

[name of program or fund]

Infrastructure Grants Funding Agreement

Name of Organisation: **[organisation name]**

Name of Project: **[project name]**

Contact details

Department	Name	The Crown in right of New South Wales as represented by the NSW Office of Sport (ABN 31 321 190 047)
	Address	6B Figtree Drive, Sydney Olympic Park NSW 2127
	Postal Address	Locked Bag 1422 Silverwater NSW 2128
Department Authorised Person (Representative)	Name	[insert]
	Role	[insert]
Department Contact	Telephone	13 13 02
	E-mail	infrastructuregrants@sport.nsw.gov.au
Organisation ('You')	Name	[organisation name]
	ABN	[number]
Organisation address	Address	[insert]
Organisation postal address	Postal Address	[insert]
Organisation Authorised Signatory	Name	[insert]
	Role	[insert]
	Telephone	[insert]
	Mobile	[insert]
	E-mail	[insert]
Organisation Secondary Contact Person	Name	[insert]
	Role	[insert]
	Telephone	[insert]
	Mobile	[insert]
	E-mail	[insert]

Program Details

Program/Fund name	[name of program or fund]
Objectives	[insert objectives (i.e. increase the number and type of regional sporting facilities, to improve the standard of existing sporting facilities, and to increase participation in sport)]

Project Details

Project name	[project name]
Project Description (for publication purposes)	[insert]
Project Objectives, Outcome and Benefits	[insert]
Project Scope and Deliverables	[insert]
Total Project Value	[insert]
Grant Value	A maximum of \$amount (excluding GST) payable in the amounts as outlined in Schedule A.
End Recipient	[Insert name, ABN and contact details for any End Recipient. If no End Recipient insert "Not applicable".]
Minimum non-interference period	[insert]
Project Scheduled Initiation	
Project Scheduled Construction Start	[insert Month and Year]
Project Scheduled Construction Finish	[insert Month and Year]
Commencement Date	The date the Agreement is signed by both parties.

Schedule A – Funding and Budget schedule

Milestone Payment Schedule

Total Amount of Grant: **\$amount** (excluding GST)

The Department will pay the Grant to You in the instalments set out in the table below on achievement of the corresponding Milestone:

Milestone	Name of Milestone	Description of Activities to be achieve Milestone	Grant Payment (excl. GST)	Supporting documentation and evidence required	Estimated date of Milestone Completion
1	Funding Agreement execution	Funding Agreement is finalised, signed and submitted to Office of Sport.	\$ (xx%)	a) Signed Funding Agreement. b) Project Brief c) Copy of certificate of currency (remove for Councils)	On execution of Funding Agreement by both parties.
2	Project Establishment	Project Establishment: <ul style="list-style-type: none"> • Engage Project Manager (Interim); • Concept Layout – Draft; • Preliminary Budget; • Preliminary Program; • Risk Register; and • Project Governance. Commence: <ul style="list-style-type: none"> • Contact with Key Stakeholders; • Contact and application with Service Infrastructure Authorities; and 	\$ (xx%)	a) Copy of Terms of Reference (ToR) and membership of Project Control Group (PCG) (or equivalent) b) Written confirmation of landowner's consent c) Copy of executed lease agreement with landowner d) Copy of contract for Quantity Surveyor (QS)	[Date]

Milestone	Name of Milestone	Description of Activities to be achieve Milestone	Grant Payment (excl. GST)	Supporting documentation and evidence required	Estimated date of Milestone Completion
		<ul style="list-style-type: none"> • Consultants - long lead or essential baseline – survey, geotechnical fieldwork • QS Costing 		<ul style="list-style-type: none"> e) Copy of contract for core consultant / project management service provider f) Project Plan 	
Project Stage Gate				<ul style="list-style-type: none"> a) Approval of revised project scope if required b) Revision of Payment Milestone Schedule if required c) Confirm risks associated with the facility, its ongoing operations and termination of existing site 	To be completed by Us within 20 working days of completion of the previous milestone
3	Project site and concept endorsement; environmental assessment and design for project approval submission	<p>Complete:</p> <ul style="list-style-type: none"> • Engagement and management of consultants and Project Manager • Environmental Assessment documentation • Functional specifications • Master Plan layout • Concept Design of Buildings • Submission to Council for Project Approval • Landowners consent • Update Project Budget • Update Program 	\$ (xx%)	<ul style="list-style-type: none"> a) Performance Report to date b) Progress statement endorsed by PCG c) Copy of signed contract(s) with core consultants and/or project management service provider 	[Date]

Milestone	Name of Milestone	Description of Activities to be achieve Milestone	Grant Payment (excl. GST)	Supporting documentation and evidence required	Estimated date of Milestone Completion
		<ul style="list-style-type: none"> • Risk Register • Engage consultants for Service Infrastructure Authority work • Engage Design Team, provide regular design coordination meetings, workshops, progressive design and documentation publishing (50%, 90% & 100%) for QS review. • Progress Service Infrastructure Authority outcomes. • Negotiations for terminating lease with Crown Land. 		<ul style="list-style-type: none"> d) Copy of Quantity Surveyor (QS) report and indicative project cash flow e) Copy of environmental assessment f) Copy of Functional specifications g) Copy of revised Project Brief and concept plans (endorsed by PCG) h) Copy of revised Project Budget (endorsed by PCG) i) Copy of lease termination agreement with Crown Land for existing site 	
4	Development Application (DA) consent and tender for facility construction	<ul style="list-style-type: none"> • Finalise Design and Certificate of Construction approval, integrate Service Infrastructure Authority outcomes, Expression of Interest for Building Contractors/Tenderer selection, Draft Building Contract, Tendering process and review to Budget. • Engage Superintendent for contract administration, delivery. • Award of the Building Contract. 	\$ (xx%)	<ul style="list-style-type: none"> a) Performance report to date b) Progress statement endorsed by PCG c) Copy of DA consent document d) Copy of Construction certificate e) Copy to awarded tender 	[Date]

Milestone	Name of Milestone	Description of Activities to be achieve Milestone	Grant Payment (excl. GST)	Supporting documentation and evidence required	Estimated date of Milestone Completion
5	20% completion of Project construction	Completion of 20% of the construction works related to the project.	\$ (xx%)	<ul style="list-style-type: none"> a) Performance report to date b) Progress statement endorsed by PCG c) Evidence from construction company confirming Project construction is 20% compete (endorsed by QS) d) Copies of bank guarantees for retention sums 	[Date]
6	50% completion of Project construction	Completion of 50% of the construction works related to the project.	\$ (xx%)	<ul style="list-style-type: none"> a) Performance report to date b) Progress statement endorsed by PCG c) Written evidence from construction company confirming Project construction is 50% compete (endorsed by QS) 	[date]

Milestone	Name of Milestone	Description of Activities to be achieve Milestone	Grant Payment (excl. GST)	Supporting documentation and evidence required	Estimated date of Milestone Completion
7	70% completion of Project construction	Completion of 70% of the construction works related to the project.	\$ (xx%)	<ul style="list-style-type: none"> a) Performance report to date b) Progress statement endorsed by PCG c) Written evidence from construction company confirming Project construction is 70% complete (endorsed by QS) 	[Date]
8	Practical completion of Project construction	Practical Completion of the Project	\$ (xx%)	<ul style="list-style-type: none"> a) Performance report to date b) Progress statement endorsed by PCG c) Certificate of Practical Completion d) Proposed design of any permanent signage (including, but not limited to, plaques) 	[Date]

Milestone	Name of Milestone	Description of Activities to be achieve Milestone	Grant Payment (excl. GST)	Supporting documentation and evidence required	Estimated date of Milestone Completion
9	Handover completion and Project Completion Report	[insert]	\$ (xx%)	a) Project Completion Report, including: <ul style="list-style-type: none"> – details on achievement of the Project and Objectives; – details on the final Project output/outcomes including details on Project design and ongoing commitment as outlined in Your application; – Project materials (e.g. photographs, promotional material); and – any other supporting documents requested by us. b) Progress statement endorsed by PCG c) Occupation Certificate	[Date]

Milestone	Name of Milestone	Description of Activities to be achieve Milestone	Grant Payment (excl. GST)	Supporting documentation and evidence required	Estimated date of Milestone Completion
10	Final Acquittal and Financial Statement submission	Submission of satisfactory Final Acquittal and Financial Certification Statement as per Schedule B	\$ (xx%)		Submitted in accordance with the requirement of Schedule B.

Payment and General invoicing Terms

1. Payment of each Instalment of the Grant is conditional upon each and all of the following:
 - a) You have submitted the relevant supporting documentation and evidence which establishes achievement of the Activities to the Department's satisfaction; and
 - b) You have met each and every obligation imposed on You under this Agreement to the Department's satisfaction.
2. You must submit milestone reports with supporting documents and evidence within 30 days of achieving the milestone.
3. Payments will be made to You by the Department within 30 days of the Department assessing that the milestone has been achieved following receipt of the milestone report and supporting documents and evidence.
4. All Tax Invoices must:
 - a) be clearly addressed to:
Office of Sport
ABN 31 321 190 047
Locked Bag 1422
Silverwater NSW 2128
 - b) be provided to the Department via its electronic grants management system; and
 - c) display prominently the words "Tax Invoice".

5. All Tax Invoices must contain the following information:
- a) the word "Tax Invoice"
 - b) tax invoice date
 - c) tax invoice reference number
 - d) the name of the Project
 - e) Your name, address and contact details including telephone and email
 - f) Your ABN
 - g) Your EFT payment details including bank name, BSB, account number, account name; and
 - h) the total amount requested with GST breakdown.

Budget

ITEM	\$
A. INCOME	
<i>Office of Sport Funding</i>	
<i>Recipient's cash contribution (e.g.: Fundraising, Trading/Operating Activities)</i>	
<i>Third Party Funding (e.g. federal or local government grant)</i>	
Sub-Total (A)	
B. EXPENDITURE – CAPITAL RELATED COSTS	
<i>Grossed Up Construction (including government agency/authority costs)</i>	
<i>Asset Purchases</i>	
<i>Contingency</i>	
Sub-Total (B)	
C. EXPENDITURE – ADMINISTRATION COSTS	
<i>Professional Services (eg: project management, design, contract administration, accounting, legal)</i>	
<i>Administration (eg: Telephone, Printing & Stationery)</i>	
Sub-Total (C)	
TOTAL COST (B + C)	

Schedule B – Reporting Requirements

Reporting requirements

1. You must provide to the Department via its electronic grants management system:
 - (a) Reports meeting the description and requirements specified below, at the times and frequency specified below.
The Department may prescribe the form of reports and manner of submission by written notice to You from time to time.
 - (b) All financial reports must comply with Australian Accounting Standards issued by the Australian Accounting Standards Board, as amended from time to time.

Report name	Description	Special requirements	Reporting period and frequency of submission
Progress Reports	1. A report documenting progress of the Project (format will be provided by Office of Sport).	The report must be signed by Your authorised representative. The information in the Progress Report will be used to confirm expenditure of the Grant, as well as provide evidence of meeting Project milestones.	As per Schedule A
Facility Use Report	1. A report documenting the usage of the facility (format will be provided by Office of Sport)	The information used in the Facility Use Report will be used to measure the facility use prior to and post construction of the Project.	Prior to construction of the Project and once the project has been completed, unless otherwise specified in Schedule A.

Report name	Description	Special requirements	Reporting period and frequency of submission
Project Completion Report	<ol style="list-style-type: none"> 1. A report documenting completion of the Project (format will be provided by Office of Sport); 2. An up to date copy of the Asset Register. 3. A copy of promotional and marketing material and any media reports relating to the Project. 	<p>The information in the Project Completion Report will be used to confirm expenditure of the Grant, as well as provide evidence of meeting Project milestones.</p> <ol style="list-style-type: none"> 1. All unspent Grant money must be returned to us either: <ol style="list-style-type: none"> (a) by cheque submitted with the Project Completion Report; or (b) electronically by EFT direct to our bank, on the same day as the Project Completion Report is submitted to us. 	<p>Report to be submitted to us within 30 days of the earlier of:</p> <ol style="list-style-type: none"> (a) the completion of the Project; (b) the expiry of this Agreement; or (c) the termination of this Agreement.
Annual Project Acquittal and Financial Certification	<ol style="list-style-type: none"> 1. The following financial information: <ol style="list-style-type: none"> (a) Certified Profit & Loss Statement; and (b) Any additional documents required in accordance with any notes to the financial statements. 	<p>The Profit & Loss Statement must be:</p> <ol style="list-style-type: none"> (a) prepared in accordance with Australian Accounting Standards and any statutory requirements that govern Your accounting and financial records; (b) be signed by Your Chief Financial Officer or equivalent authorised officer; and (c) incorporate a statement by an independent qualified accountant certifying that the financial statements present fairly that the Grant has been spent solely on the Project and in accordance with the Agreement. 	<p>Annual Acquittal to be submitted to us within three months of the end of each Financial Year during the Grant Period.</p>

<p>Final Project Acquittal and Financial Certification</p>	<p>1. The following financial information:</p> <ul style="list-style-type: none"> (a) Certified Profit & Loss Statement; and (b) Any additional documents required in accordance with any notes to the financial statements. 	<p>The Profit & Loss Statement must be:</p> <ul style="list-style-type: none"> (a) prepared in accordance with Australian Accounting Standards and any statutory requirements that govern Your accounting and financial records; (b) be signed by Your Chief Financial Officer or equivalent authorised officer; and (c) incorporate a statement by an independent qualified accountant certifying that the financial statements present fairly that the Grant has been spent solely on the Project and in accordance with the Agreement. 	<p>Final Acquittal to be submitted to us within three months of the end of the Financial Year following the earlier of:</p> <ul style="list-style-type: none"> (a) the completion of the Project; (b) the expiry of this Agreement; or (c) the termination of this Agreement.
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Terms

Background

- A. The Objectives of the Program, or Fund, under which the Grant is provided are contained in the Program Details.
- B. The Department is responsible for the administration of the Program or Fund, including entering into funding agreements and making payments.
- C. The Department agrees to provide You, and You agree to accept, the Grant for the Project in accordance with the terms of this Agreement.

1. Interpretation and Definitions

1.1 Interpretation

Unless the context requires otherwise, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) 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;
- (c) 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 the same from time to time;
- (d) headings are for convenience only and do not affect the interpretation of this Agreement;
- (e) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (f) references to persons include bodies corporate, government agencies and vice versa;
- (g) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (h) 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; and
- (i) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2 Definitions

Agreement means this Funding Agreement document and includes the Details, Terms (including any Special Conditions), Schedule A – Funding and Budget, Schedule B – Reporting Requirements, and any other schedules, annexures or other documents cross-referenced in this Agreement.

Asset Register means a written register (whether stored in hardcopy or electronic form) containing details of assets, as a result of the Funding, owned by You including but not limited to:

- (a) the date of purchase or creation of each item of Capital Equipment;
- (b) a description of each item of Capital Equipment;

- (c) the address at which each item of Capital Equipment is located;
- (d) the purchase price or input costs of the Capital Equipment, exclusive of GST; and
- (e) the amount of the Funding used to purchase the Capital Equipment.

Budget refers to a budget for the purposes of delivering the Project as contained at Schedule A.

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

Capital Equipment means any item of tangible property, purchased, leased, created or otherwise brought into existence wholly, or in part, with the use of the Grant, which has at that time a value of at least \$100,000 inclusive of GST, but does not include Project Material.

Certificate of Practical Completion means a certificate of practical completion for the Project issued in form and substance acceptable to the Department.

Claim means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

Confidential Information of a party means any information (including, but not limited to, 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 and if so designated, then marked accordingly however any failure to mark accordingly does not deny the information of its status as confidential;
- (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:

- (e) is in the public domain; or
- (f) 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;
- (g) may be or is required to be disclosed pursuant to Memorandum No. 2000-11 Disclosure of Information on Government Contracts with the Private Sector dated 27 April 2000, as amended or updated from time to time; or
- (h) is required to be disclosed pursuant to law, regulation, legal or parliamentary process or to a regulatory authority.

Contribution means the amount of Your funds, Your in-kind contributions or a third party's funds to be contributed to the costs and delivery of the Project as specified in the Budget but does not include any rebates or discounts that you have been offered or provided with for any component of the Project.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damage.

End Recipient means an incorporated entity that has been identified by the Recipient in the Grant Proposal, or which is reasonably evident from the nature of the Grant Proposal, as a principle end user of the Project.

Financial Year means the period of twelve (12) months beginning on:

- (a) one (1) July in a calendar year; or,
- (b) if You have a financial year that begins on some other date, that date.

Grant means any part of the Grant, specified in Schedule A, used for the Project.

Grant Proposal means a document in a form or manner as required by the Department and developed by You which has informed the decision by the Department to provide a Grant for the Project and can include, but is not limited to, any funding application as submitted by You, any project proposal, project brief or business case.

Grant Period means the period commencing on the Signing Date and ending on the date that You have completed the Project to the Department's satisfaction and the Department has made all payments due.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, related legislation and any delegated legislation made pursuant to such legislation.

Intellectual Property or IP includes, whether created before or after the Commencement Date in Australia or elsewhere:

- (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.

Interest means the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points on a daily compounding basis.

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.

Objectives means the objectives of the activities described in the Project Details, which are the agreed results You must achieve and ensure Your subcontractors achieve.

Occupation Certificate means a final certificate provided, in accordance with any applicable law, that certifies that the works for the Project have been completed and authorises a person to commence occupation or use of any new building or to commence a new use of an existing building, premises or facility listed in the certificate.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

Program Details means the table proceeding Schedule A in this Agreement

Project means the Project as outlined in the Grant Proposal and as approved for funding.

Project Details means the table proceeding Schedule A in this Agreement.

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

Project Plan means the document (commonly referred to as a project plan, project management plan or project initiation documentation) developed by You and approved by the Department and contains, at a minimum:

- (a) project Objectives;
- (b) requirements, scope and deliverables, and the management of these;
- (c) project organisation, governance and assurance;
- (d) project constraints and assumptions;
- (e) communication and stakeholder management;
- (f) risks identification and management;
- (g) financial and budget management; and
- (h) schedule, milestone and decision points, and the management of these.

Project Stage Gate means a review at the achievement of an identified Milestone at which a decision is made, based on any information provided by You up to that Milestone and any other relevant information that the Department may have, on whether the project should continue, with or without variation, or not.

Report means Project Material that is provided to the Department for reporting purposes on matters stipulated in Schedule B – Reporting Requirements.

Restriction on the Use of Land means a restriction on the use of land by a prescribed authority (Form LRS 13RPA) pursuant to s. 88E(3) of the *Conveyancing Act 1919* (NSW).

Signing Date means the date that this Agreement was signed by the last party.

Special Conditions means any additional conditions applicable to the Project, set out in this Agreement.

Unspent Grant means Grant paid to You that is unspent at the end of the Grant Period and includes any Grant that is committed but unspent.

2. Commencement

This Agreement will commence on the Commencement Date being the date on which both parties have signed the Agreement.

What You must do

3. Your Obligations

3.1 You must:

- (a) ensure the Grant is used only for the approved Project during the Grant Period;
- (b) ensure the Grant is spent in accordance with the Budget;
- (c) ensure You make Your Contribution to the Project;
- (d) as soon as practicable, notify the Department if You are or may not be able to make Your Contribution in full noting that, unless otherwise agreed to by the Department, such notification does not relieve You of Your obligation under clause 3.1(c);
- (e) ensure the Project is completed, by the date of the final Instalment payment as set out in Schedule A, and:
 - (i) be complete and free from defects or omissions that are not minor;
 - (ii) not cause any legal or physical impediment to the use an occupation of the property for the designated use; and
 - (iii) be fit for use for the designated use.
- (f) comply with the reporting requirements set out in Schedules A and B.
- (g) comply with all applicable laws, regulations and standards that may apply in relation to the Project including complying with Your obligations under or arising from such applicable laws, regulations and standards;
- (h) hold all rights, licences and consents required to conduct the Project and otherwise fulfil Your obligations under this Agreement;
- (i) comply with all policies, guidelines and reasonable directions the Department provides to You;
- (j) notify the Department if the Project will not commence within 60 days from the Commencement Date or has been inactive for a period of 60 days or more;
- (k) must not do anything which may damage:
 - (i) the reputation or standing of the Department or any of its programs, or otherwise bring the Department into disrepute; or
 - (ii) Your reputation or standing, Your sport (where applicable), or otherwise bring Yourself or Your sport (where applicable) into disrepute;
- (l) notify the Department immediately:
 - (i) of any corporate action (including a resolution), legal proceeding or other step taken by You or any other person in relation to:
 - a. the suspension of payments, winding up, dissolution, administration or reorganisation in respect of You;
 - b. entering into any scheme or arrangement with any of Your creditors;

- c. the appointment of a liquidator, receiver, administrator or other similar officer in respect of You or any of Your assets; or
- d. the enforcement of any security over any of Your assets;
- (ii) of the occurrence of any event which is reasonably likely to have a material adverse effect on Your ability to complete the Project in accordance with the terms of this Agreement or on Your financial condition; or
- (iii) if You propose to sell or lease or otherwise dispose of any part of the land on which the Project is or will be carried out.

3.2 You agree that:

- (a) You bear any and all risk that the cost of the Project may exceed the sum of the Grant and Contributions;
- (b) You are responsible for any costs that may be incurred at any time that exceed the sum of the Grant and Contributions (whether You expected to incur such costs or not at any time before or after execution of this Agreement);
- (c) You (or a nominated party) are responsible for all operating and maintenance costs arising from the Project;
- (d) the Department will not provide any further contribution over and above the Grant specified in the Project Details;
- (e) You must procure any additional funding above the sum of the Grant and Contributions that is necessary to carry out and complete the Project, as described in the Grant Proposal and this Agreement, in order to ensure that the Project is delivered to achieve the objectives of the grant program; and
- (f) other than in respect of payment of the Grant, the Department is not the financial underwriter of the Project and that the Department does not carry any delivery or financial risk for the delivery of the Project.

3.3 Where You are specified as a trustee for a trust (Trust) then You warrant that:

- (a) You are the sole trustee of the Trust; and
- (b) You have full and valid power and authority to enter into this Agreement and perform the obligations under it on behalf of the Trust; and
- (c) You have entered into this Agreement for the proper administration of the Trust; and
- (d) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Agreement and perform the obligations under it; and
- (e) You have the right to be indemnified out of the assets of the Trust for all liabilities incurred by You under this Agreement.

4. Holding of Grant

- 4.1 The Grant must be managed with sufficient accounting controls, relative to the nature and type of the Project, in place to track the expenditure of the Grant and all records must be held in compliance with current tax requirements and laws.
- 4.2 You agree:
- (a) to ensure that Your personnel and subcontractors do not engage in any Fraud in relation to the Project;
 - (b) to report within 7 days, to the Department and all appropriate law enforcement and regulatory agencies, of becoming aware of any Fraud in relation to the Project or any other Fraud that has had or may have an effect on the delivery of the Project;
 - (c) to investigate any Fraud referred to in clause 4.2(b) at Your own cost and in accordance with any relevant standards or best practice or as directed by the Department; and
 - (d) that the Department may, at its discretion, investigate any Fraud in relation to the Project and to co-operate and provide all reasonable assistance at Your own cost with any such investigation.

5. Personnel

- 5.1 Any positions funded by the Grant must be filled by persons that have appropriate skills, qualifications or experience for such positions.
- 5.2 In relation to engaging sub-contractors, You:
- (a) may sub-contract all or part of the conduct of the Project to a sub-contractor:
 - (i) subject to prior notification to the Department at least 14 days prior to the engagement commencing (including any required updated conflict of interest declaration);
 - (ii) any such engagement does not relieve You from any of Your obligations or liabilities under this Agreement; and
 - (b) will ensure that all work carried out by any sub-contractor meets the requirements of this Agreement.
- 5.3 In relation to where the Project includes any aspect of construction:
- (a) Where applicable, You must ensure that only a builder or builders accredited under the Office of the Federal Safety Commissioner Work Health and Safety Accreditation Scheme is contracted, and providing the necessary assurances to the Department;
 - (b) You must ensure compliance with the most recent National Construction Code is made a condition of tender for all contractors and subcontractors who tender for the work and providing the necessary assurances to the Department.

6. Consent of landowner

- 6.1 In the event that You are not the owner of all or part of the land where the Project will be constructed, installed or otherwise delivered, You:
- (a) warrant that You have obtained the approval and agreement of the landowner to construct, install or otherwise deliver the Project on their land; and
 - (b) indemnify and agree to keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any cost, expense, loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by the land owner or interested third party as a result of or in connection with the Project.

About the Grant

7. Payment of Grant

- 7.1 The Department will pay You the Grant subject to:
- (a) the times and Terms specified in Schedule A; and
 - (b) You being fully compliant, to the Department's satisfaction, with the terms and conditions, including any reporting or acquittal requirements, of any previous funding agreement with the Department.
- 7.2 The making of any payment of the Grant does not constitute any admission by the Department that the performance of any part of the Project is in conformity with this Agreement or release You from Your obligations under this Agreement.
- 7.3 The Grant is capped at the amount specified in Schedule A. Beyond the amount of the Grant, the Department is unable to provide additional or ongoing funds for the Project. You accept that the Grant is capped and non-recurrent.
- 7.4 If the funding required to complete the Project exceeds the amount of the Grant for any reason (including, but not limited to, where you experience cost increases or are subject to fraud), then You are responsible for obtaining any such additional funding required above the Grant that is necessary to ensure that the Project is delivered.
- 7.5 Unless otherwise agreed by the Department, where:
- (i) the actual cost of the Project is less than the sum of the Grant and Contributions; or
 - (ii) the Department has paid You an amount greater than the Grant

then the Department may reduce the final Milestone payment or seek repayment of any Grant already paid to reflect the actual cost incurred to deliver the Project with any repayment sought by the Department to be a debt due and owing by You to the Department.

7.6 Where the Grant is paid into an interest earning account, unless otherwise agreed to by the Department, all interest earned on the Grant must be used by You for the Project only in accordance with the terms of 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:

- (a) Despite any other provision of this Agreement, GST is imposed on any supply by You to the Department under this Agreement; and
- (b) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

then the Department will pay to You an additional amount equal to the GST imposed on that supply, at the time and in the manner which 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 to 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.

8.7 Any overpayment the Department claims under clause 8.6 will be a debt due and owing by You.

8.8 If You are not registered for GST any invoice to the Department must be as set out in Schedule A.

9. Withholding, Suspension, Changes to Payments and Repayment

9.1 If:

- (a) You are not complying with this Agreement;
- (b) You fail to secure a site for the Project;
- (c) You fail to secure or obtain any right, licence or consent required to conduct the Project;
- (d) You fail to execute a lease agreement with the landowner; or
- (e) You fail to develop a Project concept or Budget endorsed by the Department;

then the Department may withhold or suspend payment until You remedy such non-compliance or failure to the Department's satisfaction.

- 9.2 You must repay within 28 days of a Notice being sent:
- (a) any payment spent in breach of this Agreement;
 - (b) all Unspent Grant funds at the time of the Notice being sent.
- 9.3 Any repayment the Department claims from You under this clause will be a debt due and owing by You to the Department.

10. Capital Equipment

- 10.1 Any Capital Equipment acquired with the Grant for the purposes of the Project will become Your property at the completion of the Grant Period. However, You will be fully responsible for, and bear all risks relating to, the use or disposal of all Capital Equipment from the date of acquisition or creation of such Capital Equipment.
- 10.2 You must not acquire any Capital Equipment with the Grant unless the Capital Equipment is specified in the Grant Proposal or the Department has provided You with prior written consent to acquiring that Capital Equipment.
- 10.3 You must for the term of this Agreement not sell, restrict, cease to use or otherwise dispose of any Capital Equipment acquired with the Grant without first obtaining written consent from the Department.
- 10.4 You must maintain an Asset Register for each item of Capital Equipment purchased or created using the Grant which is, at least, valued at \$100,000 GST inclusive. The Asset Register is to record all items of Capital Equipment and be kept current at all times in accordance with Australian Accounting Standards.

11. Reporting Requirements

- 11.1 You agree to provide the Department with reports relating to the Project and the Grant in the format, at the times and containing the information specified in Schedule B – Reporting Requirements.
- 11.2 Without limitation to any other right that the Department may have, if You do not comply, to the Department's satisfaction, with Your obligations in clause 11.1, then the Department may consider You ineligible for any further funding from the Department until such non-compliance is rectified.

12. Performance Monitoring and Evaluation

- 12.1 The Department will monitor and evaluate the Project against measures including, but not limited to:
- (a) the Program Objectives;
 - (b) the Project Objectives;
 - (c) the Budget;
 - (d) Project Progress Reports submitted; and

- (e) Your compliance with the terms of this Agreement.

12.2 You:

- (a) acknowledge that the Department's representative will maintain regular contact with You to monitor the implementation of the Project and of this Agreement;
- (b) agree to co-operate with the Department's representative in this role;
- (c) agree to the Department's representative attending Your board or committee meetings and visiting the Project at any reasonable time, upon giving You reasonable notice; and
- (d) in addition to any other reporting obligations under this Agreement, You must, if the Department requests, provide additional information to the Department concerning the Project, subject to the Department's request being reasonable in terms of administrative overheads and costs involved with compliance.

12.3 The Department may use any information contained in reports it receives from You subject to compliance with its obligations under this Agreement not to disclose Your Confidential Information.

12.4 At any point during the Grant Period and until five years after the termination or expiry of this Agreement, where requested:

- (a) You must provide statistical data and any other program information or media in response to any request the Department may reasonably make for the purpose of research, program evaluation and surveys conducted by the Department or its authorised representative; and
- (b) where such request made covers data or information which is commercial-in-confidence, You agree to negotiate with the Department in good faith to provide the data or information in an aggregated or de-identified form, or in such other form or on such other basis, as may be agreed with the Department.

13. Public Announcements and Acknowledgement

13.1 The Department may publicise the awarding of the Grant at any time and include:

- (a) Your name;
- (b) the amount of the Grant; and
- (c) the title and brief description of the Project and the Project Outcomes.

13.2 If requested to do so, You must obtain written authorisation from relevant Project recipients, representatives or beneficiaries authorising the Department to name those recipients in any media statements, include their identities in the Department's Annual report or in media releases issued by it from time to time setting out any successful inquiries arising from the administrative activities funded by the Department.

- 13.3 You must ensure that any public events, media opportunities and speaking engagements relating to this Grant or Project, including any official opening or launch, are discussed with and approved by the Department two (2) months prior to the event or publication, including any publication on social media.
- 13.4 You must issue an invitation, through the Department, to a NSW government representative to any launch or public event associated with the Grant and, where they are able to attend, they are acknowledged as official guests. Where practicable, they should be afforded the courtesy of publicly addressing the event.
- 13.5 You must ensure the following wording and graphics appear on all published materials:
- (a) Funded by the NSW Government; and
 - (b) Approved NSW Government brand marks including logo and graphics.
- 13.6 Verbal recognition of NSW Government support must be acknowledged across all media, publicity and public engagements.
- 13.7 Any signage (including plaques) erected in relation to the Project (whether temporary or permanent) must comply with the NSW Government NSW Funding Acknowledgement Guidelines as set out at: <https://www.nsw.gov.au/nsw-government-communications> including compliance with any required NSW Government logos or phrasing.

Material and Information

14. Intellectual Property

- 14.1 Intellectual Property in all Project Material vests in You, unless otherwise stated in any Special Conditions.
- 14.2 You grant to the Department, without cost, a non-exclusive, irrevocable, royalty free and transferable licence to use, reproduce, communicate to the public and adapt for the Department's own purposes all Intellectual Property in the Project Materials.

15. Confidential Information

- 15.1 Each party as the recipient of Confidential Information ("**Recipient**") must in relation to the Confidential Information of the other party ("**Discloser**"):
- (a) keep it confidential;
 - (b) not copy it or any part of it that is in material form other than as strictly necessary and must mark any such copy 'Confidential – ([Name of Discloser]);
 - (c) implement security practices against unauthorised copying, use and disclosure;
 - (d) immediately notify the Discloser if the Recipient becomes aware of any unauthorised copying, use or disclosure in any form; and

- (e) cooperate with the Discloser in any reasonable action it takes to protect the Confidential Information.

15.2 The Recipient must promptly:

- (a) comply with any request by the Discloser to return or destroy any or all copies of Confidential Information; and
- (b) 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.

15.3 A Recipient may disclose Confidential Information to only those of its employees, directors, officers, subcontractors, agents and legal, financial or other professional advisers (or where the Recipient is the Department, disclose Confidential Information to the relevant Minister) who have a need to know the information for the purposes of this Agreement, provided that, prior to the disclosure, the Recipient:

- (a) ensures that those persons are made aware of the confidential nature of the Confidential Information; and
- (b) procures an assurance that any such Confidential Information will be kept confidential.

15.4 A Recipient may disclose Confidential Information to the extent that it is required to be disclosed by law (and in the case of the Department, to the extent that is required to be disclosed by parliamentary process), provided that the Recipient:

- (a) 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;
- (b) must postpone any disclosure required by law for as long as the Recipient is able to, without prejudicing the Recipient's own position; and
- (c) 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.

16. Privacy

16.1 Both parties will:

- (a) 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;
- (b) not disclose any such Personal Information without the written consent of:
 - (i) the individual to whom the Personal Information relates; or
 - (ii) the Department,

- unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998 (NSW)* 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
 - (d) include equivalent requirements regarding Personal Information (including this clause 16) in any subcontract entered into for the provision of any of the Activities under this Agreement.

Dealing with Risk

17. Insurance

- 17.1 On request by the Department, You must provide a copy of valid and current certificates of currency for each of the insurance policies specified in clause 17.2.
- 17.2 You warrant that You have and will maintain, throughout the Grant Period, appropriate insurance to cover any liability it may incur in relation to this Agreement, including:
 - (a) a broadform public liability policy of insurance to the value of at least \$20 million in respect of each claim and unlimited in the aggregate as to the number of occurrences in the policy period; and
 - (b) workers compensation insurance as required by law

18. Indemnities and Liability

- 18.1 You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
 - (a) the Grant or the use of any outcomes from the Project;
 - (b) Your breach of this Agreement;
 - (c) any unlawful or negligent act or omission by You or Your subcontractors in connection with this Agreement;
 - (d) any illness, injury or death of any person caused or contributed to by You or Your subcontractors in connection with this Agreement;
 - (e) any loss or damage to real or personal property caused or contributed to by You or Your subcontractors in connection with this Agreement; or
 - (f) any act or omission by You or Your subcontractors in connection with this Agreement that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
- 18.2 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.

- 18.3 No party will be liable to the other party under or in respect of the Agreement whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.
- 18.4 Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Agreement.
- 18.5 Without limiting any other provision of this Agreement, the Department will not be liable to your under or in respect of the Agreement whether in contract, tort (including negligence), statute or any other cause of action for any Claim by you arising directly or indirectly from a failure or breach of any physical or cyber security measure implemented by you in relation to your operations including, but not limited to, where any or all of the Grant is obtained by a third party as a result of such failure or breach of such physical or cyber security measure.

Expiry and Termination of the Agreement

19. Expiry and Termination

- 19.1 Unless terminated earlier in accordance with this clause, this Agreement will end at the end of the Grant Period and once You have completed the Project to the Department's satisfaction and the Department has made all payments due.
- 19.2 Where a party has breached this Agreement:
- (a) the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
 - (b) 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.
- 19.3 The Department may terminate this Agreement immediately by written Notice if:
- (a) You breach a provision of this Agreement in a manner that, in the Department's opinion, is not capable of remedy;
 - (b) You breach any of the following provisions: clause 3 (Your Obligations), clause 4 (Holding of Grant), clause 11 (Reporting Requirements) or clause 17 (Insurance);
 - (c) the Department, in its absolute discretion, decides that any third party is unable to comply with, may be unable to comply with or have not complied with its obligations to provide Contribution towards the Project as specified in the Budget; or
 - (d) You become insolvent, or if You are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966* (Cth), or if You resolve to go into administration or liquidation or have a summons for Your winding up presented to a Court or enter into any scheme of arrangement with Your creditors.
- 19.4 The Department may terminate this Agreement by giving You 30 days' Notice, if any one or more of the following occurs:

- (a) in the Department's opinion You are not carrying out the Project diligently and competently;
- (b) You have not completed one or more of the activities by the date they are due to be completed;
- (c) the Department considers the Project no longer viable; or
- (d) the Department considers that there has been a material change in circumstances in Your financial position, Your structure or Your identity.

19.5 Notwithstanding clause 19.3:

- (a) the Department may, at any time, by notice, terminate this Agreement or reduce the scope of the Project.
- (b) On receipt of a notice of termination or reduction of Project scope You must:
 - (i) take all available steps to minimise loss resulting from that termination or reduction and to protect Intellectual Property and Project Materials; and
 - (ii) continue to undertake any part of the Project not affected by the notice.
- (c) If this Agreement is terminated under this clause 19.5, the Department is only liable for:
 - (i) payments under clause 7 in accordance with this Agreement before the effective date of termination; and
 - (ii) reasonable costs actually incurred by You that are directly attributable to the termination.
- (d) If the scope of the Project is reduced, the Department's liability to pay the Grant abates in accordance with the reduction in the Project.
- (e) the Department is not liable to pay compensation under clause 19.5(c)(ii) for an amount which would, in addition to any amounts paid or due, or becoming due, to You under this Agreement, exceed the total Grant payable under this Agreement.
- (f) You are not entitled to compensation for loss of prospective profits.

19.6 Any termination of this Agreement by the Department is without prejudice to any of its accrued rights or remedies.

20. Survival

20.1 The following clauses survive termination, expiry or repudiation of this Agreement:

- (a) clause 14 (Intellectual Property);
- (b) clause 15 (Confidential Information);
- (c) clause 16 (Privacy);
- (d) clause 18 (Indemnities);
- (e) clause 19 (Termination);
- (f) clause 21 (Obligations when this Agreement Ends);
- (g) clause 23 (Notices); and

any other clause which by its nature is intended to survive this Agreement.

21. Obligations when this Agreement Ends

- 21.1 You must, except to the extent agreed to by the Department in writing, provide to the Department within seven (7) days of termination or expiry of this Agreement:
- (a) any reports due under this Agreement or otherwise reasonably requested by the Department; and
 - (b) on the Department's request, any documents containing any Confidential Information of the Department used by You or Your employees, agents or contractors or otherwise in their possession and all copies of such documents, except to the extent You are required by any relevant laws or regulations to retain copies of such documents.
- 21.2 For the avoidance of doubt, upon termination or expiry of this Agreement, You will not be entitled to any further payments under this Agreement, notwithstanding that the amount paid to You could be less than the Grant specified in this Agreement.
- 21.3 If this Agreement is terminated by the Department under clause 19 then, unless otherwise agreed, You must deliver to the Department or its representative all Capital Equipment purchased, acquired, established or created by You using the Grant which is, at least, valued at \$100,000 (GST inclusive).
- 21.4 Upon the termination or expiry of this Agreement You must, if requested to do so by the Department, transfer to the Department, free of charge, all investments made by You using the Grant.
- 21.5 You agree to maintain and not to demolish, eradicate, remove, dispose of or otherwise interfere with the infrastructure, facilities or improvements created by the Project for any minimum non-interference period as specified in the Project Details after the completion of the Project, or as otherwise agreed by Us and:
- (a) acknowledge that as the Grant is provided to benefit the local community and/or End Recipient, if identified, and conversion or disposal through sale or otherwise of assets acquired with the Grant is not consistent with this purpose, if You intend to convert or dispose of assets funded by the Grant within the period stated in this clause 21.5, You must notify the Department immediately with the intended conversion or disposal;
 - (a) where request by the Department, You must repay the Grant that was expended on the asset disposed of or converted within 1 month of such disposal or conversation; and
 - (b) If You are notified by the Department that it requires repayment of any amount under sub-clause (b) then that amount will become a debt due and owing by You to the Department.

Other Legal Matters

22. Dispute Resolution

- 22.1 If a dispute arises in relation to this Agreement (“a Dispute”), a party must comply with this clause 22 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 22.2 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 23 (Notices).
- 22.3 Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
- (a) does not have prior direct involvement in the Dispute; and
 - (b) has authority to negotiate and settle the Dispute.
- 22.4 If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under clause 22.2 must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 22.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 22.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.
- 22.7 Nothing in this clause 22 will prevent either party from seeking urgent interlocutory relief.

23. Notices

- 23.1 Unless otherwise stated in this Agreement, all Notices to be given under this Agreement must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
- 23.2 The receiving party will be deemed to have received the Notice as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address except when delivered on a day that is not a Business Day or later than 5.00pm on a Business Day then it will be deemed to have been duly delivered at 9.00am on the next Business Day;
 - (b) if sent by post within Australia:
 - i. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
 - ii. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
 - (c) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - i. when the sender receives an automated message confirming delivery;
 - or

- ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered.
 - (d) if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- 23.3 Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

24. General

24.1 Keeping of records, audit and rights of access to such records:

- (a) You must ensure that adequate financial and operational records and registers, and any other specific records or registers requested by the Department, are kept and maintained whilst carrying out the Project and for a period of seven years after the date that is the earlier of the date of expiry of the Grant Period or termination of this Agreement;
- (b) You must authorise the Department for the purposes of this Agreement (the "Auditors"), to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any records You hold, and allow any such records to be copied or extracted, in whole or in part; and
- (c) You must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

24.2 Conflict of Interest:

- (a) You:
 - (i) represent and warrant that, as at the date of this Agreement, no Conflict of Interest exists or is likely to arise in relation to the entry into, or performance of obligations under, this Agreement by You or any of Your employees;
 - (ii) undertake to promptly notify the Department, in writing, immediately upon becoming aware of the existence, or possibility, of a Conflict of Interest;
- (b) On receiving a notice of a Conflict of Interest under clause 24.2(a)(ii), the Department may:
 - (i) approve the continuation of Agreement, which approval may be subject to reasonable conditions to ensure appropriate management of the Conflict of Interest; or
 - (ii) where in the Department's reasonable view the Conflict of Interest cannot be appropriately managed, terminate this Agreement; and
- (c) You must ensure that sub-clauses (a) and (b) of this clause 23.2 are included in any contract with an agent or contractor engaged by You in relation to the Project to ensure that they have the same obligations to You as You have to the Department regarding conflicts of interest.

- 24.3 **Entire Agreement:** This Agreement supersedes all prior contracts, obligations, representations, conduct and understandings related to the Project as provided by this Department and the Department will not bear any delivery and financial risk for the delivery of the Project, other than in respect of payment of the Grant.
- 24.4 **Variation:** This Agreement may only be varied in writing signed by the parties. If You wish to vary this Agreement then You must first make a written request to the Department, in the form as directed by the Department, and provide such information as is reasonably required or requested by the Department. Consideration of such request does not obligate the Department to accept such request and may, in its sole and absolute discretion, reject any such request.
- 24.5 **Negation of employment, partnership or agency**
- (a) This Agreement does not create a relationship of agency, partnership, and/or employment between the parties. All work performed by You and all contracts made by You to carry out the Project shall be as principal and not as an agent for the Department.
 - (b) You must not represent itself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.
- 24.6 **Waiver**
- (a) 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.
 - (b) 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.
- 24.7 **Governing Law:** The laws of New South Wales govern this Agreement and the parties submit to the non-exclusive jurisdiction of the courts in that State.
- 24.8 **Child Protection:** You are responsible for complying with the provisions of the *Children & Young Persons (Care and Protection) Act 1998 (NSW)*, *Child Protection (Working with Children) Act 2012 (NSW)*, *Children's Guardian Act 2019 (NSW)* and any other laws which apply to child protection and establish systems for ensuring that You meet these obligations.
- 24.9 **Severability:** If any part of this Agreement is prohibited, void, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.
- 24.10 **Assignment:** You must not assign or novate Your obligations or interests under this Agreement, without the Department's prior written consent.
- 24.11 **Counterparts:** This Agreement may be signed in any number of counterparts which taken together will constitute one instrument.
- 24.12 **Further assurance:** Each party must promptly execute all documents and do all things required by law, or that the other party from time to time reasonably requests, to effect, perfect or complete this Agreement and all transactions incidental to it.

24.13 **Electronic dealing:** Each party agrees that this Agreement and any other documents to be delivered in accordance with this Agreement may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Special Conditions

SC1. Project Steering Committee [remove if not applicable]

SC1.1. In this clause SC1, Project Steering Committee (PSC) means a governance arrangement and group of persons to oversee the delivery of the Project. It ensures delivery of scope, oversees risk management, and ensures the Project stays within Budget. It will involve key project stakeholders, including You and the Department.

SC1.2. For the purpose of facilitating and monitoring the development and delivery of the Project You:

SC1.2.1. unless already established by You, agree to establish a PSC at the commencement of the Project, comprising key project stakeholders;

SC1.2.2. agree to Our representative/s being a part of the PSC;

SC1.2.3. agree to the PSC continuing until the ending of the Grant Period when the Project is completed or as directed by the Department;

SC1.2.4. agree to a develop a PSC Terms of Reference (TOR) that sets out:

(a) the role and outcomes to be achieved by the PSC including:

- (i) its relationship to You and other key personnel, such as the project manager;
- (ii) stakeholder identification, management strategies and communication channels;
- (iii) oversight of the construction, budget and delivery schedule;
- (iv) monitoring of Objectives as outlined in the Grant Proposal;
- (v) review and confirm the suitability of key project documentation prepared by You, including any Reports;
- (vi) financial and project risk management;
- (vii) any authorities to be delegated by the PSC by You; and
- (viii) meeting frequency;

(b) the structure of the PSC including roles, responsibilities and voting rights (including, where directed by the Department, that the Department is provided voting rights on the PSC).

SC2. Restriction on the use of land [remove if not applicable]

SC2.1. In the event that the purpose of some or all of the Grant is to purchase land for the Project, You agree that:

SC2.1.1. You must purchase that land;

SC2.1.2. before purchasing any such land, You must advise the Department that You propose to purchase land for the Project (unless the proposed purchase is identified in Your Grant Proposal);

SC2.1.3. the Department may register on the title for the land purchased by You a Restriction on the Use of Land, restricting the use of the land to community purposes; and

SC2.1.4. You will do everything necessary to allow the Restriction on the Use of the Land to be registered on the title of the land, including executing any dealing and producing title to allow for registration.

SC3. Project Stage Gate [remove if not applicable]

SC3.1. If a Project Stage Gate is included in the Milestone Payment Schedule at Schedule A, then:

SC3.1.1. You acknowledge that the delivery of the Project beyond that Project Stage Gate is not authorised to be conducted, nor any associated claim for any payment of the Grant made, until such time where the Department agrees, in writing, for the Project to proceed past the Project Stage Gate; and

SC3.1.2. the Department make no representations or warranties that Project activities (and any associated claim for payment) beyond the Project Stage Gate will be conducted by You under this Agreement.

SC4. End Recipient [remove if not applicable]

SC4.1. Where the Project Details specify an End Recipient, then:

SC4.1.1. You acknowledge and agree that You are delivering the Project for the ultimate benefit of the End Recipient as a identified principle end user of the Project;

SC4.1.2. You acknowledge that You and the End Recipient:

(a) currently are parties to an agreement for lease and licence (or other such relevant agreement) relating to any part of the land on which the Project is or will be carried out; or

(b) if sub-clause (a) does not apply, will enter into an agreement for lease and licence (or other such relevant agreement) relating to any part of the land on which the Project is or will be carried out as the identified principle end user of the Project;

SC4.1.3. where clause SC4.1.2(a) is applicable, the Department acknowledges that may be reliant on the End Recipient performing any obligations it may have under such agreement for the delivery of the Project; and

SC4.1.4. Notwithstanding any other provision of this Agreement, You may (by giving the Department written notice) immediately terminate this Agreement at any time if any agreement for lease and licence referred to in SC4.1.2(a) is terminated or rescinded.

SC5. Insert Special Condition

