by the Department), the Organisation must provide to the Department:
 - a) a current project management plan in an agreed format that includes, as a minimum, a project scope, project timings with key milestones such as design, tender and construction stages, costs, Estimated Project Commencement Date, Estimated Project Completion Date and, where relevant, a risk management schedule; and
 - b) dates when claims for payment are expected to be lodged with the Department.

Tendering and quotations

- 4.1.4. In the procurement of an Approved Project(s), the Organisation must comply with the *Local Government Act 2009* and other relevant laws.
- 4.1.5. The Organisation must supply to the Department, upon request, a copy of the successful quotation and associated contract documentation for the Approved Project(s).
- 4.1.6. Where the cost (either estimated or based on the value of agreements) of the Approved Project(s) exceeds that estimated by the Organisation, the Organisation will absorb these additional costs.

Project management

- 4.1.7. The Organisation acknowledges that the Department is funding the Approved Project(s) for the public benefit, which includes allowing members of the public reasonable access and rights of use of the Approved Project(s). The Organisation will manage the Approved Project(s) in such a way to ensure this occurs.
- 4.1.8. The Organisation will not commence construction of the Approved Project(s) until all development, building and other associated approvals have been obtained.
- 4.1.9. The Organisation must complete the Approved Project(s) on or before the Funding Period End Date.
- 4.1.10. The Organisation will engage or nominate from within the Organisation, a suitably qualified project manager with the relevant skills and experience to undertake the management of the Approved Project(s).
- 4.1.11. If the Department reasonably forms the opinion that the person selected as the project manager does not have the skills, qualifications or experience to undertake the Approved Project(s), the Department may require the Organisation to appoint a project manager suitable to the Department.
- 4.1.12. Where any alteration, addition, refurbishment or demolition of a building containing asbestos material is proposed, the Organisation must comply with the *Work Health and Safety Regulation 2011* which requires owners of buildings built on or before 31 December 2003 to keep an asbestos register at each workplace where asbestos materials have been identified.
- 4.1.13. The Organisation must ensure that the project manager is made responsible for ensuring the asbestos register is reviewed by the contractor to determine the exact location of any asbestos materials prior to commencement of any work on the building.
- 4.1.14. Where works are to be performed on buildings containing asbestos materials the Organisation must ensure all contracts include clauses:
- a) alerting the contractor of the need to access and assess the asbestos register;
 - b) requiring the contractor to disclose the location of further asbestos materials; and
 - c) about the costs of removal of asbestos materials.
- 4.1.15. The Organisation will allow the Department and its agents:
- a) access to the Project Site prior to, during and/or after completion of the Approved Project(s) on three (3) business days' notice; and
 - b) access to the contracted or nominated project manager on three (3) business days' notice. The Organisation must render all reasonable and necessary assistance to enable the Department to undertake project monitoring and oversee the progress of construction and development on a regular basis.

Variations and record management

- 4.1.16. The Organisation must not amend, waive or fail to give effect to any material part of an Approved Project(s) without the prior written approval of the Department.
- 4.1.17. Any variation to an Approved Project(s) must be approved in writing by the Department prior to that variation being effected. A variation to the Approved Project(s) may impact on the level of Approved Funding
- 4.1.18. The Organisation must notify the Department in writing no later than two (2) months prior to the end of the Funding Period End Date if the Organisation desires to vary an Approved Project(s) in any way or decides not to complete an Approved Project(s).
- 4.1.19. Where project works have been delayed for any reason, the Organisation must immediately notify the Department detailing reasons for the delay and the anticipated date of recommencement of works.
- 4.1.20. The Organisation must include, with any variation request involving an extension of time to complete the Approved Project(s), a revised project management plan, detailing the milestones for the extended timeframe and reasons for the request.
- 4.1.21. Where an Approved Project(s) is cancelled for any reason, the Organisation must immediately notify the Department detailing the reasons for cancellation and return all unspent Approved Funding to the Department.
- 4.1.22. Should project expenditures or timeframes vary following commencement of the Approved Project(s), the Organisation must provide updated cash flow forecasts and revised project timeframes to the Department within ten (10) business days of these variances being identified.
- 4.1.23. Should the Eligible Project Costs be reduced due to income confirmed from another source of funding, the Organisation must notify the Department within ten (10) business days, to enable the Department to adjust the maximum fundable amount allowable under the relevant Funding Program Guidelines.
- 4.1.24. The Approved Funding must not be disbursed to or otherwise applied for the direct benefit of any other project(s), a member of the Organisation or any other third party, except to the extent that it is a consequence of and consistent with the implementation of the Approved Project(s), without the prior written approval of the Department.
- 4.1.25. All details of any disbursement of the Approved Funding to any other project(s), a member of the Organisation or any other third party, as approved by the Department must be recorded in the accounts and/or accounting records prepared by the Organisation in respect of the Approved Project(s).
- 4.1.26. The Organisation must keep full and accurate records of the conduct of an Approved Project(s) and store them securely.
- 4.1.27. The Organisation must provide to the Department monthly progress reports for the Approved Project(s) in a format as advised by the Department.
- 4.1.28. If requested by the Department, the Organisation must submit an updated project management plan within ten (10) business days of the request.

Claims for payment

4.1.29. When making a claim for payment the Organisation must:

- a) use and complete the prescribed form available on the Department's website;
- b) certify the works have been completed satisfactorily in accordance with legislative requirements;
- c) certify the amount claimed has been properly incurred for the Approved Project(s) in accordance with this Funding Deed of Agreement and the relevant Funding Program Guidelines, and if requested, a detailed transaction general ledger report to support claimed expenditure; and
- d) use and complete the payment by electronic funds transfer form provided by the Department.

4.1.30. All certifications must be made by an appropriately delegated officer of the Organisation, or other persons as agreed by the Department.

Acquittal

4.1.31. The final claim for payment and the completed Final Project Report must be provided to the Department within thirty (30) days of the Funding Period End Date.

4.1.32. Where the Organisation holds unexpended Approved Funding, those funds must be returned to the Department within the timeframe stipulated in the Department's tax invoice seeking return of unexpended Approved Funding. If those unexpended funds are not returned, the Department may initiate debt recovery proceedings

4.1.33. Where the Final Project Report is not provided to the Department in accordance with clause 4.1.31, the Department is under no obligation to provide the Organisation with the remaining Approved Funding.

4.2 Allocation-based Funding Programs

The following obligations apply to an Approved Project(s) under an Allocation-based Funding Program

4.2.1 The Organisation agrees to meet all associated costs over and above the Approved Funding.

4.2.2 The Organisation agrees to return any unspent funding for the relevant financial year, or an agreed proportion of the Approved Funding to the Department if the conditions outlined in this Funding Deed of Agreement, the Formal Advice of Funding Approval and the relevant Funding Program Guidelines are not met to the satisfaction of the Department.

4.2.3 Clauses 4.1.18, 4.1.19, 4.1.32 apply to all Allocation-based Funding Programs.

4.2.4 On or before the Acquittal Period, the Organisation must provide to the Department the relevant Funding Program Certificate of Expenditure Form.

5. OBLIGATIONS OF THE DEPARTMENT

- 5.1 Subject to the Department being satisfied that the Organisation has complied with the terms of this Funding Deed of Agreement and for Application-based Funding Programs, upon receipt of a valid Tax Invoice from the Organisation or the receipt of a Recipient Created Tax Invoice agreement from the Organisation, the Department will provide Approved Funding in accordance with the Payment Schedule. The Approved Funding will not exceed the Approved Funding percentage of the Eligible Project Cost as detailed in the Formal Advice of Funding Approval.
- 5.2 Upon the expiration of the Funding Period End Date, the Department's commitment to any outstanding payments will be discharged and unclaimed funding may be forfeited.

6. ACKNOWLEDGEMENT OF DEPARTMENT'S FUNDING CONTRIBUTION

- 6.1 The Organisation must acknowledge the Department's funding contribution in accordance with the Acknowledgment Guidelines.

7 ACCESS TO PREMISES, RECORDS AND FINANCIAL ACCOUNTABILITY

- 7.1 All financial transactions incurred in the conduct of an Approved Project(s) must be separately identifiable in the Organisation's books of account. All such documentation, including Tax Invoices, cheques issued and relevant bank statements must be retained by the Organisation for a period of three (3) years after the Funding Period End Date and, during this period, be made available to the Department in accordance with Clause 7.2.
- 7.2 The Department or its nominated agents may, on giving three (3) Business Days written notice to the Organisation:
- a) access the premises of the Organisation;
 - b) inspect and copy documentation and records, however stored, in the custody or control of the Organisation to ensure compliance with all reporting and accountability requirements under this Funding Deed of Agreement and conduct audits of Approved Project(s);
 - c) require the Organisation or its employees to provide full and accurate answers to any questions concerning records or information related to an Approved Project(s);
 - d) undertake an audit to ensure the Organisation has sound planning, governance and management practices to manage the Approved Project(s) and successfully meet its obligations under this Funding Deed of Agreement.

8 INTELLECTUAL PROPERTY

- 8.1 The Department and the Organisation acknowledge that any Intellectual Property created during an Approved Project(s), upon its creation, shall vest in the Organisation unless otherwise agreed to in writing between the Parties.
- 8.2 The Organisation grants to the Department a non-exclusive, irrevocable and royalty-free licence to use, adapt for its own use, modify, develop and distribute any Intellectual Property for the sole purpose of discharging the Department's portfolio responsibilities of public and financial accountability.

- 8.3 The Organisation shall ensure that any licence which is granted to the Department pursuant to Clause 8.2 shall also include licences to any Background Intellectual Property to enable the Department to take the benefit of any licences to the Intellectual Property.
- 8.4 Prior to an individual commencing work on an Approved Project(s), the Organisation must obtain from that individual, in writing, and provide to the Department upon request a consent to any act or omission (including the specific acts or omissions as may be necessary) which would otherwise infringe the Moral Rights of that individual.

9 CONFIDENTIALITY

- 9.1 The Organisation shall not disclose Confidential Information belonging to the Department except where:
- a) it has obtained the Department's prior written approval, which shall not be unreasonably withheld; or
 - b) disclosure is made in compliance with a lawful requirement and the Organisation advises the Department of the information provided.
- 9.2 Subject to Clause 9.3, the Department shall not disclose the Organisation's Confidential Information except where the Organisation has given its prior written approval, which shall not be unreasonably withheld.
- 9.3 Subject to Clause 8, the Department reserves the right, in its absolute discretion and without any liability to account to the Organisation or any third person, to make available, disclose and allow the disclosure of any information received from the Organisation or otherwise relating to this Funding Deed of Agreement to:
- a) any Commonwealth department, Queensland Government department, agency, authority or Minister;
 - b) any third person, including any court, tribunal, governmental committee or other person within government, where such disclosure would be permitted or required by law, or otherwise would be consistent with established government policies, procedures or protocols or for public accountability purposes to the extent required in those circumstances;
 - c) members of the Queensland public in order to publicise the benefits of Funding Program(s) and the Department's Approved Funding of the Organisation, including creating case studies and promotional materials.
- 9.4 The Organisation and the Department will make every reasonable effort to ensure that their employees, volunteers, agents and subcontractors are aware of and comply with the obligations in this Clause 9.

10 PRIVACY AND DISCLOSURE OF PERSONAL INFORMATION

- 10.1 Where the Organisation has access to and/or is responsible for holding Personal Information in order to fulfil its obligations under this Funding Deed of Agreement, it shall:
- a) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
 - b) not use Personal Information other than for the purposes of this Funding Deed of Agreement, unless required or authorised by law;

- c) not disclose Personal Information without the written agreement of the person to whom the Personal Information relates, unless required or authorised by law;
- d) ensure that only authorised personnel have access to Personal Information;
- e) immediately notify the person to whom the Personal Information relates if it becomes aware that a disclosure of Personal Information is or may be, required or authorised by law; and
- f) ensure that its employees, volunteers, agents and subcontractors are aware of and comply with the obligations stated in this Clause 10.

10.2 Any Personal Information exchanged between the Department and the Organisation shall be dealt with in accordance with the public sector privacy regime applicable under any relevant State Government policy, legislation or subordinate law.

11 INDEMNITY AND INSURANCE

11.1 The Organisation shall indemnify the Department and its officers, employees and agents (“those indemnified”) from and against all actions, proceedings, claims, demands, costs (including all legal costs and all reasonable costs associated with defending those indemnified), losses, damages and expenses, including those arising out of the terms of any settlement, which:

- a) may be brought against or made upon those indemnified; and
- b) those indemnified may incur or sustain, arising out of or as a consequence of:
 - i) any breach of this Funding Deed of Agreement by the Organisation, its directors, officers, employees, contractors or agents; or
 - ii) any wilful, unlawful or negligent act or omission of the Organisation, its directors, officers, employees, contractors or agents, under or in connection with this Funding Deed of Agreement.

11.2 The Organisation must, subject to the operation of competing legislative obligations, effect and maintain adequate insurance or similar coverage to cover any liability arising as a result of its undertaking of an Approved Project(s) and, if requested, provide the Department with a copy of the relevant policies or certificates of currency, whichever is applicable. The Organisation must be responsible for maintaining workers’ compensation insurance for an amount required by the relevant State or Territory legislation.

12 TERMINATION

12.1 If a Party defaults in the performance of its obligations under this Funding Deed of Agreement so far as it applies to the Approved Funding for a particular Approved Project, the other Party may give a notice of default requiring the default to be rectified within a reasonable period nominated in the notice, or if no such period is nominated then, fourteen (14) days.

12.2 If the default is not remedied within the period specified in Clause 12.1, the non-defaulting Party may terminate this Funding Deed of Agreement as far as it applies to the Approved Funding for the Approved Project immediately by written notice to the other Party. The Funding Deed of Agreement will remain in place for all other current or future Approved Projects subject to valid termination of the entire Funding Deed of Agreement by either Party.

12.2 Termination of this Funding Deed of Agreement under this Clause 12 does not affect any accrued rights or remedies of a Party.

13 CONSEQUENCES OF TERMINATION

13.1 In the event of termination of this Funding Deed of Agreement as it applies to particular Approved Project(s):

- a) all Approved Project(s) shall be deemed to have been terminated as at the date of termination of this Funding Deed of Agreement;
- b) the Department shall have no further obligation to pay Approved Funds to the Organisation for all Approved Project(s) as at the date of termination of this Funding Deed of Agreement;
- c) the Organisation must take all action necessary to minimise further expenditure of all Approved Funding;
- d) the Department may in the notice of termination or a further notice, require the Organisation to repay unspent Approved Funding, or such part of the unspent Approved Funding as is stated in the notice, within the time specified in the notice;
- e) any Approved Funds which have not been expended by the Organisation on Approved Project(s), as at the date of termination will be applied in the following order:
 - i) first, in payment of any Eligible Expenditure items, including any debts or liabilities incurred by the Organisation in relation to the Approved Project(s) prior to the date of termination of this Funding Deed of Agreement; and
 - ii) second, the Department may recover any Approved Funds which have not been expended by the Organisation as at the date of termination.
- f) the Organisation will return, or upon request of the Department, destroy all or any documents containing Confidential Information supplied by the Department.
- g) the Department may offset the spent Approved Funding for the Approved Project(s) or such part of the spent Approved Funding as is stated in the notice of termination or a further notice, against any other Approved Funding the Organisation may be entitled to receive under another existing or future Approved Project(s);
- h) any Approved Funds which have not been expended by the Organisation as at the date of termination of the Approved Project(s) will be applied in the following order:
 - i) first, in payment of any Eligible Expenditure items, including any debts or liabilities incurred by the Organisation in relation to the Approved Project(s) prior to the date of termination of the Approved Project(s); and
 - ii) second, the Department may recover any Approved Funds which have not been expended by the Organisation as at the date of termination of the Approved Project(s).

14 DISPUTE RESOLUTION PROCESS

14.1 Both Parties agree that any dispute arising during the course of this Funding Deed of Agreement will be dealt with as follows:

- a) firstly, the Party claiming that there is a dispute will serve notice to the other Party setting out the nature of the dispute;
- b) secondly, the Parties will try to resolve the dispute by direct negotiation;

- c) thirdly, the Parties have ten (10) business days from the service of the notice (or such extended time as the Parties may agree in writing before the expiration of the ten (10) business days) to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure with the costs and expenses of any mediation or alternative dispute resolution procedure being borne equally between the Parties; and
- d) lastly, if:
 - i) there is no resolution or agreement; or
 - ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within ten (10) business days of the submission, or such extended time as the Parties may agree in writing before the expiration of the ten (10) business days,then any Party may commence legal proceedings.

14.2 Each Party shall, as far as reasonably possible, continue to perform its obligations under this Funding Deed of Agreement notwithstanding the existence of any dispute or any proceeding under this Clause 14.

14.3 This Clause 14 does not apply to the Department under or purportedly under Clause 12 (Termination) nor does it preclude either party from commencing legal proceedings for urgent interlocutory relief.

15 GST

15.1 Where the Approved Funding paid to the Organisation by the Department is a “taxable supply” of services within the meaning of the GST Act, the Organisation must issue a valid Tax Invoice for the supply of the service. The ‘service’ is the delivery of the Approved Project(s).

15.2 Further to this:

- a) If the Organisation has an Australian Business Number (ABN) and is GST registered then it has the responsibility to charge, collect and pay GST to the Australian Tax Office (ATO). The Approved Funding paid to the Organisation will include GST, normally an extra 10% of the Eligible Expenditure;
- b) To receive the Approved Funding, the Organisation has the option of issuing the Department with a valid tax invoice or requesting the Department to enter into a Recipient Created Tax Invoice agreement. If the Organisation chooses to enter into the Recipient Created Tax Invoice agreement, the Department will issue the Organisation a Recipient Created Tax Invoice. The Organisation must not issue a Tax Invoice in this instance;
- c) If the Organisation has an Australian Business Number (ABN) but is not GST registered, the Organisation must issue a Tax Invoice to the Department to receive the Approved Funding. The Approved Funding paid to the Organisation will not include GST;
- d) If the Organisation does not have an ABN but it has tax exemption status, the Organisation must provide the Department with a Statement by a Supplier to receive the Approved Funding. If the Organisation does not have an ABN and does not have exemption status there is an ATO requirement that 49% of the Approved Funding will be withheld and remitted to the ATO.

15.3 If it is determined on reasonable grounds that the amount of GST collected from the Department by the Organisation under this Clause 15 differs, for any reason, from the amount of GST paid or payable by the Organisation, including by reason of:

- a) any amendment to the GST;
- b) the issuance of a ruling or advice by the Commissioner of Taxation; or
- c) a refund to the Organisation in respect of a supply made under this Funding Deed of Agreement,

the Department is entitled to a refund of the appropriate consideration collected from the Department and the Organisation must issue an appropriate GST adjustment notice.

16 TITLE AND USE OF ASSETS

16.1 Subject to the legal entitlements of third parties and the nature of the Approved Project(s), the Organisation must ensure that property in an Approved Project(s), any plant, equipment, materials and other supplies purchased or otherwise acquired or constructed by the Organisation for the purposes of an Approved Project(s), vests irrevocably in the Organisation.

16.2 The Organisation must ensure that the intended purpose of the Approved Project(s) continues in operation or use for a period of ten (10) years after the Funding Period End Date unless a different period is advised by the Department.

16.3 Where a public facility has been funded, the Organisation must allow reasonable access by the general public to enable participation in activities delivered at the Approved Project(s) consistent with the purpose of the facility.

16.4 Subject always to Clause 17.2, in the event that the Organisation transfers, with the Department's consent, property in an Approved Project(s), the Organisation must ensure that the new owner of legal or beneficial title of an Approved Project(s) shall enter into a deed whereby that person agrees that the Department may enforce Clause 16.2 against that person as if that person was a party to this Funding Deed of Agreement. If no deed is entered into, the Department may take action to recover the Approved Funds from the Organisation.

17 GENERAL

17.1 No Agency Employee or Partnership Relationship

- a) The Organisation must not represent itself and must ensure that its members and employees do not represent themselves as being an employee, partner or agent of the Department.
- b) This Funding Deed of Agreement does not create a relationship of employment, agency or partnership between the parties.

17.2 Assignment

Unless otherwise provided for in this Funding Deed of Agreement, no Party will assign, novate, transfer, encumber or subcontract any or all of its rights or obligations under this Funding Deed of Agreement without the prior written consent of the other Party.

17.3 Entire Agreement, Variation and Severance

- a) This Funding Deed of Agreement records the entire agreement between the Parties in relation to its subject matter.
- b) The parties may, in writing, agree to vary this Funding Deed of Agreement from time to time.
- c) If a court or tribunal finds any term of this Funding Deed of Agreement to be illegal or unenforceable the term will be severed from the Funding Deed of Agreement and the remaining terms will govern the relationship of the Parties.

17.4 Unexpected Events

No Party is liable for any failure to perform or delay in performing its obligations under this Funding Deed of Agreement if that failure or delay is due to an Unexpected Event. If that failure or delay exceeds sixty (60) days, either Party may terminate this Funding Deed of Agreement with immediate effect by giving notice to the other Party.

17.5 Waiver

- a) A waiver by a Party of any rights arising from a breach or non-observance by the other Party of a term of this Funding Deed of Agreement will not be taken to be a waiver in respect of any other breach or non-observance of the same or any other term.
- b) The failure of either Party to enforce a term of this Funding Deed of Agreement will not be interpreted as a waiver of that term.

17.6 Compliance with Law

The Organisation shall in carrying out the Approved Project(s) comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any applicable Commonwealth, State, Territory or local authority.

17.7 Applicable Law

The laws of the State of Queensland govern this Funding Deed of Agreement and the Parties submit to the exclusive jurisdiction of the courts of Queensland.

17.8 Counterparts

If circumstances require it, the Parties may sign separate copies of this Funding Deed of Agreement and all copies (counterparts) will constitute one instrument.

17.9 Right of First Refusal

Subject to any existing legal obligations imposed on the Organisation, the Organisation must not transfer its interest in a Project Site, if any, to any third party, for ten (10) years from the opening date of operation of the facility unless the Organisation has first offered its interest in the Project Site to the Department and has obtained written approval from the Department for any transfer. The State cannot unreasonably withhold its consent.

17.10 Survival

The rights of the Parties accrued under any of the following clauses:

- a) Clause 6.1 (Acknowledgement of Department's Funding Contribution);
- b) Clauses 7.1 and 7.2 (Access to Premises, Records and Financial Accountability);
- c) Clause 8 (Intellectual Property);
- d) Clause 9 (Confidentiality);
- e) Clause 10 (Privacy and Disclosure of Personal Information);
- f) Clause 11 (Indemnity and Insurance);
- g) Clause 12 (Termination);
- h) Clause 13 (Consequences of Termination);
- i) Clause 16 (Title and Use of Assets);
- j) Clause 17 (General)

will survive the termination of this Funding Deed of Agreement.

17.11 Notices

- a) Notices required to be given under this Funding Deed of Agreement must be in writing and may be delivered by hand, by prepaid postage or by email.
- b) The address for service of the Parties is set out in Schedule A of this Funding Deed of Agreement.
- c) Notices will be deemed to have been received:
 - i) if hand delivered, upon delivery;
 - ii) if sent by prepaid postage, five (5) Business Days after posting;
 - iii) if sent by email, one Business Day after sending, unless an undeliverable report is received, at which time the notice shall be resent.
- d) A Party may change its address for service, from time to time, by a written notice served on all other Parties.
- e) Any notice received after 5.00pm is deemed to have been received on the next Business Day in the place to which it was sent.

17.12 Funding Deed of Agreement supersedes previous Head of Agreement

This Funding Deed of Agreement supersedes any previous Head of Agreement entered into between the Department and the Organisation.

17.13 Existing Sub-agreements continue in force

Despite Clause 17.12, any Sub-agreement entered into between the Department and the Organisation under a previous Head of Agreement continues in force under the previous Head of Agreement.

17.14 Buy Local

- a) The Organisation acknowledges that the Department is providing funding for the public benefit, which includes supporting greater employment opportunities for members of the local community.
- b) When conducting procurement processes, the Organisation agrees to use its best endeavours to ensure that competitive local firms (that comply with relevant legislation) are given a full, fair and reasonable opportunity. For larger, more complex purchases, 'local' may be interpreted as the whole of Queensland.

EXECUTED as a DEED:

SIGNED for and on behalf of
the **STATE OF QUEENSLAND** acting through the
Department of Infrastructure, Local Government
and Planning.

by _____
(name)

(signature)

the _____
(position)

being duly authorised in this behalf,

this _____ day of _____ 20__

in the presence of

(signature of witness)

(name of witness)

SIGNED for and on behalf

of

by _____
(name)

(signature)

the _____
(position)

being duly authorised in this behalf,

this _____ day of _____ 20__

in the presence of

(signature of witness)

(name of witness)

SCHEDULE A
PARTY DETAILS

The Department:

Department Infrastructure, Local Government and Planning
PO Box 15009
BRISBANE QLD 4001

Contact Details:

(Regional Director)
Regional Director
Telephone: (Phone number)
Email: (Name)@dilgp.qld.gov.au

The Organisation:

(Organisation)
(Street Address)

Contact Details:

(Name)
Chief Executive Officer
Telephone: (Phone number)
Facsimile: (Fax number)
Email: (email address)

Organisation's ACN/ABN: (ACN/ABN number)