



**REGIONAL CULTURAL FUND
DIGITISATION ROUND
FUNDING DEED**

**THIS IS AN IMPORTANT DOCUMENT. IT CONTAINS BINDING LEGAL
OBLIGATIONS. READ IT CAREFULLY AND CONSULT YOUR SOLICITOR BEFORE
SIGNING IT.**

Project	«Project_Title»
Description	«Project_Description»
RCF No.	«Application_ID»

BETWEEN:

Name	The Crown in right of the State of New South Wales acting through the Department of Premier and Cabinet (the Department)
ABN	36 081 905 761
Address	52 Martin Place, GPO Box 5341, Sydney NSW 2001

AND

Name	«Applicant_Name» (Recipient)
ABN	«ABN»
Address	«Applicant_Postal_Full_Address»

(the **parties**)

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Attachment 5 - Governance and Terms of Reference

Attachment 6 - Licencing Deed between Recipient and Museums and Galleries of NSW*

*This attachment is currently in development.

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BACKGROUND

- a) The NSW Government established the Regional Cultural Fund to support local communities to upgrade or develop cultural infrastructure and digitise regional collections to enable bold and exciting arts and culture that reflects the rich diversity of regional NSW.
- b) The Department has agreed to provide the Funding Amount from the Regional Cultural Fund to the Recipient to facilitate the carrying out of the Project, by the Recipient.
- c) The objective of this Deed is to document the agreed outcomes for the Project including Milestones and timing for the payment of the Funding Amount and completion of the Project.
- d) The parties also agree that in the event that part of the Funding Amount is not required or used by the Recipient for the Project, that portion of the Funding Amount will be refunded by the Recipient to the Department.
- e) The Department agrees to provide, and the Recipient agrees to accept, the Funding Amount in accordance with the terms of this Deed.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

In this Deed, unless the contrary intention requires:

Acquittal and Financial Certification means Attachment 3 of this Deed.

Acquittal Date means the date specified in Item 5 of the Deed Details as the Acquittal Date, or another date agreed between the parties in writing.

Deed or the **Funding Deed** means this deed including all the Schedules and Attachments.

Deed Date means the date that this Deed is executed by the Recipient.

Details means Schedule A to this Deed.

Application includes all documentation the Recipient submitted in its funding application to the Regional Cultural Fund.

Approved Auditor means a person who is:

- (a) 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;
- (b) 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” have the same meaning as in section 9 of the *Corporations Act 2001 (Cth)*); and
- (c) not the Recipient’s Qualified Accountant.

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Audited Financial Statements means an organisation's accounts audited by an Approved Auditor in compliance with Australian Auditing Standards and Australian Accounting Standards.

Australian Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth).

Australian Auditing Standards means the standards prepared by the Auditing Standards Board of Australia and maintained by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth) or its international equivalent as determined by that Act.

Budget means a budget for the purposes of undertaking the Project and/or performing obligations under this Deed as set out in the Application or as agreed pursuant to a Variation.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, New South Wales, and concludes at 5pm on that day;

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

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) to a party, or acquired by a party which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential; or
- (c) the party knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed;
- (e) is in a party's lawful possession without restriction in relation to disclosure before the date or receipt of the information from another party or a third party;
- (f) has been developed or acquired by a party independently of this Deed;
- (g) is ascertainable through independent enquiries;
- (h) may be or is required to be disclosed pursuant to Premier's Memorandum No. 2007-01 Public Disclosure of Information arising from NSW Government Tenders and Contracts dated 8 January 2007, as amended or updated from time to time; or
- (i) is required to be disclosed pursuant to law, regulation, legal process or by a regulatory authority.

Conflict of Interest means an actual or perceived conflict between a person's public duty and their private or personal interest.

Department where the context permits, includes officers, delegates, employees and agents and successors of the Department of Premier and Cabinet (ABN 36 081 905 761).

Digitisation Standards means the *Crystal Clear – Standards and guidance for digitising regional collections held in museums, galleries, keeping places and cultural centres* prepared by Museums and Galleries NSW that is at Attachment 7 to this Deed and any

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update to those Standards as may be issued by Museums and Galleries NSW from time to time and provided to the Recipient .

Existing Material means all Material in existence prior to the commencement of this Deed:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Project Material.

Final Project Status Report means a report confirming that the Project has been completed, the actual cost of the Project and the date the works comprised in the Project were made available for use by the local community in-line with this Deed.

Funding Amount means:

- (a) the funding amount payable by the Department under this Deed as specified in Item 3 of the Details; and
- (b) any interest earned on the funding once paid by the Department to the Recipient.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW) (as amended from time to time).

Governance Terms of Reference means the terms for the Project Governance, including Create Infrastructure involvement as contained in Attachment 5.

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.

Hub means the anchor organisation such as a Council owned museum, library, Aboriginal Keeping Place, archive or gallery in a regionally central physical location with some existing capacity to grow digitisation capabilities and partner with smaller organisations to extend the reach of regional digitisation.

Insolvency Event means the occurrence of any liquidation or insolvency event, including the appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

Intellectual Property Rights includes all copyright (including rights in relation to recordings and broadcasts), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, and all other rights resulting from intellectual activity in the literary or artistic fields whether registered or not and whether existing in Australia or not and created at any time.

Law includes:

- (a) Acts of the Commonwealth and the State(s) and Territory(s) in which the Project will be undertaken, and any other relevant State or Territory;
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);

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- (c) directions by any person exercising statutory powers regarding the Recipient or the Activity; and
- (d) all the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Activity,

whether currently in force or coming into force on or after the date of this Deed.

Material includes documents, equipment, software, goods, information and data stored by any means including all copies and extracts of the same.

Milestone means a milestone or stage of completion of the Project as set out in Schedule B (or as amended by a Variation Deed).

Moral Rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed as defined in the *Copyright Act 1968* (Cth).

Payment means that part of the Funding Amount released for the Project, from time to time, in accordance with Schedule B to this Deed.

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

Project means the digitisation project under which the Department has agreed to provide funding to the Recipient as further described at Schedule A Item 4 of this Deed.

Project Control Group (PCG) is responsible for monitoring performance against project objectives, approving key engagements, deliverables, processes and endorsing project decisions – of budget, procurement and release of funds. The PCG is a collection of key stakeholders or their representatives that meets regularly to keep the project on track in matters including, but not limited to time, cost and quality. PCG roles and responsibilities are further defined in Attachment 5.

Project Governance means the governance of the project in accordance with the Governance Terms of Reference.

Project Scope means the works as described in the project plan and other documentation submitted to Create Infrastructure – through Smarty Grants in connection with the Application. It includes all plans, descriptions, costings, quotes, concepts, pictures and briefs that were uploaded as a part of the RCF Application.

Project Material means all Material:

- (a) brought into existence for the purpose of performing obligations under this Deed;
- (b) incorporated in, supplied or required to be supplied along with the Material brought into existence for the purpose of performing obligations under this Deed; or
- (c) copied or derived from material referred to in this definition above.

Project Status Report includes information about the Project to be provided to the Department in the format outlined at Attachment 1 to this Deed. Information to be included in the progress status report and timeframes are specified at Schedule B to this Deed.

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Recipient includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient.

Recipient Contribution means the amount of the Recipient's funds or any other contribution, whether financial or in-kind resources (with in-kind resources valued at cost), other than the Funding Amount, which are specified in Schedule A and are to be used by the Recipient to perform the Project.

Recipient Created Tax Invoice (RCTI) means a tax invoice created by the Recipient which complies with the Tax Invoice Requirements.

Records includes documents, information and data stored by any means and all copies and extracts of the same relating to the Funding Amount or the Project.

Regional Cultural Fund or RCF means the fund established by the NSW Government to support local communities and help the development of cultural infrastructure including the Digitisation program to enable bold and exciting arts and culture that reflects the rich diversity of regional NSW.

Regional Cultural Fund Digitisation Round Guidelines or Project Guidelines means the document published by the Department which sets out the intent of the Regional Cultural Fund as well as eligibility for funding, the application process and acceptable uses of funds under which the Funding Amount has been granted to the Recipient.

Representative means the Department's representative or Recipient's representative identified in Item 1 of the Details (Schedule A), as the context requires. The Departments' Representative may delegate authority to another member of the Department to undertake duties on their behalf.

Schedule means a schedule to this Deed and may include Annexures and incorporate other documents by reference;

Special Conditions means the requirements specified at Item 2 of the Details (Schedule A).

Spoke means smaller, possibly volunteer-led cultural organisation in the selected region(s) with digitisation capabilities that will be enhanced by leveraging the service connection with its hub.

Tax Invoice Requirements means the requirements for tax invoices as outlined in Schedule B to this Deed.

Term means the duration of this Deed, beginning on the Deed Date and ending on the Acquittal Date.

Unexpended Funding means any part of the Funding Amount that is unspent on the completion of the Project or Project Scope and includes any part of the Funding Amount that is committed but unspent. This may include the contingency.

Variation means any notable change to the Projects approved outcomes, scope, budget, components, location, completion timeframe, key milestone dates and use of RCF funding. Any variation will require the submittal and approval of a Variation Request Form in Accordance with Schedule D.

Variation Request means a request for variation of the terms of this Deed made by way of a Variation Request Form.

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Variation Request Form means Attachment 4 to this Deed.

Variation Schedule means changing an aspect/s of the Project including changes to the milestones, payment schedule, proposed works, key project team, the timeframe for delivery of activities or the Budget. Variations must be submitted using a Variation Request Form (Attachment 4 to this Deed) and approved by the Department.

1. Interpretation:

Except where the context otherwise requires:

- (a) a singular number includes a reference to a plural number and vice versa;
- (b) any person or company will mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
- (c) words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents;
- (d) statutes, regulations, ordinances or by-laws will be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (e) “includes” and “including” mean by way of example but without limitation;
- (f) monetary references are references to Australian currency;
- (g) where any time limit is pursuant to this Deed falls on a Saturday, Sunday or public holiday in the State of New South Wales then that time limit will be deemed to have expired on the next Business Day;
- (h) where a party is comprised of more than one person, each of that party’s obligations will bind those persons jointly and severally and will be enforceable against them jointly and severally;
- (i) the headings used in this Deed are for convenience only and will not affect the interpretation of this Deed;
- (j) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Deed or any part of it;
- (k) this Deed is binding when the first party executes the Deed;
- (l) where there occurs a reference to the doing of anything by the Department including giving any notice, consent, direction or waiver, this may be done by any officer we duly authorise; and
- (m) the Special Conditions (if any) amend the operative provisions of this Deed as specified in Item 2 of the Details.

2. Term

2.1 This Deed commences on the Deed Date and, unless terminated earlier, will continue for the Term.

2.2 The Recipient must commence and complete the Project by the Project commencement date and the Project completion date, respectively, as specified in Item 4 of the Details.

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3. **Provision of Funding Amount**

3.1 **Precondition to Funding**

The Recipient agrees that it is a precondition of entitlement to the Funding Amount that the Recipient must:

- (a) provide to the Department satisfactory evidence that the Recipient is an entity capable of entering into this Deed and provide all such required identification details including an ABN;
- (b) correctly use the Recipient's name on all documentation provided to the Department;
- (c) have an ABN;
- (d) immediately notify the Department if the Recipient ceases to hold an ABN;
- (e) correctly quote the Recipient's ABN on all documentation provided to the Department;
- (f) supply proof of the Recipient's GST status.
- (g) immediately notify the Department of changes to the Recipient's GST status.

3.2 **Funding Amount**

- (a) Subject to compliance by the Recipient with this Deed, the Department will provide up to a maximum of the Funding Amount to the Recipient for the Project. The Funding Amount will be paid to the Recipient by instalments in accordance with the payment milestone schedule specified in Schedule B of the Details, and subject to the terms of this Deed.
- (b) The Recipient agrees to receive, and must only use, the Funding Amount for the Project in accordance with the terms of this Deed.
- (c) The Funding Amount is the maximum amount of funding that the Department will pay to the recipient.
- (d) Recipients must demonstrate that the funding has been expended up to the amount claimed for payment.
- (e) The entire Funding Amount will not be paid to a Recipient if it is not required to complete the project.
- (f) The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funding Amount.

3.3 **Timing of payment:**

Prior to the Department making any Payments in accordance with this clause 3, the Recipient must provide to the Department a request for Payment with:

- (a) a valid Recipient Created Tax Invoice (RCTI) (including separate itemisation of the GST component) in accordance with the Tax Invoice Requirements for the relevant portion of the Funding Amount requested;

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- (b) a Project Status Report meeting the description and requirements specified at Schedule B to this Deed; and
- (c) any other supporting evidence and documentation to support satisfaction of the relevant Milestone, as reasonably requested by the Department.

3.4 Recipient's Contribution to the Project

- (a) The Recipient must make the Recipient Contribution towards the Project.
- (b) The Recipient must ensure all Recipient Contributions have been secured for the Project on or before 31 December 2021.
- (c) The Recipient must notify the Department immediately if the Recipient is or may not be able to comply with clause 3.5 (a) or clause 3.4 (b).
- (d) The Department may terminate this Deed under clause 18 if the Department decides in its absolute discretion that the Recipient is unable or may be unable to comply with this clause 3.4.
- (e) The Recipient must, when presenting of request for a Milestone Payment pursuant to Schedule B at any time after 31 December 2021, provide evidence that it has made or secured in full the Recipient Contribution.

3.5 Project Costs

The Recipient acknowledges and agrees that the Funding Amount for the Project is the maximum amount to be paid under the Regional Cultural Fund towards the carrying out of the Project and that the Recipient:

- (a) has completed an adequate scope of works for the Project (as identified in the Application and any deliverables outlined in Schedule B);
- (b) has completed an appropriate estimation of the costs of carrying out the Project;
- (c) is responsible for any costs that may be incurred at any time that exceed the Funding Amount for the Project (whether or not the Recipient expected to incur such costs);
- (d) (or a nominated party) is responsible for ensuring all ongoing operational and maintenance costs arising from the Project (including any such costs incurred after the Term) are adequate for the ongoing life of the facility; and
- (e) must procure any additional funding above the Funding Amount that is necessary to ensure the Project is delivered and maintained in accordance with the terms of this Deed.

3.6 Management of Funding

The Recipient agrees to spend the Funding Amount only for the Project and in accordance with:

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- (a) this Deed; and
- (b) the Budget.

The Recipient agrees to obtain prior written approval from the Department for any transfer or reallocation of more than 5% of any budget category.

3.7 Right to Withhold Funding

If the Recipient is not complying with this Deed, the Department may provide the Recipient with a notice complying with clause 22 advising that the Department is withholding all or part of the Funding Amount until the Recipient complies with its obligations to the Department's satisfaction, and may so withhold all or part of the Funding Amount. If the Department withholds any part of the Funding Amount, the Recipient must continue to perform its obligations under this Deed.

3.8 Repayment of Funding

Without limiting the Department's rights under this Deed, the Department may by notice in writing complying with the requirements of clause 22, recover some or all of the Funding Amount from the Recipient (as a debt due and payable on demand) in any of the circumstances set out below:

- (a) the Recipient is paid more than the Funding Amount;
- (b) the Recipient has incorrectly claimed a Payment of some or all of the Funding Amount;
- (c) the Recipient abandons the Project (whether or not the Department has terminated the Deed in accordance with clause 18) and does not resume performance of the Project within 10 Business Days after receiving notice requiring it to do so;
- (d) any part of the Funding Amount is unspent at the expiry of the Term;
- (e) the Recipient has not spent the Funding Amount in accordance with this Deed;
or
- (f) an Insolvency Event occurs in respect of the Recipient (whether or not the Department has terminated the Deed in accordance with clause 18).

3.9 No Capacity

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

- (a) manage the funding it receives from the Department pursuant to this Deed; or
- (b) undertake the Project in accordance with this Deed, or

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the Recipient breaches this Deed and the Recipient fails to remedy that breach within a reasonable time following receipt of a written request from the Department,

the Department may by notice in writing complying with the requirements of clause 22 immediately do any or a combination of the following:

- (c) suspend, reduce or cease the release of the Funding Amount or any portion thereof to the Recipient;
- (d) require the Recipient to refund some or all of the Funding Amount to the Department; and
- (e) terminate the Deed in accordance with the provisions of clause 18.

3.10 General

- (a) If the Department exercises its rights in accordance with clause 3.4(d), clause 3.7 clause 3.8 or clause 3.9, the Recipient must, within 20 Business Days after the date of the notice, repay or refund the Funding Amount (or part thereof) as specified in the notice.
- (b) The Department making any Payment under this Deed does not constitute an admission that the performance of any part of the Project is in conformity with this Deed and no Payment will be deemed to release the Recipient from its obligations under this Deed.

4. Bank Account

- 4.1 To process and record all Payments, the Recipient must maintain an existing general account at a financial institution where adequate internal financial controls are in place for the identification of the Payments which is an authorised deposit-taking institution, located in New South Wales, including a bank, credit union or building society ('bank account').
- 4.2 Any interest earned on the Payments held in a bank account must be used solely for the purpose of the Project.
- 4.3 On request from the Department, the Recipient must provide evidence of the separate financial controls in place in relation to the Funding Amount.

5. Responsibility of the Recipient

- 5.1 The Recipient must carry out the Project:
 - (a) lawfully, diligently, efficiently, safely, using all proper care and to a high professional standard;
 - (b) in accordance with the terms and conditions of this Deed and any Variation approved by the Department from time to time;
 - (c) in accordance with all information, plans and specifications submitted with the Application;

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- (d) in accordance with all laws, policies, guidelines and reasonable directions from the Department;
 - (e) in accordance with the Recipient's Budget submitted in the Application or as otherwise modified by the Department in this Deed;
 - (f) in accordance with any Special Conditions (Schedule A, Item 2) including adherence to the Departments' Project Governance requirements; and
 - (g) diligently and to a high standard.
- 5.2 The Recipient must comply with the Regional Cultural Fund Digitisation Round Guidelines (RCF) and the Application conditions.
- 5.3 The Recipient acknowledges and agrees that it is solely responsible for delivery and completion of the Project within the Term.
- 5.4 The Recipient must ensure that all personnel employed or engaged by the Recipient to work with any person under the age of 18 in connection with any part of the Project undergoes a Working with Children Check in accordance with the procedures set down by the Office of the Children's Guardian (or equivalent body from time to time);
- 5.5 The Recipient must hold all rights, permissions, approvals and consents required to conduct the Project, and otherwise fulfil its obligations under this Deed.
- 5.6 The Recipient must not do anything that would cause the Department to breach its obligations under any legislation.
- 5.7 The Recipient must complete each Milestone by the date specified for completion of that Milestone, to the satisfaction of the Department.
- 5.8 The Recipient, at its first recognition of such, submit a Variation Request Form for the predicted change in milestone achievement or date of achievement.
- 5.9 The Recipient must use the Funded Amount only for the purpose of the Project and for no other purpose.
- 5.10 The Recipient is fully responsible for the performance and successful delivery of the Project and for ensuring compliance with the requirements of this Deed, and will not be relieved of that responsibility because of any:
- (a) involvement by the Department in the performance of the Project;
 - (b) subcontracting of the Project;
 - (c) acceptance by the Department of Specified Personnel; or
 - (d) payment of any amount of Funding Amount to the Recipient.

The Recipient may not rely on any advice or representation made by the Department but must make its own enquiries and rely on its own advice and advice from its consultants.

- 5.11 The Recipient agrees to comply with all of the Department's reasonable requests, directions, monitoring or reporting requirements.

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- 5.12 The Recipient agrees to keep financial accounts and records relating to the Funded Amount and Project that identify:
- (a) all receipts and payments related to the Project; and
 - (b) all interest earned on the Funded Amount.
- 5.13 In relation to conducting a final review and final evaluation of the Regional Cultural Fund , the Recipient agrees to:
- (a) respond to all of the Department’s reasonable requests; and
 - (b) provide all reasonable assistance required by the Department;
 - (c) provide any information the Department reasonably requires.

6. Project Status Reporting and Keeping Records

- 6.1 The Recipient must provide a Project Status Report to the Department at each Project Control Group meeting and as set out within the Milestone Reporting Requirements at Schedule B to this Deed.
- 6.2 Each Project Status Report must be in the format set out in the Attachments to this Deed and must address the matters specified, including the extent to which (and the times at which) Milestones have been completed, and whether the relevant outputs or outcomes in the table have been realised. Any major changes to the Project and any major issues arising out of the Project must be outlined in the Project Status Report.
- 6.3 The Department may also request a Project Status Report or other reports on a regular basis, outside of the Milestones or Project Control Group meetings as noted, to provide an update on project progress.
- 6.4 Each Project Status Report must be endorsed by the Recipient’s representative identified in Item 1 of the Details (Schedule A) before being provided to the Department.
- 6.5 The Recipient must, within 10 Business Days after a request, provide the Department with any additional Project Status Report, Budget or Records the Department requires.
- 6.6 The Recipient must participate in any survey or feedback request made by the Department, whether during or after the actual completion of the Project, including any:
- (a) confirmation questionnaire regarding the benefits of assistance received from the Department;
 - (b) independent survey of the Department’s service levels, and the effectiveness of assistance provided; and
 - (c) the Department’s survey of Project outcomes.
- 6.7 The Recipient must create and maintain full and accurate accounts and records of the conduct of the Project including, without limitation, all:

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- (a) progress against the Milestones;
- (b) receipt and use of the Funding Amount;
- (c) Recipient Contributions (if any); and
- (d) creation, acquisition and disposal of Project assets.

7 Project Review and Evaluation

- 7.1 The Recipient must make and keep full and accurate Records and must retain such Records for a minimum of 7 years after expiry or termination of this Deed.
- 7.2 The Department may, at the Recipient's cost, appoint an Approved Auditor to conduct audits under this Deed.
- 7.3 If the Department wishes to conduct an audit under this Deed, the Recipient must:
- (a) permit reasonable access to and the copying of the Recipient's financial and other records by any appropriate person duly authorised by the Department;
 - (b) answer all reasonable enquiries by any person duly authorised by the Department; and
 - (c) provide reasonable assistance to any person duly authorised by the Department in the conduct of the audit or inspection.
- 7.4 The Recipient must if required provide the Auditor-General of NSW with access to accounting records and documentation in respect of the Funding Amount provided under this Deed.
- 7.5 The Recipient's representative identified in Item 1 of the Deed (Schedule A) must keep the Department up-to-date on all matters relevant to this Deed and must regularly communicate with the Department's representative.
- 7.6 The Recipient agrees to disclose to the Department all material matters that might have an impact on the Recipient's obligations under this Deed or on its financial situation or governance. Where possible, that disclosure is to occur at least 10 Business Days prior to the event that constitutes such a material matter occurring. Such events, requiring 10 Business Days' notice include:
- (a) any changes to key personnel including the chair, chief executive officer or equivalent and artistic director;
 - (b) any expected significant negative variation to projected end-of-year financial results and the Recipient's proposed strategies to address the negative variation;
 - (c) any changes to the Recipient's board composition, including expertise and special responsibilities of any new board members;
 - (d) Any changes to project timeframes; and
 - (e) an Insolvency Event.

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- 7.7 The Recipient must give the Department further information or Records within 10 Business Days after a request, or explanations as reasonably required by the Department.
- 7.8 The Recipient agrees to participate in Regional Cultural Fund evaluation, including baseline and outcome data.

8 Project Finalisation

The Recipient must provide to the Department, within 1 month of actual completion of the Project or by 30 June 2022, whichever is the earliest:

- (a) an Acquittal and Financial Certification in the format set out in Attachment 3 to this Deed or as otherwise approved and communicated by the Department; and
- (b) a Final Project Status Report endorsed by the Recipient's representative identified in Item 1 of the Deed.

9 Sub-Contractors

- 9.1 The Recipient remains fully responsible for the performance of the Project if the Recipient subcontracts the performance of any part of the Project.
- 9.2 The Recipient must ensure that all Funding Deed, Contractors, Sub-Contractors or project partners (if any) and any person engaged to carry out the work:
- (a) have appropriate skills, qualifications and experience, and hold the appropriate licences and insurances, for the work they have been engaged to perform; and
 - (b) adhere to all regulatory requirements associated with carrying out the Project.
- 9.3 Neither NSW Government nor the Department accept any responsibility or liability for works carried out and bear no responsibility for the Project.
- 9.4 Unless the Department agrees otherwise, the recipient must have a written contract with each of the Recipient's subcontractors (subcontract) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Deed. If requested by the Department, the Recipient must notify the Department of any subcontractors appointed to carry out any of the Recipient's obligations under this Deed. The Recipient must notify the Department no later than 20 Business Days after the request from the Department.
- 9.5 The Recipient must, in any subcontract placed with a subcontractor, include a requirement for insurance that is consistent with the requirement for insurance under clause 13.
- 9.6 The Recipient is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Deed.
- 9.7 The Department may direct the Recipient to terminate a subcontracting arrangement by notifying the Recipient in writing.

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9.8 The Recipient must, in any subcontract placed with a subcontractor, reserve a right of termination to take account of:

- (a) the Department's right to direct the Recipient to terminate that subcontract under clause 9.7; and
- (b) the Department's right of termination under clause 18.

The Recipient must make use of that right in the event of a termination by the Department.

10 Acknowledgement and Publicity

- 10.1 The Recipient must acknowledge the Funding Amount received from the Department for the Project in accordance with the NSW Government's Funding Acknowledgement Guidelines for recipients of NSW Government infrastructure grants (the Funding Acknowledgement Guidelines, available at <https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf>)
- 10.2 The Recipient must, unless the Department agrees otherwise, use the NSW Government's Waratah logo as set out at: <https://communications.dpc.nsw.gov.au/branding/> in conjunction with all acknowledgements of NSW Government support in accordance with the Funding Acknowledgement Guidelines.
- 10.3 The Recipient must provide the Department with at least 30 Business Days' notice of any proposed announcements, launches or public events relating to the Project, and provide an opportunity for a representative of the NSW Government to attend and speak at the launch or event.
- 10.4 The Department may, in its sole discretion, issue public communications on the provision of the Funding Amount to the Recipient and the progress of the Project. Where practicable to do so, the Department will give notice of such communications and their content to the Recipient.
- 10.5 If the Department determines that the Project (or any part of it) is not consistent with the purposes for which the Recipient was funded, and the Department gives the Recipient written notice of this, the Recipient must promptly remove the Department's acknowledgement and logo from all programs, promotional material and other printed or electronic material and publications relating to the Project.

11 GST and TAX

- 11.1 The parties agree that all amounts referred to in this Deed are exclusive of GST.
- 11.2 If GST is imposed upon any supply made under this Deed (Taxable Supply) then the recipient of the Taxable Supply will pay to the supplier, in addition to any consideration payable for that Taxable Supply under this Deed (the Consideration), the amount of GST imposed upon the Taxable Supply.
- 11.3 Any increased amount will be payable to the supplier in the same manner and at the same time as the Consideration is payable to the supplier, provided that the recipient has received from the supplier a tax invoice in the form required by the GST Law,

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setting out the amount of GST payable by the supplier on the Taxable Supply, and evidence of the supplier's registration for the purposes of GST. In all cases, any increased amount must be paid within 14 days of receipt of such tax invoice.

- 11.4 The Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Deed.

12 Indemnity and Release

- 12.1 The Recipient must at all times indemnify and keep indemnified, hold harmless and defend the Department, the Crown in right of the State of New South Wales and its officers, employees and agents (those indemnified) from and against any liability or loss (including reasonable legal costs and expenses), which is suffered or incurred 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 any of the following:
- (a) a breach of this Deed by the Recipient;
 - (b) any unlawful, wrongful, wilful or negligent act or omission of the Recipient, or the officers, employees, agents, contractors or volunteers of the Recipient, in connection with this Deed;
 - (c) any illness, injury or death of any person caused or contributed to by the Recipient, the Recipient's employees, invitees, contractors, subcontractors in connection with this Deed or the Project;
 - (d) any loss or damage to real or personal property caused or contributed to by the Recipient, the Recipient's employees, invitees, contractors, subcontractors in connection with this Deed or the Project; or
 - (e) any act or omission by the Recipient, the Recipient's employees, invitees, contractors, subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
- 12.2 The liability of the Recipient to indemnify those indemnified under this Deed will be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.
- 12.3 The indemnity contained in this clause is a continuing obligation of the Recipient separate and independent of any other responsibility of the Recipient and will continue beyond the Term.
- 12.4 The Recipient agrees to release and discharge those indemnified from any action, proceedings, Claim or demand which, but for this provision, might be brought against or made upon those indemnified.

13 Insurance

- 13.1 The Recipient must maintain during the Term all appropriate insurance policies including, but not limited to:

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- (a) workers compensation insurance as required by law (or personal income protection insurance in the instance of the Recipient being a business) for all employees, sub-contractors and volunteers involved in the delivery of the Project;
 - (b) public liability insurance to the value of not less than \$20 million in respect of each and every occurrence and unlimited in the aggregate for any one period of cover; and
 - (c) insurance over all assets used in connection with the Project funded or partly funded by the Funding Amount, for their full replacement value.
- 13.2 On request by the Department, the Recipient must provide a copy of valid and current certificates of currency for the insurance and/or a warranty from its insurer that the policy extends to the Department and covers potential liability arising under this Deed.
- 13.3 The Recipient must not do, permit or suffer any act, matter or thing or omission whereby the policy referred to in this clause may be vitiated, rendered void or voidable.
- 13.4 The insurance must cover liability of subcontractors and volunteers that may be involved in the Project.
- 13.5 The Recipient must comply with all reasonable requirements of the Department in relation to:
- (a) the identity of the insurer;
 - (b) the amount of any deductible or excess;
 - (c) the insurance being in the joint names of the Department and the Recipient, or noting the Department's interest on the policy;
 - (d) not containing unacceptable or non-commercial exclusions from cover;
 - (e) the Department receiving a notice, at the same time as the Recipient in relation to key policy events such as claims, cancellation, expiry and non-renewal; and
 - (f) inspecting the full terms of the policies of insurance for compliance with the Deed.

14 Intellectual Property

- 14.1 The Recipient owns the Intellectual Property Rights in all Project Material, subject to clause 14.2. Nothing in this clause affects the ownership of any Intellectual Property Rights in any Existing Materials.
- 14.2 The Recipient grants, and must arrange for any relevant third party to grant, to the Department, without cost, a permanent, perpetual, irrevocable, free, worldwide, non-exclusive licence (including a right of sublicense) to use the Intellectual Property Rights in the Project Material for the Specified Acts (as defined in clause 14.3).

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- 14.3 For the purposes of clause 14, the 'Specified Acts' means any of the following classes or types of acts or omissions by or on behalf of the Department:
- (a) using, reproducing, communicating (including communicating to the public), modifying or adapting all or any part of the Project Material, with or without attribution of authorship; and
 - (b) using the Project Materials in a different context to that originally envisaged.
- 14.4 The Department licenses the Recipient to use the Department's Existing Material (including copying it and supplying it to others), but only for the purposes of this Deed. The Recipient uses any of the Department's Existing Material at its own risk.
- 14.5 The Recipient must ensure that it has obtained all relevant Moral Rights consents in writing in connection with the Project Material and licences under clause 14.2. The consents must cover acts done before or after the date of the consent, and whether done by the Department or by someone claiming under or through the Department. On request by the Department, the Recipient must provide the Department with the original of the consent.
- 14.6 On request by the Department, the Recipient must bring into existence, sign or otherwise deal with any document which is considered necessary or desirable to give effect to this clause 14.
- 14.7 The Recipient will enter into a deed in the form at Attachment 6 through which it will grant to Museums and Galleries NSW a licence to publish all images of collection items and associated data created or brought about as part of the Project for non-commercial use.

15 Confidentiality

- 15.1 Each party must keep the Confidential Information of each other party in confidence and not disclose the Confidential Information to any person without the other party's prior written consent, subject to clauses 15.2 and 15.3.
- 15.2 **Limited Disclosure:** A party may disclose the Confidential Information of another party to their personnel and legal and professional advisors provided they ensure that the such persons:
- (a) keep the Confidential Information confidential; and
 - (b) do not use the Confidential Information except for the purposes of this Deed.
- 15.3 The Recipient acknowledges that the Department may disclose certain information in relation to the Deed (including Confidential Information), in accordance with the Department's obligations under the GIPA Act, or any other legal right of information requests.
- 15.4 The Recipient must, within 5 Business Days after receiving a written request from the Department, provide the Department with immediate access to information that the Department advises the Recipient is required to be disclosed in accordance with the Department's obligations under the GIPA Act, or any other legal right of information requests.

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Privacy

16.1 The Recipient will:

- (a) ensure that Personal Information that is provided by the Department or collected by the Recipient under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, authorised access, use modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the prior 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 the Recipient 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 conducting the Project under this Deed.

16 Variation

- 16.1 This Deed may only be varied by written agreement between the parties in accordance with the Variation Request Form (Attachment 4 to this Deed) or any other Variation document required by the Department.
- 16.2 The Department may issue a Variation document at any time throughout the term of the Project.
- 16.3 Except and to the extent only of the variations contained in the Variation document, the Principal Deed (this Deed) shall remain in full force and effect and the parties severally agree to remain bound by the Principal Deed, as varied by the Variation document.

17 Ending this Deed

- 17.1 **Termination for default:** The Department may terminate this Deed immediately by notice in writing to the Recipient complying with clause 22 if any of the following occur:
- (a) the Department is satisfied that any statement made by the Recipient in the Application or any other information provided by the Recipient is incorrect, incomplete or misleading in a way that may have affected the decision to approve the Funding Amount, the terms and conditions of this Deed, or any action taken by the Department under this Deed;
 - (b) the Recipient breaches any of its obligations under this Deed and the Department considers that the breach cannot be rectified, or the Recipient has

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failed to remedy a breach of this Deed within 10 Business Days after receiving a Notice to Remedy from the Department;

- (c) the Recipient varies the Project without the Department's written approval;
- (d) the Recipient fails to satisfactorily meet the Milestones or deliver the Project or the Department considers that the Project is no longer viable;
- (e) an Insolvency Event occurs in relation to the Recipient;
- (f) the Recipient is unable to proceed with the performance of its obligations by reason of force majeure, war, strikes, riot or civil commotion (whether war be declared or not) or any other circumstance whatsoever beyond the Recipient's control;
- (g) the Recipient acts in a manner that will cause damage to the Department's reputation;
- (h) the Recipient does not use the expertise, skill, diligence and care in carrying out the Project, as outlined in this Deed, to be expected from an experienced provider of activities of this nature;
- (i) the Recipient is not properly certified or accredited to undertake the Project, as outlined in this Deed;
- (j) the Recipient does not lawfully carry out the Project, as outlined in this Deed, in a timely manner; or
- (k) the Department considers that any non-compliance of any of the Recipient's obligations under this Deed are not capable of remedy.

The Department is not liable to pay the Recipient any compensation or costs if this Deed is terminated in accordance with clause 18 and the Recipient irrevocably and unconditionally releases the Department, the Crown in right of the State of New South Wales and their officers, employees and agents in respect of such termination.

18 Maintenance of Assets

- 18.1 **Non-digitised assets:** The Recipient agrees to maintain and not to demolish, eradicate, remove, dispose of, transfer or otherwise interfere with the infrastructure, facilities or equipment ('non-digitised assets') created by or bought as part of the Project for 5 years after actual completion of the Project without obtaining the prior written consent from the Department.
- 18.2 As the Funding Amount is provided to benefit the local community, conversion or disposal of non-digitised assets funded through the Regional Cultural Fund through sale or otherwise is not consistent with this purpose. The Recipient must notify the Department immediately if the Recipient intends to convert or dispose of any non-digitised asset within 5 years of the actual completion of the Project.
- 18.3 On request by the Department through a notice complying with clause 22, the Recipient must repay the Department all or part of the Funding Amount within one month of the disposal or conversion of the non-digitised asset if that disposal or conversion occurs within 5 years of the actual completion of the Project.

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- 18.4 **Digitised assets:** The Recipient agrees to maintain and store all images of collection items and associated data ('digitised assets') created or brought about as part of the Project in perpetuity. At the request of the Department, the Recipient must provide evidence of such maintenance and storage and public access to the digitised assets.
- 18.5 Any repayment the Department claims from the Recipient under clause 18.3 will be a debt due and payable by the Recipient to the Department.

19 Continuing Obligations

- 19.1 Rights and remedies not prejudiced: Any termination of this Deed by the Department is without prejudice to any accrued rights or remedies of the Department.
- 19.2 Survival: Clauses 7 (Project Review and Evaluation), 12 (Indemnity and release), 13 (Insurance) 14 (Intellectual Property) 15 (Confidentiality), 16 (Privacy), 18 (Maintenance of Assets) and this clause 20 (Obligations when this Deed ends) and any other clause of this Deed which by its nature should survive termination will survive termination, expiry or repudiation of this Deed.

20 Dispute Resolution

- 20.1 The parties must attempt to settle any dispute in relation to this Deed in accordance with the following provisions, before resorting to court proceedings or other dispute resolution process.
- 20.2 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 22.
- 20.3 Following receipt of a Dispute Notice, each party must refer the dispute that is the subject of the Dispute Notice 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.
- 20.4 If the dispute is not resolved within 14 Business Days or within such further period as the parties agree in writing, 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 21.2 must refer the dispute to the Australian Disputes Centre Limited (**ADC**) for resolution in accordance with the mediation rules of the ADC.
- 20.5 If the dispute is not resolved within 28 Business Days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.
- 20.6 Each party must pay its own costs of complying with this clause 21 and split the costs of the mediator evenly.
- 20.7 Nothing in this clause 21 will prevent either party from seeking urgent interlocutory relief.

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21 Notices

- 21.1 Change of contact details: The parties must inform each other within 7 days of any changes to its contact details set out in Item 1 of the Details at Schedule A to this Deed.
- 21.2 Insolvency Events: The Recipient must immediately notify the Department of any resolution by the Recipient to go into administration or liquidation or to enter into any scheme or arrangement with creditors under the *Corporations Act 2001* (Cth) or any applicable insolvency law.
- 21.3 Notice Requirements: A notice under this Deed must be in writing, and hand-delivered, posted or emailed to the Representative of the other party as specified in Item 1 of the Details.
- 21.4 When a notice is served: A notice under this Deed will be deemed to be served:
- (a) in the case of delivery in person – when delivered to the recipient’s address for service and a signature received as evidence of delivery;
 - (b) in the case of delivery by post – on the day which is within four (4) Business Days after the date of posting;
 - (c) in the case of delivery by email – at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- 21.5 Delivery late in the day: Notwithstanding clause 22 (Notices), if delivery or receipt of a Notice is on a day which is not a Business Day or is after 5pm on a Business Day, then it will be deemed to have been received on the next Business Day in that place.

22 General

- 22.1 **Entire agreement:** This Deed, its attachments and items referenced there-in, constitutes the entire agreement and understanding between the parties as to the subject matter of this Deed. Any prior arrangements, representations or undertakings as to the subject matter of this Deed are superseded, whether orally or in writing.
- 22.2 **Non-waiver:** No failure or delay by a party in exercising any right, power or remedy under this Deed and no course of dealing or grant by a party to the other party of any time or other consideration, will operate as a waiver of the breach or a default by a party. Any waiver by a party of a breach of this Deed will not be construed as a waiver of any further breach of the same or any other provision.
- 22.3 **Conflict of interest:** The Recipient warrants that at the date of this Deed, no Conflict of Interest exists or is likely to arise in relation to execution of this Deed or its subject matter. The Recipient must immediately notify the Department, in writing, upon becoming aware of the existence, or possibility, of a Conflict of Interest and must comply with any reasonable directions of the Department to appropriately manage the Conflict of Interest, within the time frame stipulated by the Department in writing.
- 22.4 **Assignment:** The Recipient must not assign or novate obligations or interests under this Deed without the prior written consent of the Department.

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- 22.5 **Severability:** If any part of this Deed is prohibited, void, illegal or unenforceable, then that part is severed from this Deed but without affecting the continued operation of the remainder of the Deed.
- 22.6 **Relationship:**
- (a) Nothing in this Deed is intended to create a partnership, joint venture, employment or agency relationship between the parties; and
 - (b) A party will not hold itself out to be an employee, partner, agent or representative of the other party.
- 22.7 **Applicable law:** The laws of New South Wales govern this Deed and the parties submit to the exclusive jurisdiction of the courts in that State.
- 22.8 **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 Deed and all transactions incidental to it.
- 22.9 **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.

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Schedule A –Details

Item 1: Contact Details

The Department	
Address:	52 Martin Place GPO Box 5341 Sydney NSW 2001
Representative:	Annette Pitman, Head of Create Infrastructure
Email:	regional@create.nsw.gov.au
Phone:	(02) 8289 6575

Recipient	
Organisation Name and Trading Name:	«Applicant_Name»
Address:	«Applicant_Postal_Full_Address»
Representative:	«Head_Of_Org_Name»
Email:	«Head_Of_Org_Contact_Primary_Email»
Phone:	«Applicant_Primary_Number»

Item 2: Special Conditions (amendments or additions to standard conditions)

«Special_Condition_One» Recipient hub to provide evidence of reconfirmed agreement with spokes on execution of Funding Deed

«Special_Condition_Two» Project Governance for the project will be in accordance with the Governance Terms of Reference, including the establishment of a monthly Project Control Group with representation from stakeholders including Create Infrastructure.

«Special_Condition_Three» Recipient must complete project by 30 June 2022, this includes submitting and securing Department approval of the project final report and financial acquittal and certification.

Item 3: Funding details

RCF Funding Amount

Funding Amount (Total)	«Amount_Approved» Ex GST
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Recipient Contributions

Amount (Cash and/or in-kind)	«Recipient_Contribution» Ex GST
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Item 4: Project Definition

Project Commencement Date:	No later than 1 month from receiving the first payment of the Funding Amount under the Deed
Project Completion date:	30 June 2022
Project Description:	«Project_Description»
Project Scope	«Scope»
Project Guidelines	The document published by the Department which sets out the intent of the Regional Cultural Fund Digitisation Round as well as eligibility for funding, the application process and acceptable uses of funds..

Item 5: Acquitting the Funding Amount

Acquittal Date	Within 1 month of project completion, or by 30 June 2022 whichever is the earliest, or upon termination of this Deed.
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To comply with the Department's reporting requirements, the Recipient must use the Project Acquittal and Financial Certification form (Final Payment). An example of this attached to this Deed in **Attachment 3**.

The Recipient must provide the Department with a Statement of Income and Expenditure and project budget breakdown showing expenditure and funding in accordance with the Reporting Requirement set out at **Schedule B** to this Deed. This must be prepared by an Approved Auditor or suitably qualified professional as approved by the Department.

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Schedule B – Funding schedule

Payment	Payment Amount (excl GST)	Milestone Description	<p style="text-align: center;">Supporting Documentation</p> <p style="text-align: center;">Prior to the Department making any Payments in accordance with this clause 3, the Recipient must provide to the Department a request for Payment with:</p>
1 st Milestone Payment	«First_payment 30%»	<p>«Milestone1»</p> <p>Project Plan showing budget, program, delivery method, resourcing structure, roles and responsibilities of stakeholders/spokes, list of equipment, training strategy, and digitisation content/volume</p>	A Project Status Report, Supporting Evidence and Documentation and an RCTI must be provided prior to the Department making any Payment.
2 nd Milestone Payment	«Second_Payment _10%»	<p>«Milestone2»</p> <p>Equipment Quotes, training program confirmation</p>	A Project Status Report, Supporting Evidence and Documentation and an RCTI must be provided prior to the Department making any Payment.
3 rd Milestone Payment	«Third_Payment_ 15%»	<p>«Milestone3»</p> <p>Acquisition of all equipment, digitisation studio set-up, staff training complete</p>	A Project Status Report, Supporting Evidence and Documentation and an RCTI must be provided prior to the Department making any Payment.
4 th Milestone Payment	«Fourth_Payment_ 15%»	<p>«Milestone4»</p> <p>Digitisation</p>	A Project Status Report, Supporting Evidence and Documentation and an RCTI must be provided prior to the Department making any Payment.
5 th Milestone Payment	«Fifth_Payment_ 30%»	<p>«Milestone5»</p> <p>50% of digitisation completed</p>	A Project Status Report, Supporting Evidence and Documentation and an RCTI must be provided prior to the Department making any Payment.
Final Project Report			Final Project Status Report, Project Acquittal & Financial Certification, Statement of Income and Expenditure, Support Evidence and Documentation.

Please note that the Department reserves the right to change the timing of Milestone Payments and conditions precedent required to trigger a Milestone Payment. At the Department's discretion any change will be notified to the Recipient in writing.

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Schedule B (continued) – Milestone Reporting Requirements

Reporting requirements:

1. You must provide to the Department:
 - (a) Reports meeting the description and requirements specified below, at the times and frequency specified below. We will prescribe the form of reports and manner of submission by written notice to you.
 - (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
Project Status Report	A report documenting progress of the Project (see example at Attachment 1 of this Deed). The report must address the progress of milestone achievement as outlined in your Application.	<p>The report must be signed by your authorised recipient representative as listed in Schedule A of the Funding Deed.</p> <p>The information in the Progress Report will be used to confirm expenditure of the Funding Amount, as well as provide evidence of meeting your Project Milestones as outlined in your Application.</p>	Report to be submitted on request of your next payment milestone or as requested by the Department.
Final Project Status Report	<p>A report documenting completion of the Project (see example template at Attachment 2 of this Deed); The report must address the achievement of milestones as outlined in your Application.</p> <p>Copies of promotional and marketing material and any media reports relating to the Project.</p>	<p>The information in the Final Project Status Report will be used to:</p> <ol style="list-style-type: none"> 1. Demonstrate how you achieved your Project's objectives as stated in the Recipient's Project Plan and those of the Regional Cultural Fund Digitisation Round. 2. Outline whether you met your key project milestones as outlined in your Application. 3. Evaluate the overall success of the Regional Cultural Fund Digitisation Round with specific reference to project outcomes 	<p>Report to be submitted within 3 months or the earlier of:</p> <ol style="list-style-type: none"> (a) the completion of the Project; (b) the expiry of this Deed; or (c) the termination of this Deed.

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Report name	Description	Special requirements	Reporting period and frequency of submission
Project Acquittal and Financial Certification	<ol style="list-style-type: none"> 1. A form confirming expenditure of the Funding Amount (see template at Attachment 3 of this Deed). 2. A Statement of Income and Expenditure 3. Supporting documentation and/or evidence of project completion. 	<p>The information in the Project Acquittal and Financial Certification form will be used to confirm expenditure of the Funding Amount.</p> <ol style="list-style-type: none"> 1. All unspent money must be returned to us either: <ol style="list-style-type: none"> (a) by cheque submitted with the Final Report; or (b) electronically by EFT direct to our bank, on the same day as the Final Report is submitted to us. <p>The Statement of Income and Expenditure for the whole Project must:</p> <ol style="list-style-type: none"> (c) show a breakdown of income, including funding income from all sources including recipient contribution, and all expenses demonstrating that the funding amount has been spent solely on the project and in accordance with the Deed. 	<p>To be submitted <u>by 30 June 2022</u> or earlier on:</p> <ol style="list-style-type: none"> (a) the completion of the Project; (b) the expiry of this Deed; or (c) the termination of this Deed.
Ongoing Reporting Requirements	<p>By entering into a Funding Deed under the RCF, you agree to provide the Department of Premier and Cabinet (the Department) the data necessary to evaluate the fund.</p> <p>This data will be held confidentially and only be presented holistically to evaluate the performance of the fund and your organisations data</p>	<p>The requested data may include:</p> <ol style="list-style-type: none"> 1. Baseline data (before RCF Funds) 2. Jobs (including volunteers) created within your organisation / region 3. Amount and detail of digitisation programs both current and future <p>And any other material/information the Department may reasonably require.</p>	<p>The Department will request data regularly via an online survey for a three-year period following the completion of the project. The survey must be completed and returned to the Department promptly.</p>

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Report name	Description	Special requirements	Reporting period and frequency of submission
	will not be published without your prior consent.		

2. You also acknowledge and agree:
 - (a) the Department will maintain regular contact with you to monitor implementation of this Deed including site visits as required by the Department;
 - (b) in addition to any other reporting obligations under this Deed, 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.
3. The Department may use any information contained in reports it receives from you subject to compliance with its obligations under this Deed not to disclose your Confidential Information.

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Recipient Created Tax Invoice (RCTI) Agreement

When issuing a Receipt Created Tax Invoices to the Department, the following applies.

1. All Tax Invoices must:
 - i. be clearly addressed to the Department of Premier and Cabinet
 - ii. be sent to the Regional Cultural Fund team, emailed to regional@arts.nsw.gov.au; and
 - iii. display prominently the words "Tax Invoice".
 - iv. be provided in Microsoft word or pdf format

2. All Tax Invoices must contain the following information:
 - a) creation date of the invoice
 - b) the name of the Project and RCF reference number
 - c) Your organisation's name and ABN
 - d) the instalment payment reference (e.g Milestone 1);
 - e) Vendor Purchase Order Number issued to you by the Department
 - v. the amount requested;
 - vi. the GST component (listed separately to the amount requested); and
 - vii. the total amount requested.

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Schedule C – Media

Media, Public Announcements and Acknowledgement

1. You must acknowledge the Funding Amount received from the Department for the Project in accordance with the NSW Government’s Funding Acknowledgement Guidelines for recipients of NSW Government infrastructure grants as set out at: <https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf>
2. You must, unless the Department agrees otherwise, use the NSW Government’s Waratah logo as set out at: <https://communications.dpc.nsw.gov.au/branding/> in conjunction with all acknowledgements of NSW Government support in accordance with the NSW Government Funding Acknowledgement Guidelines.
3. You must provide the Department with at least 30 business days’ notice of any proposed media releases, social media posts, announcements, launches or public events relating to the Project and/or the Regional Cultural Fund Digitisation Round, and provide an opportunity for a representative of the NSW Government to attend and speak at the launch or event.
4. Signage, including plaques, requirements are as per the NSW Government *NSW Funding Acknowledgement Guidelines* as set out in: <https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf> with particular reference to acknowledgement requirements in line with the Funding Amount received, signage production and approval processes.
5. All images provided to the Department as part of your Project Status Reports need to meet the following requirements:
 - File format – JPEG, no smaller than 1MB (High resolution).
 - Indicate what the image is of, provide the names of anyone shown within the image and the name of the photographer.

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Schedule D – Variations

The Funding Amount has been provided or will be provided to your organisation for the purpose of delivering the Project as outlined in your Application and according to the terms within this Deed.

Any change to the outcomes, scope or components of the project, overall timeframes for completion, achievement of milestones (Schedule B – funding schedule) or utilisation of the Funding Amount as outlined in your Application, will require you to submit a Variation Request

When to ask for a Variation?

If you are seeking to make changes to your Project in any of the following areas:

- overall project outcomes
- project scope or concept
- project components
- project location
- timeframe for completion
- time frames for the achievement of key milestones
- payment schedule
- use of Regional Cultural Fund funding

You must contact the Regional Cultural Fund Office on (02) 8289 6575 or regional@create.nsw.gov.au to describe project changes **before** making any changes.

Some changes are small or do not affect the outcomes and delivery of your overall project and will not require the submission of formal Variation Request. When you contact the RCF, we will inform you if you are in this category.

Other changes are more significant and require approval by the Department to ensure the Project or service still achieves what it was funded to do. If this is the case, the team will ask you to submit a written Variation Request Form.

An example of this template at **Attachment 4** of this Deed. If a Variation Request is deemed necessary, the Recipient must provide a Variation Request Form to the Department. If approved by the Department, a Variation Schedule will be provided by the Department to the Recipient.

Please note that except and to the extent only of the variations contained in the Variation Schedule, this Deed (the Principal Deed) shall remain in full force and effect and the parties severally agree to remain bound by the Principal Deed, as varied by the Variation Schedule. Variations can only be approved for future events. You cannot ask for a variation for reimbursement or a change already made. If you make a change without approval you may be in breach of your Funding Deed. In addition, you may be requested to place all activities on hold while your Variation Request is assessed. Make sure you contact the Regional Cultural Fund as soon as you start considering any changes.

Can I ask for more money?

No, as this is one-off funding there is no option for additional funds to be provided.

How does the Department decide if a variation is approved?

When assessing Variation Requests, the following will be considered:

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- are the changes consistent with the objectives of the Regional Cultural Fund Digitisation Round?
- the type and scope of change to the Project
- if the change to the Project effects your Projects eligibility as outlined in the Regional Cultural Fund Digitisation Round guidelines
- the impact of the change on intended outcomes including delivery timeframes and Project beneficiaries

When will you know if your variation is successful?

You will receive an update on your Variation Request within 10 business days from when we receive your email. If you request significant changes, the update advise if any additional information is required.

Once a decision is made, the outcome of your Variation Request will be emailed to you. If approved you will receive any Special Conditions and if required, a Variation Deed will be attached to your Funding Deed.

Steps for a Variation Request

1. Contact the Regional Cultural Fund to discuss your Variation needs on: **Phone (02) 8289 6575** or regional@create.nsw.gov.au.
2. If advised by the Regional Cultural Fund, submit a written Variation Request.
3. Assessment of your Variation Request by The Department.
4. The Regional Cultural Fund will provide an update on your Variation Request within 10 business days of receiving your written request and advise you of documentation requirements to support the request.

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Attachment 1

Progress and/or Project Status Report

Organisation Name:	
Project Name:	<i>[As per title listed in Application]</i>
RCF Project ID #	<i>RCFXXDXXXXXX</i>
Location/Address:	<i>[Where project is taking place/site] The Hub</i>
Project Manager:	<i>[Recipient PM]</i>
Key Contact:	<i>[Recipient key contact]</i>
Key Contact Phone:	
Forecast Completion	<i>[Date – note if this has been amended]</i>
Overall Current Project Status:	<i>[insert colour based on the code outlined below]</i>
<p>Red: Serious issues affecting budget or timing or regarding progress, safety or perception of project. Adverse media coverage</p> <p>Amber: Some issues that may impact cost or timing. Significant decisions required to continue project design or delivery.</p> <p>Green: No issues with project. No significant holdpoints. No significant decisions pending. Project is tracking as projected.</p>	

Project Update Summary:

<p><i>Please provide an overall summary of the progress of the project in dot point form. Summary should address, at a minimum: Timing & Budget changes, milestones reached, key decisions made, issues affecting any of these subjects & any media coverages. Examples below:</i></p> <ul style="list-style-type: none"> ▪ <i>equipment purchased</i> ▪ <i>training undertaken</i> ▪ <i>number of objects digitised</i> ▪ <i>number of digitised images provided to MGNSW for Collection & Stories website</i> ▪ <i>Local newspaper cover project favourably</i>
<p><i>Risk: Note any risks that have been identified with a Probability of 3 or 4</i></p>
<p><i>Please provide a cost report detailing actual spend to date and forecast spend</i></p>

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Attachment 1

Project Update Details:

<i>Please provide details of project progress or issues. If there are no problems in a category, please note 'on target' or provide next expected milestone date. If there is a problem within a category, please note the details of the issue with any actions taken or required to remedy.</i>	
Authorities/Approvals:	<i>e.g. Funding deed approved by CEO</i>
Procurement:	<i>e.g. Create Infrastructure to review Draft equipment proposal</i>
Scope/Design:	<i>e.g. Detailed timeframes for digitisation at spokes</i>
Cost/Budget:	<i>e.g. PCG to approve</i>
Time/Program:	<i>e.g. Project delayed. Reason: xxx</i>
Quality Assurance:	<i>e.g. Program peer review</i>
Installation:	<i>e.g. Equipment due for delivery xxx</i>
Operational Issues:	<i>e.g. Council to issue revised volunteer schedule</i>
WHS:	<i>e.g. Workcover provided minimum Public Liability insurance limits</i>
Communications/Media:	<i>e.g. Local paper ran favourable article on progress. Minister seeks update on completion date</i>

Project Risk Tracking:

<i>Probability: 1) Remote 2) Unlikely 3) Likely 4) Certain Impact: A) Minimal B) Marginal C) Significant D) Severe</i>			
Risk Identified	Probability	Impact	Mitigation actions / Owner
<i>Delay in engaging staff resources</i>	<i>Unlikely 2</i>	<i>Marginal B</i>	<i>Recipient to action</i>
<i>Equipment damage</i>	<i>Unlikely 2</i>	<i>Significant C</i>	<i>Recipient to action</i>
<i>Co-funding is unavailable</i>	<i>Remote 1</i>	<i>Severe D</i>	<i>▪ Monitor funding partner budget approvals. Department to review</i>
<i>Spoke decides not to collaborate</i>	<i>Unlikely 2</i>	<i>Significant C</i>	<i>▪ Manage stakeholder expectations ▪ Mediate</i>
<i>Permissions for objects not obtained</i>	<i>Unlikely 2</i>	<i>Significant C</i>	<i>▪ Identify like objects to digitise</i>
<i>Theft/loss of equipment</i>	<i>Unlikely 2</i>	<i>Sever D</i>	<i>▪ Keep equipment register ▪ Keep equipment secure and insured</i>

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Recipient	«Applicant_Name»
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Attachment 2
FINAL PROJECT STATUS REPORT (Final Payment)

Organisation Name:	
Project Name:	<i>[As per title listed in Application]</i>
RCF Project ID #	<i>RCFXXDXXXXXX</i>
Location/Address:	<i>[Where project is taking place/site]</i>
Project Manager:	<i>[Recipient PM]</i>
Key Contact:	<i>[Recipient key contact]</i>
Key Contact phone:	
Forecast Completion:	<i>[Date – note if this has been amended]</i>

NB: This report must be completed in addition to your Project Acquittal and Financial Certification.

<p>Project Review</p> <p>Outline how your Project met the objectives of the Regional Cultural Fund. <i>(E.g. Improved and encourage growth in NSW cultural diversity; number of objects digitised shows value for money and strong ongoing viability; and, communities have experienced cultural, recreational and educational benefits)</i></p>
<p>Detail how your Project has been successful using measurable outcomes and provide any qualitative and quantitative data. <i>(E.g.-new/different groups utilising the asset, objects on the web/available digitally, improved community connection, community engagement, sustainable hub and spoke model enabling ongoing digitisation).</i></p>
<p>In terms of project planning, how has your Project achieved milestones with the initially defined resources? <i>(E.g. any additional personnel and volunteers involved, any contingency funds used, any extra time you required, any new relationships between hub and spokes etc.)</i></p>

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Attachment 2

Please detail any issues that arose during your Project. Please give a brief explanation of how you resolved these issues. This also includes whether the Project met the Milestones as per the Funding Deed.

How effective were the Project Governance arrangements? Did your internal management perform well? Was working Create Infrastructure a positive experience? Did your relationship with spokes go smoothly?

Approval		
	Recipient Authorised Representative	Department Representative
Signature		
Name		
Position		
Date		

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Attachment 3

PROJECT ACQUITTAL & FINANCIAL CERTIFICATION

To be completed and submitted to the Department by 30 June 2022.

Organisation Name:	
Project Name:	<i>[As per title listed in initial Application]</i>
RCF Project ID #	<i>RCFXXDXXXXXX</i>
Location/Address:	<i>[Where project is taking place/site]</i>
Project Manager:	<i>[Recipient Project Manager]</i>
Key Contact:	<i>[Recipient key contact]</i>
Key Contact Phone:	
Completion:	<i>[Date – note if this has been amended]</i>

Statutory Declaration
OATHS ACT 1900, NSW, NINTH SCHEDULE

I, *[name of declarant]*....., of*[residence]*.....with the position *[name of position of employment]* with company *[name of recipient and ABN]*

do hereby solemnly declare and affirm that
an amount equal to the total Funding Amount paid by the Department (\$.....) has been expended on this Project in accordance with the terms and conditions of the Funding Deed dated with the Department.

I have complied with the Department's acquittal process and have provided:

- A copy of our Statement of Income and Expenditure which clearly identifies that the Funding Amount has been spent solely on the Project and in accordance with the Deed. I certify that this has been prepared by a suitably qualified professional; and
- A completed Final Project Status Report as evidence that I have met:
 - the objectives milestones as outlined in my Deed and Application.
 - the objectives of the Regional Cultural Fund Digitisation Round.

.....
And I make this solemn declaration, as to the matter (or matters) aforesaid, according to the law in this behalf made – and subject to the punishment by law provided for any willfully false statement in any such declaration.

Declared at: on
[place] *[date]*

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Recipient	«Applicant_Name»
Project Title	«Project_Title»
RCF No.	«Application_ID»

Attachment 4

Variation Request Form

Organisation Name:	
Project Name:	<i>[As per title listed in Application]</i>
RCF Project ID #	RCFXXDXXXXXX
Location/Address:	<i>[Where project is taking place/site]</i>
Project Manager:	<i>[Recipient Project Manager]</i>
Key Contact:	<i>[Recipient key contact]</i>
Key Contact Phone:	
Forecast Completion	<i>[Date – note if this has been amended]</i>

Type of Variation
<i>Please review Variation advice in Schedule ‘D’ of your Funding Deed. Please describe the nature and the type of variation.</i>
<i>Examples include:, change in Milestone date, change in completion date, change of scope of works, change of contact person, change of co-funding, change of supplier/contractor</i>
Reason for Request
<i>What steps were taken to avoid this variation request and what has transpired to confirm the need for a variation.</i>
Expected Impact
<i>Describe time, cost or contract impacts, case for change, capacity to deliver, value for money and engagement and reach,</i>

Total RCF Funding Amount	\$
Total Payments Received	\$
Balance Remaining	\$

Variation Approval:

	Recipient Authorised Representative	Department Representative
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Recipient	«Applicant_Name»
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Attachment 4

Signature		
Name		
Position		
Date		

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Recipient	«Applicant_Name»
Project Title	«Project_Title»
RCF No.	«Application_ID»

Attachment 5

Governance Terms of Reference

1. Background:

The NSW Government has established the Regional Cultural Fund (RCF) Digitisation Round to support local communities and to upgrade or develop cultural infrastructure to enable bold and exciting arts and culture that reflects the rich diversity of regional NSW.

The Department has agreed to provide funding from the RCF, to the Recipient, to facilitate the carrying out of the Project by the Recipient. The Department must provide funds only where there is certainty of project completion and a realisation of the benefits mentioned above.

To ensure these benefits are achieved all successful digitisation project applications are subject to a predefined Project Governance structure. Whilst an RCF funding recipient is solely responsible for delivery and completion of their project, adherence to this Project Governance structure is one of the conditions of receiving RCF funding and is noted in the **Special Conditions to Schedule A, Item 2** of your Funding Deed.

2. Our Involvement:

2.1 Create Infrastructure (CI) Representative

In general, we expect that any appointed Department representative would fulfil a project assurance role in RCF Project Governance. The CI representative would:

- maintain oversight of RCF-funded project progress;
- identify and where necessary escalate issues that could negatively impact the progress or completion of the project in accordance with the Funding Deed;
- advise on project management issues in relation to Funding Deed requirements;
- liaise with the managers of projects for access to project documentation as required;
- attend PCG and PCG meetings as appropriate; and
- organise health check reviews to gain independent assurance that a project will meet its objectives.

In practice, we see the CI representative role to be of greater assistance than these prescribed assurance functions. For example, your assigned CI representative could:

- provide advice on program timelines and milestones
- provide independent review of costs and budgets
- facilitate funding payments and variation requests
- review and provide 'second eyes' advice on issues
- assist with regulatory approvals and referrals to other regulatory bodies
- take part in procurement briefing, assessment and engagement

In summary, your CI Representative is here to help you achieve your projects goals, not just monitor the spending of the Departments investment. With upfront assistance from a CI representative, a project is more likely to avoid undergoing a project health check review

3. Create Infrastructure PCG guidelines:

Many funding Recipient organisations, that have an RCF governance implemented, will already be familiar with running PCG's. However, some smaller organisations may not have this expertise. CI have provided the following as the Department's expectations or 'Terms of Reference' for running a PCG. It can be adopted by the Recipient or used as a comparison for an audit of existing organisation terms of reference.

3.1 Purpose

Attachment 5

The Project Control Group (PCG) is responsible for monitoring performance against project objectives, approving key engagements, deliverables, processes and endorsing project decisions – of both design & budget.

3.2 Authority and Decision Making

While the primary responsibility of the project rests with the funded agency, the PCG is comprised of relevant parties, with appropriate experience, to provide strategic direction and advice.

3.3 Guiding Principles

The PCG is committed to establishing, maintaining and promoting good governance. It recognises the robust governance standards and commits to adhering to the Code of Ethics and Conduct for NSW Government Sector Employees.

In particular, members promote the following principles of public sector governance:

- Accountability — being answerable for decisions and having meaningful mechanisms in place to ensure the agency adheres to all applicable standards
- Transparency/openness — having clear roles and responsibilities and clear procedures for making decisions, exercising power, and communicating outcomes
- Integrity — acting impartially, ethically and in the interests of the agency, and not misusing information acquired through a position of trust
- Stewardship — using every opportunity to enhance the value of the public services, institutions and assets that have been entrusted to care
- Efficiency — ensuring the best use of resources to further the aims of the organisation, with a commitment to evidence-based strategies for improvement
- Leadership — achieving a wide commitment to good governance through leadership from the top

3.4 Role and Responsibility

It is the responsibility of the PCG to:

- Provide strategic direction and oversight of implementation outcomes;
- Monitor performance against objectives;
- Make recommendations to and implement decisions;
- Undertake validation of project planning and scope;
- Approve key deliverables and processes;
- Approve all engagements with contractors and consultants;
- Approve expenditure of project funds and release of project funds to pay for project expenses incurred;
- Monitor expenditure within the Budget;
- Oversee project activities and achievement against milestones;
- Ensure compliance with the applicable government policy and frameworks;
- Monitor project risks;
- Approve variations and expenditure of contingencies (subject to Department approval)

3.5 Meeting Structure and Operations

Meetings of the PCG will be held every month to ensure that adequate direction and approvals are received to maintain positive momentum.

The Recipient will chair the PCG meetings and is responsible for ensuring agendas, minutes and committee papers are distributed to members of the committee.

3.6 Decision making

The Chair has responsibility for all key decision points, milestones, and contentious and contested issues for the achievement of the funding goals.

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Decisions will be made by consensus within the PCG wherever possible. Where consensus cannot be reached, the decision may be made by the Chair, having taken all the relevant requirements and these Terms of Reference into account.

Where a decision needs to be made out-of-session, then a recommendation shall be made by the Project Director to the Chair. The Chair will provide information to and canvas opinion from all Project Steering Committee members. The Chair will then make a recommendation.

3.7 Dispute Resolution

In the event of a dispute that the PCG and Chair are unable to resolve, the Chair will escalate the issue to the Minister for Arts.

The minutes of each meeting shall be recorded and distributed promptly to each member of the Group within one week of the meeting together with an updated Action Log. The agenda and PCG papers will also be distributed a minimum of three days in advance of the next scheduled meeting.

3.8 Project Control Group – Membership

The PCG will consist of members from the following agencies and areas of expertise:

- Create Infrastructure
- Recipient
- Another agency nominated by Create Infrastructure
- Project Director

3.8.1 Proxies:

Members who are unable to attend in person (or by teleconference) and do not have a delegate officially acting in their role, are unable to nominate a proxy, unless approved by the Chair.

Persons officially acting in a member's position are expected to participate and contribute, and formally report back to the member that they are representing.

If the Chairperson is absent from a meeting or vacates the Chair at a meeting, he/she will appoint another person to act as the Chair on a temporary basis. If the Chairperson is unexpectedly not present and has not appointed another member to act as Chair, members present will appoint a Chair.

3.8.2 Other Participants

The Chair may from time to time invite other individuals or groups to present to, or observe, meetings. Where agreed by the Chair, members may invite guests to attend meetings to provide expert advice and support to a specific topic raised. A guest's attendance is limited to the duration of discussion on that specific topic.

3.9 Ground Rules

Minimum governance behaviours include adherence to the Code of Ethics and Conduct for NSW Government Sector Employees and the NSW Planning CORE values of collaboration, openness, respect and empowerment. Members adopt the following ground rules guiding the conduct of meetings, and interactions between members outside of session:

3.10 Collaboration

- Actively foster collaboration through committing to at least one informal check-in with each of our colleagues every week.
- Consistently demonstrate collaboration through ensuring a regular, visible presence at key forums, meetings and gatherings.
- Support openness by respecting the need to treat information provided by team members with discretion.

Attachment 5

- Actively encourage openness through supportive and sensitive giving and receiving of feedback.
- Respect
- Continually demonstrate respect by listening and allowing others to finish their point during our meetings.
- Positively display respect by standing as a team and backing the team decision.
- Actively encourage empowerment by allowing each of us to bring matters to the table for decision, discussion or information, without judgment.
- Take personal responsibility for communicating key priorities and key messages to our teams following our meetings

Ground rules can be reviewed every six months to recognise that as a unique team, interactions will evolve and change over time.

3.11 Quorum

The quorum for PCG meetings is a minimum of half the total membership plus one (more than 50%). In the absence of a quorum the meeting may continue at the Chair's discretion. Proxies are included in the determination of a quorum.

3.12 Secretariat

Secretariat support will be provided by a nominated person by the Chairperson.

Responsibilities of the Secretariat include:

- Preparing agenda and coordinating papers in consultation with the Chair
- Preparing an annual work plan and meeting schedule
- Recording and maintaining meeting proceedings (decisions and actions only).

3.13 Out of Session Papers

Items will be managed out-of-session following usual business processes.

3.14 Performance

Evaluation of functioning of the Group with respect to these Governance Terms of Reference will be conducted via an annual review.

3.15 Confidentiality

Members of the PCG may receive information that is regarded as confidential or has privacy implications. Members and proxies acknowledge their responsibility to maintain confidentiality and adhere to established practices and confidentiality provisions.

3.16 Conflicts of Interest

Members and proxies must declare any conflicts of interest and manage those in consultation with the Project Director. This may relate to a position a member holds (for example, Chair of an external organisation) or to the content of a specific item for deliberation.