



Australian Government

Department of the Environment, Water, Heritage and the Arts

FUNDING AGREEMENT

FUNDING AGREEMENT IN RELATION TO

Department of the Environment, Water, Heritage and the Arts
ABN 34 190 894 983

Recipient

IF YOUR ORGANISATION IS OFFERED FUNDING, THIS IS INDICATIVE OF THE TERMS AND CONDITIONS THAT WILL BE IN YOUR FUNDING AGREEMENT. PLEASE READ IT CAREFULLY AND SEEK PROFESSIONAL ADVICE IF YOU REQUIRE ANY CLARIFICATION.

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FUNDING AGREEMENT

Parties

This Agreement is made between and binds the following parties:

1. Commonwealth of Australia (**Commonwealth**) represented for the purposes of this Agreement by the **Department of the Environment, Water, Heritage and the Arts** ABN 34 190 894 983 of John Gorton Building, Environment entrance, King Edward Terrace, Parkes ACT 2600, Australia (**Department**).
2. **Recipient Name (Recipient)**

Context

- A. The Department is committed to the Contemporary Touring Initiative (the Program). The Program aims to make Contemporary Australian visual arts and craft accessible to more Australians by providing financial assistance to Collecting Institutions and Organisations to assist them to develop and tour such exhibitions throughout Australia.
- B. The Activity will help achieve the goals of the Program.
- C. The Department has agreed to provide Funding to the Recipient to support the Recipient to undertake the Activity.
- D. The Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the parties to this Agreement agree as follows:

1. Interpretation

1.1. Definitions

- 1.1.1. In this Agreement, unless the context indicates otherwise:

Activity means the activity, being the Exhibition described in the Application and referred to in Item A [Program and Activity], which aims to fulfil one or more of the Objectives of the Program, and includes the provision of Activity Material;

Activity Generated Income means any income earned or generated by the Recipient from its use of the Funding or Other Contributions including:

- a. interest earned on the Funds or Other Contributions;
- b. where the proceeds of insurance paid to the Recipient to replace an Asset exceed the amount actually paid by the Recipient to replace the Asset; and
- c. any income received by the Recipient as a result of its use of an Asset that reflects the proportion of the total cost of acquiring the Asset that was met by the Funding;

Activity Material

means any Material:

- a. created for the purpose of this Agreement;
- b. provided or required to be provided to the Department under the Agreement; or
- c. derived at any time from the Material referred to in paragraphs a or b;

Activity Period

means the period referred to in Item A [Program and Activity] during which the Activity must be completed;

Agreement

means this document and includes any Schedules and Annexures;

Annexure

means any annexure to this Agreement;

Application

means the Recipient's application at Annexure A;

Approved Auditor

means a person who is:

- a. where the Recipient is a State or Territory government department - an auditor employed by the Office of the Auditor-General established in the Recipient's State or Territory; or
- b. in all other cases:
 - i. registered as a company auditor under the *Corporations Act 2001 (Cth)* or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia; and
 - ii. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' having the same meaning as in section 9 of the *Corporations Act 2001 (Cth)*); and

iii. not the Recipient's Qualified Accountant;

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| Asset | means any item of property, purchased, leased, hired, financed, created (except in the case of Intellectual Property Rights) or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes Intellectual Property Rights; |
| Auditor-General | means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office; |
| Australian Accounting Standards | refers to the standards of that name maintained by the Australian Accounting Standards Board established by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth); |
| Australian Auditing Standards | refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth); |
| Budget | refers to a budget for expenditure of the Funding, the Recipient Contributions and Other Contributions for the purposes of conducting the Activity or performing obligations under this Agreement, as stipulated in the Application or as amended and approved by the Department in writing, following a decision from the Minister or a request from the Recipient; |
| Business Day | means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place; |
| Collecting Institution | means an Australian national, state, or territory institution committed to the collecting and exhibiting of Contemporary Australian visual arts and craft; |
| Commonwealth | means the Commonwealth of Australia; |
| Commonwealth Material | means any Material: a. provided by the Department to the Recipient for the purposes of this Agreement; or b. derived at any time from the Material referred to in paragraph a, and does not include Activity Material; |
| Completion Date | means the day after the Recipient has done all that it is required to do under clauses 2 [Activity], 4 [Management of Funding] and 9 [Reporting] of this |

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| Confidential Information | Agreement to the satisfaction of the Department; means any information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement; |
| Constitution | means (depending on the context): <ul style="list-style-type: none"> a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or b. in relation to any other kind of body: <ul style="list-style-type: none"> i. the body's charter, rules or memorandum; or ii. any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members; |
| Contemporary Australian visual arts and craft | means contemporary creative work, predominantly by emerging or significant Australian visual artists and craft practitioners who are alive at the time that the Funding is approved; |
| Date of this Agreement | means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so; |
| Department | means the Commonwealth represented by and acting through the Department of the Environment, Water, Heritage and the Arts (or any other Commonwealth department or agency that is, from time to time, responsible for the administration of this Agreement) and includes, where the context permits, the officers, delegates, employees and agents, and successors of the Department; |
| Depreciated | means the amount by which the value of an Asset has reduced as calculated for income tax purposes under, and in accordance with, the <i>Income Tax Assessment Act 1936</i> (Cth) and the <i>Income Tax Assessment Act 1997</i> (Cth); |
| Director | means any of the following: <ul style="list-style-type: none"> a. a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the <i>Corporations Act 2001</i> (Cth) regardless of the name given to their position; b. a member of an Aboriginal and Torres Strait Islander corporation within the meaning of section |

683-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

- c. a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; or
- d. a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;

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| Dispose | means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and 'Disposal' means the method of so disposing; |
| Exhibition | means the exhibition for which the Funding has been provided; |
| Existing Material | means all Material in existence prior to the Date of this Agreement: <ul style="list-style-type: none">a. incorporated in;b. supplied with, or as part of; orc. required to be supplied with, or as part of, the Activity Material; |
| Final Report | means a Report in the form at Annexure C which must be provided in written and electronic form at the time specified in Item E [Reporting]; |
| Financial Year | means each period from 1 July to the following 30 June occurring during the Activity Period, or any part of such a period occurring at the beginning or end of the Activity Period; |
| Funding or Funds | means the amount or amounts (in cash or kind) payable by the Department under this Agreement as specified in Item B [Funding and Payment], and includes Activity Generated Income; |
| GST | has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth); |
| Guidelines | refers to the guidelines for the Program, referred to in Item A [Program and Activity]; |
| Intellectual Property Rights | includes: <ul style="list-style-type: none">a. all copyright (including rights in relation to phonograms and broadcasts); |

- b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

but does not include:

- d. Moral Rights;
- e. the rights of performers; or
- f. rights in relation to Confidential Information;

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| Interest | means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 base points on a daily compounding basis; |
| Item | means an item in the Schedule; |
| Itinerary | means the itinerary specified in the Application or as varied in accordance with this Agreement; |
| Material | means any thing in relation to which Intellectual Property Rights arise; |
| Milestone | however described, means a stage of completion of the Activity as set out in the Application or as varied in accordance with this Agreement; |
| Moral Rights | includes the following rights of an author of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed; |
| Objectives | means the objectives described in Item A [Program and Activity]; |
| Other Contributions | means financial or in-kind resources (with in-kind resources valued at cost) other than the Funding or the Recipient Contributions, which are specified in the Application and are to be used by the Recipient to perform the Activity; |
| Party | means a party to this Agreement; |
| Personnel | means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance or management of this Agreement; |
| Privacy Act | means the <i>Privacy Act 1998</i> (Cth); |
| Privacy | means the Office of the Privacy Commissioner |

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| Commissioner | established by the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office; |
| Program | means the part of the Department's operations specified in Item A [Program and Activity] under which the Department is able to provide the Funding to the Recipient; |
| Qualified Accountant | means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia; |
| Recipient | means the Party described as the recipient of the Funds and includes officers, employees, agents, volunteers and subcontractors, and successors of the Recipient; |
| Recipient Contributions | means the financial or in-kind resources (with in-kind resources valued at cost), other than the Funding or Other Contributions, which are specified in the Budget in the Application and are to be used by the Recipient to perform the Activity; |
| Records | includes documents, information and data stored by any means and all copies and extracts of the same; |
| Report | means Activity Material that is provided to the Department for reporting purposes as stipulated in clause 9 and Item E [Reporting]; |
| Schedule | refers to the schedule to this Agreement and may include Annexures and incorporate other documents by reference; |
| Specified Acts | <p>means any of the following classes or types of acts or omissions by or on behalf of the Department:</p> <ol style="list-style-type: none"> a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution of authorship; b. supplementing the Activity Material with any other Material; or c. using the Activity Material in a different context to that originally envisaged, <p>but does not include false attribution of authorship;</p> |
| Specified Personnel | means the Recipient's Personnel specified in the Application as Personnel required to undertake all or any part of the Activity; |
| Support Material | means visual and other explanatory material provided |

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| | in support of an Application; |
| Term | refers to the period described in clause 1.4; |
| Third Party Interest | means any legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Recipient in connection with the Agreement, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest; and |
| Undepreciated | in relation to the value of an Asset, means the value of the Asset which has not been Depreciated; |
| Venue | means a place that is identified in the Itinerary in the Application as hosting the Recipient's Exhibition; |
| Venue Report | means a report in the format at Annexure D which is obtained by the Recipient from each Venue following completion of the Exhibition at the Venue; |
| Visions of Australia Committee | means the body of persons appointed by the Minister for the purpose of providing advice to the Minister on the Contemporary Touring Initiative. |

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to the Schedule (or an attachment), is a reference to the Schedule (or an attachment) to the Agreement, including as amended or replaced from time to time by agreement in writing between the parties;
- i. a reference to an Item is a reference to an Item in the Schedule;

- j. the Schedule and any attachments form part of the Agreement;
- k. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;
- l. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails; and
- m. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Duration of Term

- 1.4.1. The Term of this Agreement commences on the Date of the Agreement and, unless terminated earlier, it expires on the Completion Date.

1.5. Debt and Interest

- 1.5.1. The Recipient agrees to pay any amount owed or payable to the Department or which the Department is entitled to recover from the Recipient, under this Agreement, including any Interest, without prejudice to any other rights available to the Department under the Agreement, under statute, at law or in equity, at the discretion of the Department, as a debt due to the Department by the Recipient without further proof of the debt by the Department being necessary.
- 1.5.2. If the Department notifies the Recipient that an amount is to be refunded or repaid to the Department and the amount is not refunded or repaid within 20 Business Days, or as otherwise notified by the Department, the Recipient agrees to pay Interest, unless the Department notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.

- 1.5.3. In respect to any obligation the Recipient may have under this Agreement to pay the Department any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Department.

2. Activity

2.1. Conduct of Activity

2.1.1. The Recipient must carry out the Activity:

- a. to achieve the Objectives;
- b. within the Activity Period;
- c. in accordance with this Agreement (including any applicable Guidelines); and
- d. diligently, effectively and to a high standard.

2.1.2. Where the Department is satisfied that the Recipient does not have the capacity to adequately:

- a. manage the Funding; or
- b. undertake the Activity in accordance with this Agreement,

the Department may by written notice immediately:

- c. suspend, reduce or cease the release of Funding to the Recipient; and/or
- d. require the Recipient to refund some or all of the Funding to the Department.

2.2. Liaison and monitoring

2.2.1. The Recipient agrees to:

- a. liaise with and provide information to the Department as reasonably notified by the Department; and
- b. comply with all of the Department's reasonable requests, directions, or monitoring requirements.

2.2.2 Each of the parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Activity.

2.3. Subcontractors

2.3.1. The Commonwealth acknowledges that the Recipient may subcontract the performance of some obligations in relation to the Activity under this Agreement. However, where it proposes to do so, the Recipient agrees to ensure that any subcontractor it engages has the skills, experience and

qualifications, as appropriate, to undertake the part of the Activity for which the subcontractor has been engaged.

- 2.3.2. The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement regardless of whether the Recipient has subcontracted any of its obligations.
- 2.3.3. The Recipient agrees, in any subcontract placed with a subcontractor, to reserve a right of termination to take account of the Department's rights of termination under clause 17 [Termination or reduction in scope of Agreement], and the Recipient agrees to make use of that right in the event of a termination or revocation by the Department.
- 2.3.4. The Recipient must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

2.4. Specified Personnel

- 2.4.1. The Recipient agrees that the Specified Personnel will perform work in relation to the Activity in accordance with this Agreement.
- 2.4.2. If Specified Personnel are unable to perform the work as required under this clause 2.4, the Recipient agrees to notify the Department immediately.
- 2.4.3. The Recipient agrees, at the request of the Department acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Activity.
- 2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Recipient will provide replacement Personnel acceptable to the Department at no additional cost and at the earliest opportunity.
- 2.4.5. If the Recipient is unable to provide acceptable replacement Personnel, the Department may terminate this Agreement in accordance with the provisions of clause 17.2 [Termination for fault].

2.5. Review

- 2.5.1. The Recipient agrees to:
 - a. provide all reasonable assistance required by the Department;
 - b. respond to all of the Department's reasonable requests; and
 - c. provide any information the Department reasonably requires,in relation to conducting a review and final evaluation of the Program.

2.6. Reserved

3. Payment

3.1. Making of payment

- 3.1.1. Subject to sufficient funds being available for the Program, and compliance by the Recipient with this Agreement, the Department agrees to provide the Recipient with the Funding at the times and in the manner specified in Item B [Funding and Payment].
- 3.1.2. Without limiting the Department's rights, the Department may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.
- 3.1.3. The Department may, at its sole discretion, set off or deduct from any Funding payable to the Recipient under this Agreement, any moneys that are payable to the Department by the Recipient, whether in connection with this Agreement or otherwise. Moneys that are payable to the Department include repayment or Interest under subclauses 1.5.2 and 4.5, whether or not a notice requiring repayment has been given in respect of that debt and whether or not the time provided under such a notice has expired.

4. Management of Funding

4.1. Use of Funding

- 4.1.1. The Recipient agrees to spend the Funding only for the Activity in accordance with this Agreement.
- 4.1.2. The Recipient agrees to do all things necessary to ensure that all payments from the Funding that the Recipient makes to third parties (including subcontractors) are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all liabilities.

4.2. Keeping of Funding

- 4.2.1. The Recipient agrees to:
- a. ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959 (Cth)* to carry on banking business in Australia;
 - b. where specified in the Schedule, ensure that the account referred to in clause 4.2.1. a. is:
 - i. established solely for the purposes of the Activity;
 - ii. separate from the Recipient's other operational accounts; and

- iii. an account that complies with any other requirements specified in the Schedule;
- c. notify the Department, prior to the receipt of any Funding, of details sufficient to identify the account;
- d. where the Recipient is required to maintain a separate bank account for the Funds:
 - i. if requested by the Department, provide written notification to the authorised deposit-taking institution at which the account is established that the Funding is held for the purposes of the Activity, and provide a copy of that notification to the Department;
 - ii. on notification from the Department, provide the Department and the authorised deposit-taking institution with a written authority for the Department to obtain any details relating to any use of the account;
- e. if the account changes, notify the Department within 10 Business Days of the change occurring, provide the Department with details of the new account;
- f. unless the Recipient is a sole director company, ensure that as a minimum, two signatories, who have the Recipient's authority to do so, are required to operate the account; and
- g. identify the receipt and expenditure of the Funding separately within the Recipient's accounts and Records so that the Funding is identifiable at all times.

4.3. Financial Records

- 4.3.1. The Recipient agrees to keep financial accounts and Records relating to the Activity so as to enable:
- a. all receipts and payments related to the Activity to be identified and reported in accordance with this Agreement;
 - b. unless otherwise notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards including:
 - i. an income and expenditure statement for the Financial Year to date compared with the Budget; and
 - ii. a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget;
 - c. the audit of those accounts and Records in accordance with Australian Auditing Standards; and
 - d. the identification of all the Recipient's taxation liabilities and payments.

4.4. Use as security

4.4.1. Except with the prior written approval of the Department, the Recipient agrees not to use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation:

- a. the Funding;
- b. this Agreement or any of the Department's obligations under the Agreement; or
- c. any Assets or Intellectual Property Rights in Activity Material.

4.5. Refunds

4.5.1. If, at any time during the Term or as at the Completion Date or earlier termination of this Agreement the Department determines that:

- a. the Recipient has an amount of Funding that it has not spent or legally committed for expenditure in accordance with the Agreement; or
- b. Funding has not been spent in accordance with the Agreement; or
- c. Funds have not been acquitted to the satisfaction of the Department,

then at the discretion of the Department the Recipient agrees to refund this amount to the Department. This amount must be refunded within 20 Business Days of a notice from the Department, dealt with as notified by the Department, or the Department may reduce further payments of Funding to the Recipient by up to this amount.

4.5.2. If at the completion of the Activity Period the Recipient has remaining Funding (which does not include any Funding legally committed for expenditure in accordance with this Agreement and which fall for payment thereafter) and wishes to retain that Funding, the Recipient agrees to seek the Department's written consent to retain the Funding and use it for purposes agreed by the Department.

4.5.3. If the Department does not agree to the Recipient retaining the Funding under clause 4.5.2, the Recipient agrees to return the Funding to the Department within 20 Business Days of the Department's notice requiring the Recipient to return the Funding.

4.6. Budget

4.6.1. Subject to clause 4.6.2, the Recipient agrees to only spend the Funding in accordance with the Budget

- 4.6.2. Where Funding is approved subject to specific terms and conditions, those terms and conditions are specified in Item D of the Schedule, the Budget is varied to take account of those terms and conditions, and the Recipient:
- a. must account for the Funds in accordance with the varied Budget in the Final Report; and
 - b. must use the amount for the expenditure items as approved and must not transfer any Funds in or out of those expenditure items in accordance with the 25% transfer flexibility allowed under subclause 4.7.1.

4.7. Budget flexibility

- 4.7.1. Unless Funding is approved subject to specified terms and conditions, the Recipient may transfer Funding between categories of expenditure items within the Budget to a maximum of 25%, but must seek the prior written approval of the Department for any transfer that exceeds 25% between items in the total Budget.
- 4.7.2. Any Activity Generated Income that is not included in the Budget must be spent for the purposes of the Activity and must be accounted for in the Final Report.

4.8. No additional Funding

- 4.8.1. The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funding. The Recipient accepts responsibility for the provision of any additional funds that may be required to complete the Activity.

4.9. Other government funding

- 4.9.1. Unless otherwise agreed by the Department in writing, no Funding will be paid for the conduct of an Activity where the Recipient receives funding for the same or a similar activity from the Department or another Commonwealth Department, or a State, Territory or local government, unless the Recipient is funded solely by the State, Territory or local Government.
- 4.9.2. The Recipient agrees to inform the Department in writing within 20 Business Days of entering into any arrangement (whether contractual or statutory) under which the Recipient is entitled to receive funding from the Commonwealth or a State, Territory or local government for the same or a similar activity.
- 4.9.3. Any payments under this Agreement may be suspended by the Department:
- a. if the Recipient breaches an arrangement (whether contractual or statutory) under which it receives any funding (other than the Funding) from the Commonwealth;

- b. if the Recipient has amounts to be repaid or unacquitted moneys under any arrangement (whether contractual or statutory) with the Department; or
- c. if a Report provided by the Recipient is not accurate or complete or indicates that the Recipient currently has unspent Funding.

4.9.4. Notwithstanding such suspension of any payments, the Recipient agrees to continue to perform any obligations under this Agreement, unless the Department agrees otherwise in writing.

5. Taxes, duties and government charges

5.1.1. Unless otherwise indicated, the Recipient must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

5.1.2. The Funds paid by the Department under this Agreement includes an amount on account of GST imposed on any supplies made by the Recipient to the Department under this Agreement that are taxable supplies within the meaning of the GST Act.

5.1.3. The Recipient must give the Department a tax invoice in accordance with the GST Act in relation to any taxable supply made by the Recipient to the Department under this Agreement prior to payment of any Funds by the Department.

5.1.4. If no taxable supplies are made by the Recipient to the Department under this Agreement, the Recipient on receipt of a written demand from the Department must promptly pay back to the Department the amount on account of GST included in the Funds.

5.1.5. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

5.1.6. If requested by the Department, the Recipient must provide evidence of its GST status.

6. Recipient Contributions and Other Contributions

6.1. Recipient Contributions

6.1.1. The Recipient agrees to provide the Recipient Contributions for the Activity. Unless clause 6.1.2 applies, the Recipient Contributions must not include any amount that has been provided to the Recipient by a Commonwealth, State, Territory or local government.

- 6.1.2. If the Recipient is funded exclusively by the Commonwealth or a State, Territory or local Government and has no separate income, the Recipient Contributions may include amounts that have been provided to the Recipient by the Commonwealth, or by that State, Territory or local Government.
- 6.1.3. If the Recipient does not provide the Recipient Contributions or provide them in time to enable completion of the Activity, then the Department may:
- a. suspend payment of the Funding or an instalment of the Funding (as the case may be) until the Recipient Contributions are provided; or
 - b. terminate this Agreement in accordance with clause 17.2 [Termination for fault].

6.2. Other Contributions

- 6.2.1. The Recipient agrees to use its best endeavours to obtain the Other Contributions for the Activity as specified in the Application.
- 6.2.2. Where the Recipient is unable to obtain the Other Contributions as specified in the Application, the Recipient must use all reasonable endeavours to provide or obtain contributions from other sources sufficient to enable completion of the Activity.
- 6.2.3. The basis on which the Other Contributions are to be provided must be satisfactory to the Commonwealth and the Recipient must provide the Department with a copy of the written confirmation of each Other Contribution or the contributions from other sources and the amounts to be provided.
- 6.2.4. On request the Recipient must provide a copy of each written confirmation required by clause 6.2.3 to the Department within 10 Business Days of the request.
- 6.2.5. The Recipient agrees to notify the Department within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Activity that are not identified as Other Contributions in the Application. Any such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and the Agreement is deemed to be varied accordingly) on the date on which the Recipient notifies the Department of that contribution under this clause 6.2.5.

7. Assets

7.1. Acquisition of Assets

- 7.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset without obtaining the Department's prior written approval. Approval may be given subject to any conditions the Department may impose.

8. Records

8.1. Keeping Records

- 8.1.1. The Recipient must create and maintain full and accurate accounts and Records of the conduct of the Activity including, without limitation, all:
- a. progress against the Milestones;
 - b. receipt and use of Funding;
 - c. Other Contributions (if any);
 - d. Recipient Contributions (if any);
 - e. creation, acquisition and Disposal of Assets (if any); and
 - f. creation, acquisition and Disposal of any Intellectual Property Rights in the Activity Material or Existing Material.

8.2. Retention of Records

- 8.2.1. The Recipient agrees to create and maintain records and accounts under clause 8.1.1 and retain them for a period of no less than 7 years after the end of the Activity Period.

9. Reporting

9.1. Progress and Final Reports

- 9.1.1. The Recipient agrees to provide to the Department written Reports of the Recipient's progress in undertaking the Activity, as well as a Final Report for the Activity, in the manner specified in Item E [Reporting].

9.2. Financial Reports

- 9.2.1. Within 60 Business Days after:
- a. request from the Department, the completion of each Financial Year in which a payment of Funding is made or used by the Recipient, or the Recipient contributes Recipient Contributions or receives any Other Contributions, except the Financial Year in which subparagraph b. applies; and

- b. the expiry of the Activity Period, completion of the Activity or the termination or expiry of this Agreement, whichever is the earlier,

the Recipient agrees to provide to the Department:

- c. where the Funding is \$100,000 or more, audited financial statements prepared in accordance with Australian Accounting Standards in respect of the Funding, Recipient Contributions and the Other Contributions (if any) (separately and in the context of the Recipient's overall financial position), which must include a definitive statement as to whether the financial information for the Activity represents the financial transactions fairly and is based on proper accounts and Records; or
- d. where the Funding is less than \$100,000, a statement of financial position (assets and liabilities by class), which must include, under assets, the balance of the account referred to in clause 4.2, and a statement of the Funds and the Other Contributions and Recipient Contributions (if any) received to date including the amount spent;

and in all cases:

- e. a statement of the balance of the Recipient's account referred to in clause 4.2.1.a, or, where the Recipient is not required to keep a separate account, the balance of the Funds;
- f. a written statement of how much money the Recipient needs to meet current liabilities under legal commitments entered into by the Recipient pursuant to this Agreement;
- g. any other requirements specified in Item E.2.1.

9.2.2. Information required to be provided under clauses 9.1 and 9.2 must be accompanied by a statement that:

- a. all Funding, Other Contributions and Recipient Contributions received were spent for the purpose of the Activity and in accordance with this Agreement, and that the Recipient has complied with the Agreement;
- b. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations;
- c. unless the Activity Period has expired or the Agreement has been terminated, the unspent portion of the Funding (if any) is available for use within the next Reporting period;
- d. the financial information is presented in accordance with any other financial Reporting requirements the Department may notify to the Recipient;
- e. reserved; and

- f. at the time the Report or financial statement is provided to the Department, the Recipient is able to pay all the Recipient's debts as and when they fall due and the Recipient has sufficient resources to discharge all the Recipient's debts at the end of the current Financial Year.

9.3. Audit and certification

- 9.3.1. The audited statement referred to in clause 9.2.1.c and the statement referred to in clause 9.2.2, must also contain the requirements, if any, described in Item E.2.2.

9.4. Use of Approved Auditor and Qualified Accountant

- 9.4.1. Where Funding of \$100,000 or more is provided
 - a. the audited statements referred to in clause 9.2.1.c, 9.2.1.e and 9.2.1.f must be prepared by an Approved Auditor and must comply with the Australian Auditing Standards; and
 - b. the statement referred to in clause 9.2.2 must be provided by the Recipient's Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution. Where requested, satisfactory evidence of the authorisation is to be provided to the Department.

9.5. Certification

- 9.5.1. Where Funding of less than \$100,000 is provided, the statements referred to in clauses 9.2.1.d, 9.2.1.e, 9.2.1.f, and 9.2.2 must be provided by the Recipient's Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution. Where requested, satisfactory evidence of the authorisation is to be provided to the Department.

10. Commonwealth Material

10.1. Ownership

- 10.1.1. Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Department but the Department grants the Recipient a licence to use, reproduce, adapt and exploit that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in the Schedule or that the Department may notify to the Recipient.

10.2. Possession of Commonwealth Material

- 10.2.1. Upon the expiration of the Completion Date or earlier termination of the Agreement, the Recipient may retain all Commonwealth Material remaining in the Recipient's possession, unless otherwise notified by the Department.

10.3. Maintain Commonwealth Material

- 10.3.1. The Recipient agrees to keep safely Commonwealth Material provided to the Recipient for the purposes of this Agreement.

11. Intellectual property

11.1. Ownership

- 11.1.1. Subject to this clause 11 [Intellectual property], Intellectual Property Rights in Activity Material vest immediately in the Recipient.
- 11.1.2. Clause 11.1.1 does not affect the position between the Recipient and a third party.

11.2. Licence of Activity Material

- 11.2.1. The Recipient grants to the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit Intellectual Property Rights in the Final Report for any purpose.

11.3. Licence of Existing Material

- 11.3.1. This clause 11 [Intellectual property] does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Recipient, however, agrees to grant to the Department or procure a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose.

11.4. Dealing with Intellectual Property Rights

- 11.4.1. The Recipient:
- a. agrees, if requested by the Department to do so, to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 11 [Intellectual property];
 - b. warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 11 [Intellectual property]; and

- c. except as expressly provided for in this Agreement, must not deal with the Intellectual Property Rights in the Activity Material during the Term of this Agreement.

11.5. Consent to Specified Acts

- 11.5.1. Where the Recipient is a natural person and the author of the Activity Material, the Recipient consents to the performance of the Specified Acts by the Department or any person claiming under or through the Department and agrees to comply with clauses 11.5.2.b and 11.5.2.c.
- 11.5.2. In any other case, the Recipient agrees:
 - a. to obtain from each author of any Activity Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Department or any person claiming under or through the Department;
 - b. to obtain from each author of any Existing Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Department's benefit in relation to the Department's licensed use of such material; and
 - c. upon request, to provide the executed original of each such consent to the Department.

12. Confidential Information

12.1. No confidentiality

- 12.1.1. The Recipient acknowledges that the Commonwealth may at its discretion provide information in relation to its funding and its funding arrangements, including the Recipient and the Activity, to the Minister, any judicial or parliamentary body or governmental agency or as required by the operation of any law and accordingly none of the Recipient's information or this Funding Agreement is considered to be confidential information.

12.2. Disclosure of Commonwealth Material

- 12.2.1. The Recipient is permitted to disclose Commonwealth Material, except to the extent, if any, specified in the Schedule. If the Commonwealth requires the Recipient to maintain confidentiality of any Commonwealth Material, the Commonwealth may permit the Recipient to disclose the Material subject to compliance with any conditions on disclosure that the Commonwealth may impose.

13. Privacy

13.1. Interpretation and application

13.1.1. In this clause 13 [Privacy]:

Information Privacy Principle has the same meaning as it has in the Privacy Act; and

Personal Information has the same meaning as it has in the Privacy Act.

13.1.2. This clause applies only where the Recipient deals with Personal Information when, and for the purpose of, conducting the Activity.

13.2. Obligations of Recipient in relation to privacy

13.2.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Information Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations of the Department, to the extent that they are consistent with the Information Privacy Principles.

13.2.2. The Recipient agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 13 [Privacy].

14. Participation at public events by Minister and others, acknowledgement and publicity

14.1. Invitation to Minister for public events

14.1.1. The Recipient must invite or arrange for the invitation of the Minister or his nominated representative to all public events associated with the Activity.

14.2. Participation and speech opportunity for Minister at public events

14.2.1. If requested, the Recipient must facilitate the participation of the Minister or his nominated representative in all public events associated with the Activity, including providing the opportunity for the Minister or his nominated representative to speak at any public event where other speeches will be made.

14.3. Other invitees to public events

14.3.1. Without limiting any other provision in this clause 14, the Recipient must invite to attend all public events associated with the Activity;

- a. any other persons nominated by the Minister;

- b. members of the Visions of Australia Committee; and
- c. the Departmental officers specified in the Schedule and any other Departmental representative nominated by the Department.

14.4. Acknowledgement of support

- 14.4.1. Unless or until notified by the Department, the Recipient agrees, in all publications, promotional and advertising materials, public announcements and activities by the Recipient or on the Recipient's behalf in relation to the Activity, to acknowledge the financial support the Recipient has received from the Australian Government, in the manner set out in Item I [Acknowledgement and publicity], or as otherwise approved by the Department prior to its use.

14.5. Right to publicise Funding

- 14.5.1. The Department reserves the right to publicise and report on the awarding of Funding to the Recipient. The Department may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the title and a brief description of the Activity in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Department.

14.6. Copies of publications

- 14.6.1. Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must be provided to the Department with the Final Report.

14.7. No restriction on advocacy activities

- 14.7.1. The Department confirms that, subject to clause 14.7.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth or its agencies, employees, servants or agents;
 - b. the Department does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities; and
 - c. the Department will only exercise its rights under clause 2.4 on reasonable grounds relating to the performance of the Activity.
- 14.7.2. Nothing in this clause 14.7 limits or derogates from the Recipient's obligations under clauses 12 and 13.

15. Indemnity

15.1. General indemnity

- 15.1.1. The Recipient indemnifies (and agrees to keep indemnified) the Department against any:
- a. cost or liability incurred by the Department or the Department's Personnel;
 - b. loss of or damage to property of the Department; or
 - c. loss or expense incurred by the Department in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department,

arising from:

- d. any act or omission by the Recipient or the Recipient's Personnel, in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- e. any breach by the Recipient of the Agreement;
- f. use or Disposal of the Assets; or
- g. the use by the Department of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in the Activity Material or Existing Material.

15.2. Reduction of scope

- 15.2.1. The Recipient's liability to indemnify the Department under this clause 15 [Indemnity] will be reduced proportionally to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

15.3. Preservation of other rights

- 15.3.1. The right of the Department to be indemnified under this clause 15 [Indemnity] is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

15.4. Meaning of 'fault'

- 15.4.1. In this clause 15 [Indemnity], 'fault' means any negligent or unlawful act or omission or wilful misconduct.

16. Dispute resolution

16.1. Procedure for dispute resolution

- 16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute;
 - c. the representatives will try to settle the dispute by direct negotiation between them;
 - d. failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
 - e. the parties will co-operate fully with any process instigated under clause 16.1.1 d in order to achieve a speedy resolution; and
 - f. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

16.2. Costs

- 16.2.1. Each party will bear its own costs of complying with this clause 16 [Dispute resolution], and the parties will bear equally the cost of any third person engaged under clause 16.1.1.d.

16.3. Application of clause

- 16.3.1. This clause 16 [Dispute resolution] does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Department under or purportedly under clauses 3 [Payment], 4 [Management of Funding], 17 [Termination or reduction in scope of Agreement] or 24.1.

16.4. Performance of obligations

- 16.4.1. Despite the existence of a dispute, the Recipient will (unless requested in writing by the Department not to do so) continue to perform the Recipient's obligations under this Agreement.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Department may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue work on any part of the Activity not affected by the notice; and
 - d. immediately return to the Department any Funding in accordance with clause 17.1.3.d, or otherwise deal with any Funding held by the Recipient as directed by the Department.
- 17.1.3. In the event of termination under clause 17.1.1, the Department:
- a. will be liable only for payments due and owing to the Recipient under the payment provisions of the Agreement as at the date of the notice;
 - b. will be liable to reimburse any reasonable costs incurred by the Recipient and directly attributable to the termination of the Agreement;
 - c. will not be liable to pay amounts under clauses 17.1.3. a and 17.1.3. b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item B [Funding and Payment];
 - d. will be entitled to recover from the Recipient any part of the Funding which:
 - i. has not been legally committed for expenditure by the Recipient in accordance with the Agreement and payable by the Recipient as a current liability by the date that the notice of termination is received; or
 - ii. has not, in the Department's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.1.4. In the event of a reduction in the scope of the Agreement under clause 17.1.1:
- a. the Department will be liable to reimburse any reasonable costs incurred by the Recipient and directly attributable to the reduction in scope; and
 - b. the Department's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.

- 17.1.5. The Department's liability to pay any compensation under or in relation to this clause 17.1 [Termination or reduction in scope of Agreement] is subject to:
- a. the Recipient's compliance with this clause 17.1 [Termination or reduction in scope of Agreement]; and
 - b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.
- 17.1.6. The Recipient will not be entitled to compensation for loss of prospective profits or loss of any benefits that would otherwise have been conferred on the Recipient.

17.2. Termination for fault

- 17.2.1. The Department may by notice, terminate this Agreement immediately (but without prejudice to any right of action or remedy which either party has or may have) if:
- a. the Recipient fails to fulfil, or is in breach of any of its obligations under this Agreement, and the Department considers that this failure or breach is not capable of remedy;
 - b. the Recipient fails to fulfil, or is in breach of any of its obligations under this Agreement, and does not rectify the omission or breach within 10 Business Days of receiving a notice from the Department to do so;
 - c. the Recipient is unable to pay all its debts as and when they become due and payable;
 - d. the Recipient has applied to come under, received a notice requiring it to show cause why it should not come under, or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or an order has been made for the purpose of placing the Recipient under external administration;
 - e. reserved;
 - f. in relation to the Agreement, the Recipient breaches any law of the Commonwealth, or of a State or Territory;
 - g. the Department is satisfied that any statement made in the Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
 - h. the Department exercises any other specific right of termination under the Agreement.

- 17.2.2. Where the Department terminates this Agreement under clause 17.2.1 the Department:
- a. will be liable only for payments due and owing to the Recipient under the payment provisions of the Agreement as at the date of the notice; and
 - b. will be entitled to recover from the Recipient any part of the Funding which:
 - i. has not been legally committed for expenditure by the Recipient in accordance with the Agreement and is not payable by the Recipient as a current liability by the date that the notice of termination is received; or
 - ii. has not, in the Department's opinion, been spent by the Recipient in accordance with the Agreement.

17.3. Preservation of other rights

- 17.3.1. Clause 17.2 does not limit or exclude any of the Department's other rights under this Agreement.

18. Delay

18.1. Recipient to minimise delay

- 18.1.1. The Recipient must take all reasonable steps to minimise delay in completion of the Activity.
- 18.1.2. If the Recipient becomes aware that it will be delayed in progressing or completing the Activity in accordance with this Agreement, the Recipient must immediately notify the Department in writing of the cause and nature of the delay. The Recipient is to detail in the notice the steps it will take to contain the delay.
- 18.1.3. In the event of a delay, the Department may at its sole option:
- a. notify the Recipient in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
 - b. notify the Recipient in writing of reduction in the scope of the Activity and any adjustment to the Funds for the Recipient to complete the reduced Activity and vary this Agreement accordingly; or
 - c. terminate this Agreement under clause 17.2 or take such other steps as are available under this Agreement.
- 18.1.4. Unless the Department takes action under clause 18.1.3, the Recipient is required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.

- 18.1.5. If the Recipient does not notify the Department of any delay in progressing or completing the Activity in accordance with clause 18.1.2, the Department may, at its sole discretion;
- a.. terminate this Agreement under clause 17.2; or
 - b. reduce the scope of the Activity in accordance with the proportion of the Activity that the Department determines can be completed within the Activity Period and adjust the Funds for the Recipient to complete the reduced Activity.

19. Reserved

20. Reserved

21. Reserved

22. Corporate Governance

22.1. Constitution

- 22.1.1. The Recipient agrees to provide a copy of the Recipient's Constitution to the Department upon notification by the Department.
- 22.1.2. The Recipient agrees to inform the Department whenever there is a change in the Recipient's Constitution, structure or management which could reasonably be expected to affect the Recipient's continued eligibility for the Funding or have an adverse effect on the Recipient's ability to comply with its obligations under this Agreement.
- 22.1.3. The Recipient agrees not to employ, engage or elect any person who would have a role in the Recipient's management, financial administration or the performance of the Activity if:
- a. the person is an undischarged bankrupt;
 - b. there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
 - c. the person has suffered final judgment for a debt and the judgment has not been satisfied;
 - d. subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been convicted of an offence within the meaning of paragraph 85ZM (1) of that Act unless:
 - i. that conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
 - ii. the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or

- iii. the person's conviction for the offence has been quashed;
- e. that person is or was a Director or occupied an influential position in the management or financial administration of an organisation that had failed to comply with funding requirements of the Commonwealth; or
- f. the person is otherwise prohibited from being a member or Director or employee or responsible officer of the Recipient's organisation under the relevant local government legislation.

22.1.4. Where a person falls or is discovered as falling within any of clauses 22.1.3.a to 22.1.3.f while employed or engaged by the Recipient, or after being elected as an officer of the Recipient, the Recipient will be in breach of clause 22.1.3 if the Recipient does not:

- a. transfer the person to a position which does not have a role in the Recipient's management, financial administration or, if stated in Schedule 1, the performance of the Activity; or
- b. terminate the employment or engagement of the person or remove the person from office,

as the case may be and immediately notify the Department of the Recipient's action.

22.1.5. If the Recipient advises the Department that the Recipient considers such termination action would be a breach of a statutory provision binding on the Recipient, the Department will take the Recipient's view into account in deciding what action to take as a result of the breach.

22.1.6. If the Recipient is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), in the event that the Recipient's public officer receives a notice from the Registrar of Aboriginal Corporations calling upon the Recipient to show cause why an administrator should not be appointed, the Recipient agrees to notify the Department within 5 Business Days of the date of receipt of such a notice.

22.1.7. If the Recipient is registered under the *Corporations Act 2001* (Cth), in the event that the Recipient applies to come under, receives a notice requiring the Recipient to show cause why the Recipient should not come under, receives a notice or an application from any other person for the Recipient to come under or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or an order has been made for the purpose of placing the Recipient under external administration, the Recipient agrees to notify the Department within 5 Business Days of the date of the making or receipt of such a notice or application or the making of such an order.

23. Notices

23.1. Format, addressing and delivery

23.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Recipient to the Department* - addressed to the Department at the address specified in Item M [Notice] or as otherwise notified by the Department; or
- b. *if given by the Department to the Recipient* - given by the Department and addressed (and marked for attention) as specified in Item M [Notice] or as otherwise notified by the Recipient.

23.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand;
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

23.2. When notice is effective

23.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon actual receipt by the addressee.

23.2.2. A notice received after 5.00 pm, or on a weekend or public holiday in the place of receipt, is deemed to be effected on the next Business Day in that place.

24. General Provisions

24.1. Audit and access

24.1.1. The Recipient agrees:

- a. to give the Department, or any persons authorised in writing by the Department, access to premises where obligations under this Agreement are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.

24.1.2. The rights referred to in clause 24.1.1. are subject to:

- a. the Department providing reasonable prior notice;

- b. the reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

24.1.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of clause 24.1.1.

24.1.4. This clause 24.1 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

24.2. Insurance

24.2.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item G [Insurance]; and
- b. prior to the commencement of this Agreement, and thereafter, within 10 Business Days of the anniversary of the renewal of the Recipient's Public Liability Policy, or on request, to provide proof of insurance acceptable to the Department.

24.2.2. This clause 24.2 continues in operation for so long as any obligations remain in connection with this Agreement.

24.3. Conflict of interest

24.3.1. In this clause 24.3:

Conflict means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

24.3.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

24.3.3. If during the Term a Conflict arises, the Recipient agrees to:

- a. notify the Department immediately;
- b. make full disclosure to the Department of all relevant information relating to the Conflict; and
- c. take any steps the Department reasonably requires to resolve or otherwise deal with that Conflict.

24.4. Relationship of parties

24.4.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Department, nor does the Recipient have any power or authority to bind or represent the Department.

24.4.2. The Recipient agrees:

- a. not to misrepresent its relationship with the Department; and
- b. not to engage in any misleading or deceptive conduct in relation to the Activity.

24.5. Waiver

24.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

24.5.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

24.6. Variation of Agreement

24.6.1. Except for action the Department is expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

24.6.2. To avoid doubt, the Recipient may not vary any part of the Activity without the Department's prior approval and a variation of this Agreement in accordance with clause 24.6.1.

24.6.3. This Agreement will not be varied after the expiry of the Activity Period.

24.7. Assignment

24.7.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Department's prior written approval.

24.8. Survival

24.8.1. The operation of clauses 2.5 [Review], 7 [Assets], 8 [Records], 11 [Intellectual property], 12 [Confidential Information], 13 [Privacy], 15 [Indemnity], 16 [Dispute resolution], 24.2 [Insurance] and any other provision which expressly or by implication from its nature is intended to continue survive the expiration or earlier termination of this Agreement.

24.8.2. Clauses 14 [Participation at public events by Minister and others, acknowledgement and publicity] and 24.1 apply for the Term and for a period of 7 years from the date of expiration or earlier termination of the Agreement.

24.9. Compliance with legislation and policies

24.9.1. The Recipient agrees to comply with any provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority applicable to its performance of this Agreement.

24.9.2. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Department's policies as notified, referred or made available by the Department to the Recipient (including by reference to an internet site), including those listed in Item K [Compliance with policies].

24.10. Applicable law and jurisdiction

24.10.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

24.10.2. The parties submit to the jurisdiction of the courts of that Territory.

SCHEDULE 1 PARTICULARS

A. **Program and Activity** (Recital A, clauses 1.1.1 and 2.1.1)

A.1. **Program**

The Program is the Contemporary Touring Initiative.

The Objective of the Program is to assist Collecting Institutions and Organisations to develop and tour Exhibitions of Contemporary Australian visual arts and craft throughout Australia with the aim of:

- a. enabling and encouraging a wider audience to access Contemporary Australian visual arts and craft;
- b. promoting Contemporary Australian visual arts and craft through quality publications, education and public programs and fora held as part of the Exhibition; and
- c. encouraging curatorial partnerships between Collecting Institutions and Organisations and other appropriate partnerships.

The Activity will assist in achieving the Objective of the Program by contributing to the development of a rich and stimulating cultural sector for all Australians in a Program that promotes access to Australia's cultural material.

The Guidelines which apply to the Program are the Contemporary Touring Initiative Program Guidelines at www.arts.gov.au/visions

The Recipient's performance in carrying out the Activity will be assessed against the Objectives using the information in the Final Report to ensure that the Recipient has carried out the Activity in accordance with the Application and that it has done everything that was required to be done in accordance with this Agreement. The Recipient's achievements will be evaluated by reviewing:

- a. The Recipient's timeliness in completing the Activity and meeting any Milestones, including provision of the Final Report; and
- b. the quality and comprehensiveness of the content of the Final Report (including the Venue Reports) and any accompanying material, noting, in particular the extent to which the Exhibition attracted audiences; the degree of success of the publications and educational and public programs associated with the Exhibition and the outcome of any collaborative relationships with other Collecting Institutions or Organisations involved in the Exhibition.

A.2. **Activity**

- A.2.1. The Activity Period commences on the Date of this Agreement and ends on the date specified in the Application as the date for finalisation of the Activity, unless

the Department agrees, in writing, to another date. The Final Report is due within 60 Business Days after the end of the Activity Period.

- A.2.2. The Objective of the Activity is to develop and tour an Exhibition of Contemporary Australian visual arts and craft throughout Australia, and any related activities, in accordance with the Activity specified in the Application which will provide more Australians with the opportunity to access Contemporary Australian visual arts and craft.
- A.2.3. In performing the Activity, the Recipient is required to conduct an exhibition of Contemporary Australian visual arts and craft, and undertake any associated activities in accordance with the itinerary and time frame specified in the Application; to spend the Funds in accordance with the Budget; to comply with the requirements and obligations of this Agreement; and to keep the Department informed of any delays or potential changes which may require a variation to the Agreement.
- A.2.4. The Recipient shall, provide a copy of any Activity Material that the Department requests to the Department in a form specified by the Department.

B. Funding and Payment
(clauses 1.1.1, 3.1, 4)

- B.1.1. The total Funding for the Activity is \$X which represents \$X, the amount of Funding to be provided by the Commonwealth for the Activity, and \$X, being the total GST payable in accordance with clause 5.
- B.1.2. Payment of the Funds specified in Item B.1.1 is subject to:
- a. unless the Activity is due to commence within 60 Business Days of the Date of this Agreement, provision of written confirmation that the Activity as described in the Recipient's Application is due to commence within the next 60 Business Days;
 - b. compliance by the Recipient with the insurance provisions in clause 24;
 - c. the Recipient having provided all Reports that were due on or prior to the payment date; and
 - d. where a taxable supply is made, the Recipient having provided a correct and complete tax invoice to the Department, or where no taxable supply is made, the Recipient providing an invoice to the Department.
- B.1.3. Subject to the terms of this Agreement (including this Item B), the Department will make a payment of Funds to the Recipient within 20 Business Days of the conditions in Item B.1.2 being satisfied.

C. Reserved

D. Budget
(clauses 4.6 and 4.7)

D.1.1. Unless the Funding has been approved subject to specific terms and conditions, the Budget is as stipulated in the Application or as amended and approved by the Department in writing.

[OR where an organisation has received **partial** funding, that is, a portion of the requested funds or instructions on a specific expenditure item (ie funding on specified terms and conditions)]:

The Funding has been approved subject to specified terms and conditions. The Recipient must only use \$[amount] for the expenditure item [e.g 'catalogues'] in the Budget.. OR must only use the following amounts for the following purposes: [list].

D.1.2. Unless the Funding has been approved subject to any specific terms and conditions, the Recipient may transfer Funds in the Budget between expenditure items to a maximum of 25% without the Department's approval.

[OR where an organisation has received **partial** funding, that is, a portion of the requested funds or instructions on a specific expenditure item]:

Subject to Item D.1.1. the Recipient may transfer Funds in the Budget between expenditure items to a maximum of 25% without obtaining the Department's approval.

E. Reporting
(clauses 1.1.1, 9)

E.1. Final Report

E.1.1. The Recipient must provide the Final Report within 60 Business Days of the end of the Activity Period or the earlier termination of this Agreement.

E.1.2. The Final Report must be a stand-alone document that can be used for public information dissemination purposes and must include a financial statement in accordance with clause 9.2 The Recipient must also provide an electronic copy of the Final Report:

E.1.3. The Final Report must include a Venue Report from each Venue.

E.1.4. The Recipient must also include in the Final Report a discussion of any other matters, relating to the evaluation of the Activity, that the Department notifies the Recipient is required to be included in the Final Report. Any such

requirement will be notified to the Recipient at least 20 Business Days before the Final Report is due.

E.2. Financial Reports

E.2.1. The Recipient must also include the following financial information in the financial reports required under clause 9.2:

- a. no additional financial information specified

E.2.2. Pursuant to clause 9.3.1, the audited statement referred to in clause 9.2.1.c and the statement referred to in clause 9.2.2 must also contain the following requirements:

- a. no additional requirements.

E.3. Other Reports

E.3.1. Throughout the Activity Period, the Department may require the Recipient to provide ad hoc Reports concerning:

- a. any significant developments concerning the Activity; and
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement.

E.3.2. The Recipient must provide any such ad-hoc Reports within the timeframe notified by the Department.

F. Assets

(clauses 1.1.1 and 7)

F.1.1. The Recipient must for the Term of this Agreement maintain an Assets register in the following form and containing the following information:

| Asset number | Description of Asset | Creation, acquisition or total lease cost | Date of creation, acquisition or lease | Term of lease or other arrangement | Location of Asset | Method of, and date, which Asset was written off or Disposed of |
|--------------|----------------------|---|--|------------------------------------|-------------------|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

G. Insurance

(clause 24.2)

G.1.1. The Recipient must maintain:

- a. workers compensation insurance as required by law where the Recipient carries out activities under this Agreement;

- b. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- c. insurance against any loss or damage to an Asset for its full replacement cost.

H. Reserved

I. Participation at public events by Minister and others, acknowledgement and publicity (clause 14)

- I.1.1. The Recipient must acknowledge the provision of the Funding by the Australian Government represented by the Department of the Environment, Water, Heritage and the Arts in accordance with Annexure B.
- I.1.2. The Recipient must acknowledge the provision of the Funding by the Australian Government by utilising adhesive vinyl lettering (Decals) for the Visual Arts and Craft Strategy/Visions of Australia/Contemporary Touring Initiative Program logo and byline, in accordance with Annexure B, at the entry point to the Exhibition. The size and placement of the adhesive vinyl lettering (Decals) must properly reflect the relevant contribution of the Funding within the context of other funding and sponsorship.

J. Reserved

K. Compliance with policies (clause 24.9)

- K.1.1. The Recipient must comply with the following policies in carrying out the Activity:

None specified

L. Reserved

M. Notice (clause 23.1)

- M.1.1. The Department's details are as follows:
- M.1.2. The Recipient's details are as follows:

N. Reserved

O. Reserved

P. Reserved

Q. Reserved

Signatures

This Funding Agreement is made on the _____ day of _____ 20____

SIGNED for and on behalf of
Department of the Environment,
Water, Heritage and the Arts by

)

)

)

Signature

In the presence of:

Name of witness

Signature of witness

SIGNED for and on behalf of **NAME
OF RECIPIENT**

.....
(insert name of Signatory)

.....
(sign here)

who by signing warrants that s/he
has the authority to bind the
Recipient

in the presence of:

.....
(print name of witness)

.....
(witness sign here)

OR USE OTHER MODE OF ATTESTATION REQUIRED BY YOUR RULES