

# Funding Agreement – Creative Capital Funding Program

We agree to provide You with the Funding for the Project, and You agree to accept and use the Funding for the Project, on the terms of this Agreement.

## Project Schedule

### Agreement Parties

**Agency** (We, Us, Our) Name: The Crown in right of the State of New South Wales acting through the Department of Premier and Cabinet (Create NSW)

ABN: XXXXX

Address: XXXXX

Tel: XXXXX

Email: XXXXX

Contact: XXXXX

**Recipient** (You, Your) Name: XXXXX

ABN: XXXXX

Legal entity status:  Company  
 Incorporated Association  
 Unincorporated Partnership  
 Individual  
 Other: XXXXX

The Recipient enters into this Agreement as trustee of a Trust. If entering into this Agreement as a trustee, you represent and warrant that you have the power and authority to enter into and perform this Agreement.

Business Name: XXXXX

Address: XXXXX

Tel: XXXXX

Email: XXXXX

Contact: XXXXX

**Administrator** Name: XXXXX

ABN: XXXXX

Business Name: XXXXX

Address: XXXXX

Tel: XXXXX  
Email: XXXXX  
Contact: XXXXX

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**Project**

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Funding Program: Creative Capital Funding Program

Project: XXXXX

Project Objectives: XXXXX

Project Period: Start Date: XXXXX

End Date: XXXXX

Project Plan

XXXXX

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**Funding and payment**

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Funding The total amount of the Funding is \$XXXXX (GST excl.)

Payment Notwithstanding anything else in this Agreement, payment of the Funding is conditional on a receipt by Us from You of a tax invoice.

Subject to this Agreement, the Funding will be paid in accordance with the below Payment Plan.

<sample plan>

Milestone/ condition precedent to payment	Expected date for payment	Amount (GST excl.)	GST	Amount (GST incl.)
XXXX	XXXX	XXXX	XXXX	XXXX

Total Amount: \_\_\_\_\_

Payment will be made by direct transfer to the following nominated account:

Account Name: .....

Account Number: .....

BSB Number: .....

Bank Name: .....

Contribution

XXXXX

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## Reports

Report	Due Date	Form/Content
Project Status Report	Report to be submitted with request for Your next payment or as requested by Us	<p>A report documenting progress of the Project against achievement of your Project milestones (in accordance with Project Status Report template available through Smarty Grants website at XXXXX.</p> <p>The report must be signed by Your Contact. The information in this report will be used to confirm Your expenditure of the Funding as well as providing evidence of Your meeting Your Project milestones as outlined in your Project Plan or as otherwise agreed with Us in writing.</p>
Project Acquittal and Financial Certification	<p>To be submitted to Us within three (3) months of the earlier of:</p> <p>(a) the date of completion of the Project, and</p> <p>(b) the expiry or termination of this Agreement.</p>	<ol style="list-style-type: none"> <li>1. A form confirming expenditure of the Funding in accordance with the Project Acquittal and Finance Certification template available through the Smarty Grants website at XXXXX.</li> <li>2. Statement of Income and Expenditure for the whole Project which must be: <ul style="list-style-type: none"> <li>• prepared in accordance with Australian Accounting Standards and any statutory requirements that govern Your accounting and financial records,</li> <li>• be signed by Your Chief Financial Officer or equivalent authorised officer, and</li> <li>• clearly identify that the Funding has been spent solely on the Project and in accordance with this Agreement.</li> </ul> </li> </ol> <p>The information in the Project Acquittal and Financial Certification form will be used to confirm expenditure of the Funding.</p>
Final Project Status Report	<p>To be submitted to Us within there (3) months of the earlier of:</p> <p>(a) the date of completion of the Project, and</p> <p>(b) the expiry or termination of</p>	<ol style="list-style-type: none"> <li>1. A report documenting completion of the Project (in accordance with Final Project Status Report template available through the Smarty Grants website at XXXXX). This report must address Your achievement of Your Project milestones as outlined in Your Project Plan or as otherwise agreed with Us in writing.</li> <li>2. A copy of promotional and marketing material and any media reports relating to the Project.</li> </ol>

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## Reports

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	this Agreement.	The information in this report will be used to: <ul style="list-style-type: none"><li>• demonstrate how You achieved the Project Objectives and those of the Creative Capital Fund.</li><li>• outline whether You met Your key Project milestones as outlined in Your Project Plan or as otherwise agreed with Us in writing.</li></ul>
<b>Ongoing Reporting Requirements</b>	Regularly requested by Us for a three (3) year period following the date of completion of the Project.  Report/s to be completed and returned promptly on receipt of request and not later than any specified date.	The requested data may include: <ul style="list-style-type: none"><li>• number of visitors/attendees/tickets sold,</li><li>• number of events/shows,</li><li>• jobs (including volunteers) created within Your organisation/region, and</li><li>• any other material/information that We may reasonably require.</li></ul>

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## Funding Acknowledgement

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You must acknowledge the Funding received from Us for the Project in accordance with the NSW Government's Funding Acknowledgement Guidelines for recipients of NSW Government infrastructure grants as in place from time to time and available at:

<https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf>

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## Additional Conditions

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**AC1 - Application:** Subject to this Agreement, You must undertake the Project in accordance with Your Funding application. For the purposes of this Agreement Your Funding application includes any amendments or modifications to Your application agreed to by Us in writing prior to the signing of this Agreement by both You and Us.

**AC2 - Reasonable Directions:** You must undertake the Project in accordance with Our reasonable directions.

**AC3 - Project:** Without limiting Clause 2 of the General Terms, You must:

- carry out the Project in accordance with all information, plans, drawings, designs or specification submitted with Your Funding application;
- carry out the Project in accordance with any budget submitted with Your Funding application or as otherwise modified by Us in this Agreement.

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## Additional Conditions

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You are solely responsible for the performance and successful delivery of the Project and for ensuring compliance with the requirements of this Agreement. You are not relieved of this responsibility because of any:

- (a) involvement by Us in the delivery of the Project;
- (b) subcontracting of the Project, or parts of the Project;
- (c) payment of any amount of the Funding to You;

You must complete each Project milestone set out in your Project Plan by the date specified for completion of that milestone, to Our reasonable satisfaction.

**AC4 - Project Management:** You must engage a project officer or a project manager who will be responsible for the day to day management of the Project and advise Us in writing of the name and contact details of this person. The project officer or project manager must be suitably qualified and have the necessary skills and experience required to manage the Project.

**AC5 Project Control Group:** A Project Control Group (**PCG**), or other such project governance body approved by Us, must be established upon execution of this Agreement and include a Create Infrastructure representative. The PCG's role and responsibilities and membership are set out in **Schedule 1** to this Agreement

**AC6 - Funding:** Clause 3 of the General Terms is amended by inclusion of the following additional provisions:

"3.3 You acknowledge and agree that any Reserve included in the Funding (if any) will only be released upon submission and subsequent approval of a variation request in accordance with the process set out in **Schedule 2** to this Agreement.

3.4 The Funding is the maximum amount of funding that We will pay to You for the Project. No interest will accrue or be payable on the Funding. The entire Funding will not be paid to You if it is not required to complete the project.

3.5 The Funding is the maximum amount of funding that We will pay to You for the Project. The entire Funding will not be paid to You if it is not required to complete the Project.

3.5 We are not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

3.6 You are responsible for any costs that may be incurred at any time that exceed the Funding (whether or not You expected to incur such costs). You must procure any additional funding above the Funding necessary to ensure the Project is delivered and maintained in accordance with the terms of this Agreement.

3.7 We may terminate this Agreement for cause under clause 14.1(a) of the General Terms if You have not made and/or secured the Contribution within the timeframe specified above in this Project Schedule.

For the purposes of this Agreement, "**Reserve**" means the sum allocated within the Funding to cover the cost of unplanned or unexpected activities required to deliver the Project. It is not intended for changes to the approved Project.

**AC7 - Administrator:** Where You do not have an ABN, You must maintain a contractual arrangement with a person that its approved by Us to take carriage of the Funding on your behalf including processing and recording all payments of the Funding (**Administrator**).

If this Additional Condition applies, the Administrator will be a party to this Agreement and:

- (a) the Administrator is not to be concerned with the terms, conditions or contents of this Agreement (save as expressly provided by this Agreement).

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## Additional Conditions

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- (b) We will pay the Funding to the Administrator to the Administrator's nominated account listed above.
- (c) the Administrator is irrevocably instructed to disburse the Funding to the Recipient's account in accordance with the terms of this Agreement in relation to payment of the Funding.
- (d) We have the right to, at any time, direct the Administrator to release all of the monies in the Administrator's account to Us.
- (e) In the event of any dispute between You and Us in relation to the disbursement of any Funds remaining in the Administrator's account, the Administrator must act in accordance with the terms of this Agreement.
- (f) the Administrator instructions under this Additional Condition may not be assigned by the Administrator, You or us without the written consent of all of us.

This AC6- Administrator survives termination to expiry of this Agreement.

**AC8 - Withholding and repayment:** Clause 5 of the General Terms is amended as follows:

- (a) delete clause 5.2(c).
- (b) insert the following new clause 5.4:

"All unspent moneys must be returned to Us either by cheque submitted with the Project Acquittal and Financial Certification form or electronically by EFT direct to Our bank, within 30 days of the date of submission of the Project Acquittal and Financial Certification to Us.

**AC9 - Acknowledgement:** Clause 6.2 of the General Terms is deleted and replaced with the following:

"Unless We otherwise agree, You must use the NSW Government's Waratah logo as set out at:

<https://communications.dpc.nsw.gov.au/branding/>

in conjunction with all acknowledgements of the Funding in accordance with the NSW Government Funding Acknowledgment Guidelines referred to above.

Any signage, marketing collateral, media releases or official event invitations (including plaques) must meet the requirements set out in the NSW Government Funding Acknowledgment Guidelines, with particular reference to acknowledgment requirements in line with the Funding amount received, signage production and approval processes.

All images provided to Us as part of Your Project Status Reports must 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."

Clause 6.3 of the General Terms is deleted and replaced with the following:

"You must provide Us with at least 30 business days' written notice of any proposed announcements, launches, or other public events or media coverage relating to the Project and provide an opportunity for a representative of the NSW Government to attend and speak at any launch or event.

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## Additional Conditions

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We may, in our absolute discretion, publicise the granting of the Funding at any time after it is granted, including (a) Your name; (b) the amount of the Funding; and (c) the title and brief description of the Project, Project status and the Project results, and any project images that You have provided to Us. Where practicable, We will give You notice of such communication and its content.”

**AC10 - Reporting and access:** You acknowledge and agree that:

- (a) We will maintain regular contact with You to monitor implementation of this Agreement, including site visits as required by Us.
- (b) in addition to any other reporting obligations under this Agreement, You must provide Us with such additional information concerning the Project as We request, subject to Our request being reasonable in terms of administrative overheads and costs involved with compliance.
- (c) We may use any information contained in any Report We receive subject to compliance with any confidentiality obligations under this Agreement.

Your Contact must keep Us up to date on all matters relevant to this Agreement and must regularly communicate with Our Contact.

**AC11 - Records and audit:** Clause 8.1 of the General Terms is amended by deleting the words “six (6) months” and replacing them with the words “seven (7) years”.

**AC12 - Your representations and warranties:** You represent and warrant that, as the date of Your execution of this Agreement:

- (a) all information provided by You to Us is true and correct;
- (b) You have full power and authority to enter into this Agreement and to perform its obligations;
- (c) the execution, delivery and performance of the Agreement by You has been validly authorised;
- (d) You have the expertise, skills, qualifications and resources required to perform Your obligations under this Agreement;
- (e) other than those (if any) disclosed in your Funding application, to the best of Your knowledge, neither You nor your personnel have any actual, perceived or potential conflicts of interest in relation to the Project; and
- (f) You are not aware of any circumstances, including any financial circumstances or litigation or other proceedings that are taking place, pending or threatened, which might affect its ability to perform the Agreement.

**AC13 - Adverse events:** Without limiting Clause 11 of the General Terms, You agree to promptly notify Us as soon as you become aware of all material matters that might have an impact on Your obligations under this Agreement or on your financial situation or corporate governance including:

- (a) any material change to any representation and warranty given under this Agreement;
- (b) any changes to Your key personnel including, the chair, chief executive officer or equivalent, project manager, project officer or project administration officer;
- (c) any expected significant negative variation to projected end of year financial results and Your proposed strategies to address the negative variation;
- (d) any changes to Your board’s composition, including expertise and special responsibilities of any new board members;

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## Additional Conditions

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- (e) any changes to Project timeframes including any significant delay or suspension of the Project, including if the Project is inactive for more than thirty (30) business days; or
- (f) an insolvency event;

and, in consultation with Us, take available steps to lessen the impact of any such adverse event.

**AC14 - Insurance:** Without limiting clause 12 of the General Terms, You must maintain the following insurances:

- (a) workers compensation as required by law for all employees involved in deliver 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 for their full replacement value.

The insurance must cover liability of subcontractors and volunteers that may be involved in the Project.

You must not do, permit or suffer any act, matter or thing or omission whereby any policy of insurance may be vitiated, rendered void or voidable.

**AC15 - Asset Maintenance:** You must maintain an asset register for each item of infrastructure, facilities or improvements (**Assets**) created by or purchased as part of the Project using the Funding (**Asset Register**).

You must keep the Asset Register current at all times and in accordance with Australian Accounting Standards. You must provide us with a copy of or access to the Asset Register on demand.

Unless otherwise agreed with Us in writing, You must maintain and not demolish, remove, dispose of, transfer or otherwise interfere with these Assets for [XX years] after the date of completion of the Project.

If demanded, you must repay to Us all or part of the Funding, as determined by Us in our absolute discretion, within twenty (20) business days of the disposal or conversion of the Asset. We may recover the amount as a debt due to Us without the need for further proof or notice.

This AC15 - Asset Maintenance survives termination or expiry of this Agreement.

**AC16 - Indemnity:** You shall at all times indemnify, hold harmless and defend Us and Our officers, employees and agents ("those indemnified") from and against liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of or in connection with:

- (a) any infringement or alleged infringement of any Intellectual Property (including Moral Rights) arising from the activities of the Project other than any Intellectual Property supplied by Us; and
- (b) any unlawful, wrongful, wilful or negligent act or omission of You or Your officers, employees, agents, contractors and volunteers.

Your liability to indemnify those indemnified under this Agreement shall be reduced proportionally to the extent that any unlawful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.



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## Additional Conditions

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The indemnity in this clause is a continuing obligation of Yours separate and independent of any of Your other responsibilities and will continue beyond the termination or expiry of this Agreement.

**AC17 - Disputes:** Clause 13 of the General Terms is deleted and replaced with the following provisions:

“13.1 The parties must attempt to settle any dispute in relation to this Agreement in accordance with this clause 13 (Disputes) before resorting to court proceedings or other dispute resolution process.

13.2 A party claiming that a dispute has arisen, must give written notice of the dispute to the other party. On receipt of this notice the parties must within ten (10) business days of receipt seek to resolve the dispute.

13.3 If the dispute is not resolved within this ten (10) business day period or within such further period as the parties agree in writing then the dispute is to be referred to the Australian Commercial Dispute Centre (“ACDC”) for mediation.

13.4 The mediation shall be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

13.5 If the dispute is not settled within twenty (20) business days (or such other period as agreed in writing) after appointment of the mediator, or if no mediator is appointed within twenty (20) business days of the referral of the dispute to mediation, either party may pursue any other procedure available at law for the resolution of the dispute.

13.6 If We request it, You must continue performing this Agreement while a dispute is being dealt with in accordance with this Clause 14 (Disputes), to the extent practicable to do so.

13.7 Nothing in this Clause 13 (Disputes) will prevent either party from seeking urgent interlocutory relief.”

**AC18 - Termination for cause:** Clause 14.1(c) of the General Terms is deleted and replaced with the following:

“(c) provided false or misleading information in Your Funding application or subsequently under this Agreement which may have affected Our decision to approve the Funding, the terms and conditions of this Agreement, or any action taken by Us under this Agreement; or”

Clause 14.1 is amended by the addition of the following further paragraph:

“(d) had a Change in Control which in Our reasonable opinion renders You no longer eligible to receive the Funding. **Change of Control** means a change in any person(s) who directly or indirectly exercise(s) effective control over You (including the ability to determine the outcome of decisions about the financial, operating and other policies of your organisation) by holding the majority of voting shares, units or other interests in Your organisation or by any other means, but does include a change in respect of a local council if that change is due to an election.”

**AC19 – Variation:** Clause 16.2 of the General Terms is deleted and replaced with the following:

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**Additional Conditions**

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“This Agreement may only be varied by written agreement between the You and Us in accordance with the process set out in Schedule 5 to this Agreement or as otherwise determined by Us, acting reasonably.”

**AC20 – Electronic execution and exchange of counterparts:** Electronic signatures complying with a law applicable in New South Wales will be deemed original signatures for the purposes of this Agreement and any such digital, scanned, or electronically applied signature is to be treated in all respects as having the same effect as an original signature.

The parties may exchange executed counterparts of this Deed by emailing a portable document format (pdf) copy of the executed counterpart as an attachment to an email (**Electronic Delivery**) to each party’s nominated email address as set out below:

- DPC email address for receipt of electronic executed counterpart of the Deed: XXXX
- Recipient’s email address for receipt of electronic executed counterpart of the Deed: XXXX

Electronic Delivery of an executed counterpart will constitute effective delivery of that counterpart as if the original had been received, from the date and time that the email was sent, provided that the sending party does not receive a delivery failure message within a period of 24 hours of the email being sent.

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**Execution**

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**Executed as a Deed:**

**Signed, sealed and delivered** for and on behalf of XXXXXXXXXXXXXXXXXXXX by its duly authorised officer, XXXXXXXXXXX, but not so as to incur personal liability.

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Signature

In the presence of:

Name of witness

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Signature of witness

Date:

**[Alternatives 1A and 1B - where Recipient is a corporation]**

**Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: XXXXXXXX.

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Signature

And by XXXXXXXX.

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Signature

Date: xxxxxxxx

**Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: XXXXXXXX who states that s/he is the sole director and sole secretary of XXXXXX.

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**[Alternative 2 - where Recipient is an incorporated association]**

**Signed, sealed and delivered** by XXXXXX in accordance with its constitution and any requirements for execution contained in the statute that establishes the incorporated association.

By:

Print name and position of authorised signatory

Signature

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On: XXXXXX

In the presence of:

Name of witness who is not a party to this Agreement.

Signature of witness

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And by:

Print name and position of authorised signatory 2

Signature

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At: XXXXXXXX

On: XXXXXXXXX

In the presence of

Name of witness who is not a party to this Agreement.

Signature of witness

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**[Alternative 3 - where Recipient is an individual]**

**Signed, sealed and delivered** by XXXXXXXX.

Signature

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In the presence of:

Name of witness who is not a party to this Agreement.

Signature of witness

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Date: XXXXXX

**[Alternative 4 - where Recipient is a partnership]**

**Signed, sealed and delivered** by  
XXXXXXXXXX for and on behalf of XXXXXXXXX  
who is authorised to sign on behalf of the  
partnership.

By: XXXXXX

On: xxxxxx

In the presence of:

Name of witness who is not a party to this Agreement.

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature of witness

Creative Capital Model Funding Agreement

## **Funding Agreement General Terms**

### **1. Agreement scope**

- 1.1 This Agreement is made up of:
- (a) the Project Schedule;
  - (b) these General Terms;
  - (c) any document referenced in the Project Schedule.
- 1.2 Any inconsistency between the above will be resolved in the above order of precedence.

### **2. Project**

- 2.1 You must undertake the Project in accordance with this Agreement including:
- (a) conduct the Project within the Project Period, in a way that promotes the Project Objectives, with due care and in accordance with Your Project Plan;
  - (b) comply with applicable laws, Funding Program conditions and any notified NSW Government policies and guidelines;
  - (c) ensure You obtain all required licences and approvals to conduct the Project;
  - (d) not subcontract or vary the Project without Our prior approval; and
  - (e) if applicable, complete the Project by the End Date.

### **3. Funding and payment**

- 3.1 You must:
- (a) use the Funding only for the Project and during the Project Period; and
  - (b) make any required Contribution toward the costs of the Project within any agreed timeframe.
- 3.2 Provided You comply with this Agreement, We will pay the Funding to You in accordance with its terms.

### **4. Taxes, duties and charges**

- 4.1 It is Your responsibility to pay all taxes, duties and government charges imposed in connection with this Agreement.
- 4.2 If GST is payable on any supply You make under this Agreement and You are registered for GST, then, on receipt of a correctly rendered tax invoice (or in conjunction with the issue of a recipient created tax invoice (RCTI) if applicable and agreed) We will pay You an amount equal to the GST payable, in addition to and at the same time that the consideration for the supply is provided under this Agreement.
- 4.3 If the Project Schedule specifies that RCTIs will issue in respect of the Funding, You agree that:
- (a) We will issue You with an RCTI; and
  - (b) You will not issue a tax invoice,
- in respect of any taxable supply that You make under this Agreement.

- 4.4 You must immediately notify Us if Your GST registration changes.

- 4.5 If, for any reason, We pay You an amount which is more than the GST imposed on a particular supply by You to Us, You must immediately repay Us the excess or We may set off the excess against any other amounts due to You.

### **5. Withholding and repayment**

- 5.1 We may, by notice, withhold payment of any Funding if We reasonably believe that You have not complied or are unlikely to comply with this Agreement, or that Your actions will damage Our reputation or that of the Funding Program.
- 5.2 In addition to repayment of unspent Funding on termination, We may require You to repay any Funding within no less than twenty (20) business days of notice from Us to do so if:
- (a) You have incorrectly claimed the Funding or We have overpaid You;
  - (b) You have not spent the Funding in accordance with this Agreement; or
  - (c) the Funding is unspent at the end of the Project Period.
- 5.3 If You do not make any required repayment of Funding by the due date We may recover the amount as a debt due to Us without the need for further proof.

### **6. Acknowledgment**

- 6.1 You must acknowledge the Funding in any public statements about the Project or the Funding, using the form of acknowledgement (if any) stated in the Project Schedule.
- 6.2 You may only use Our logo or the NSW Government logo with Our prior approval and in accordance with the NSW Government's Brand Guidelines, as notified from time to time.
- 6.3 If requested, You must use Your best efforts to ensure We have the opportunity to participate in media coverage or other promotion of the Project.
- 6.4 You must promptly remove Our acknowledgement and logo from any material relating to the Project if We reasonably request it.

### **7. Reports**

- 7.1 You must comply with any requirements stated in the Project Schedule for Reports including acquittals.
- 7.2 If We do not accept a Report as satisfactory, You must submit a revised Report within ten (10) business days of Our request.

### **8. Records and audit**

- 8.1 You must keep complete and accurate records of the Project and expenditure of the Funding and any Contribution (including invoices and receipts) for the

Project Period plus six (6) months thereafter and make them available to Us on request.

- 8.2 We may audit expenditure of the Funding, and You must cooperate in any audits including by permitting reasonable access to, and copying of, Your records and providing reasonable assistance to the auditor. Any such audit will be at Our expense.

## 9. Intellectual Property

- 9.1 You grant to Us a permanent, non-exclusive, irrevocable, royalty-free, licence (including the right to sub-licence) to use, reproduce, communicate, publish, adapt and modify, for non-commercial, government purposes, all material You provide to Us under this Agreement.

## 10. Confidentiality and privacy

- 10.1 Neither of us may disclose the other's confidential information without prior written consent unless the disclosure is:
- (a) required or authorised by law, Parliament, Our responsible Minister or this Agreement;
  - (b) required to perform this Agreement;
  - (c) required by Us for a governmental purpose including research and analysis, monitoring, evaluation and reporting; or
  - (d) to the recipient party's professional advisers for the purpose of advice, or to its insurer for the purpose of claim management.
- 10.2 You must deal with personal information consistently with the information protection principles under the *Privacy and Personal Information Protection Act 1988* and must not cause Us to breach that Act.
- 10.3 You must immediately notify Us if You become aware of a breach of privacy.

## 11. Adverse events

You must promptly notify Us of anything likely to have an adverse impact on the Project (for example, a delay) and, in consultation with Us, take available steps to lessen that impact.

## 12. Insurance

You must maintain adequate insurance for the Project Period and provide certificates of currency on request.

## 13. Disputes

Except in the case of urgent, interlocutory proceedings, neither of us must begin legal proceedings in relation to a dispute without first trying for no less than ten (10) business days to negotiate a resolution.

## 14. Termination for cause

- 14.1 We may terminate this Agreement by notice if We are reasonably satisfied that You have:
- (a) breached this Agreement and We consider that the breach cannot be remedied or You have not

remedied the breach within ten (10) business days of receipt of a notice from Us to do so;

- (b) acted in a way that will cause damage to Our reputation or to the reputation of the Funding Program; or
- (c) provided false or misleading information in Your Funding application.

## 15. On termination

Unless otherwise agreed, You must, within ten (10) business days of termination, repay any unspent Funding and provide any Reports, or other agreed material then due or that We reasonably request.

## 16. General

- 16.1 This Agreement does not make You Our employee, agent or partner.
- 16.2 This Agreement may only be varied in writing, signed by both of us.
- 16.3 You must not sub-contract or transfer this Agreement to another party without Our prior consent.
- 16.4 A notice under this Agreement:
- (a) must be in writing and delivered to the other party at its address or email address as specified in the Project Schedule or as that party otherwise directs.
  - (b) is taken to be delivered:
    - (i) if by hand or by registered post, on delivery to the address for service and a signature received as evidence of delivery;
    - (ii) if by post (other than registered post), on the sixth (6<sup>th</sup>) business day after posting; and
    - (iii) if by email, on receipt by the sender of confirmation of delivery (by confirmation of delivery notification from an email server or a written acknowledgement from the recipient)

provided that, if delivery or receipt is on a non-business day or is later than 5pm (Sydney, NSW time) it will be taken to be delivered at 9am on the next business day.

- 16.5 This Agreement may be executed in any number of counterpart copies which taken together will form one agreement.
- 16.6 Clauses 5 (Withholding and repayment), 7 (Reports), 8 (Records and audit), 9 (Intellectual Property), 10 (Confidentiality and privacy), 13 (Disputes), 15 (On termination), this clause 16.6 and any other clause of this Agreement that of its nature survives expiry or termination shall survive the expiry or termination of this Agreement.
- 16.7 This Agreement is governed by the laws of NSW and the parties submit to the jurisdiction of the courts of that State.

## **SCHEDULE 1: PROJECT CONTROL GROUP**

### **Governance & Terms of Reference - Create Infrastructure (CI) PCG guidelines**

CI have provided the following as the Departments expectations or 'Terms of Reference' for running a PCG.

#### **1.1 Purpose**

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.

#### **1.2 Authority and Decision Making**

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

#### **1.3 Guiding Principles**

The PCG is committed to establishing, maintaining and promoting good governance.

In particular, members will adhere to principles of accountability, transparency, integrity and efficiency.

Members will conduct meetings with regard to values of collaboration and respect.

#### **1.4 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;
- Endorse key deliverables and processes;
- Endorse all engagements with contractors and consultants;
- Endorse 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;
- Endorse variations and expenditure of any Reserve Funding Amount (subject to Department approval).

#### **1.5 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.

#### **1.6 Decision making**

Decisions and recommendations 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 or recommendation 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 PCG members. The Chair will then make a recommendation.

## **1.7 Minutes**

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.

## **1.8 Project Control Group – Membership**

The PCG will consist of members from:

- Recipient
- Project Director

In attendance and non-voting:

- Create Infrastructure
- Key Contractors e.g. architect, builder, museum/theatre/arts consultant, quantity surveyor

### **1.8.1 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 Chair 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.

### **1.8.2 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.

## **1.9 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.

## **1.10 Out of Session Papers**

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



### **1.11 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.

### **1.12 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.

Creative Capital Model Funding Agreement

## SCHEDULE 2 - VARIATIONS

Creative Capital Funding has been provided to your organisation for the purpose of delivering the Project as outlined in your Funding application and according to the terms within this Agreement.

Changes during this Agreement to the outcomes, scope or components of the Project, overall timeframes for completion, achievement of key milestone or utilisation of the Funding as outlined in your Application, may require you to submit a Project 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
- Release of 'Reserve' component of the Funding'
- timeframe for completion
- time frames for the achievement of key milestones
- payment schedule
- use of the Funding

you must contact the Creative Capital office on (02) XXXXXXXX or [creative.capital@create.nsw.gov.au](mailto:creative.capital@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 a formal variation request. When you contact us, we will inform you if you are in this category.

Other changes are more significant and need approval from 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 together with supporting evidence and documentation.

An example of a template variation request can be accessed via Smarty Grants at XXXXXX. If a variation request is deemed necessary, you must provide a Variation Request Form to us using this template. You will be advised of the supporting evidence and documentation that will be required to substantiate your Project variation. If approved by us, we will provide you with a Variation Deed documenting the agreed changes.

Please note that except and to the extent only of the variations agreed in any variation schedule, the Principal Agreement (this Agreement) shall remain in full force and effect and the parties severally agree to remain bound by the Principal Agreement, as varied by the Variation Deed. 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 this Agreement. In addition, you may be requested to place all activities on hold while your variation request is assessed. Make sure you contact us 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.

### When can I apply for release of the Reserve component of the Funding Amount 'Reserve Funding'?

Applications for release of all or part of the reserve funding are considered on a case by case basis and will generally only be considered when all Project risks have been identified, costed and budgeted for by You.

### How do we decide if a variation is approved?

When assessing variation requests, the following will be considered:

- are the changes consistent with the objectives of the Creative Capital Fund
- the type and scope of change to the Project
- if the change to the Project effects your Project's eligibility as outlined in the Creative Capital Fund 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 working days from when we receive your email. In most instances this first update will advise if your request has been completed correctly and if additional information regarding the Project variation is required to enable Department consideration. If you request significant changes, the update will let you know how much longer the assessment is likely to take and 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 attaching to our approval and if required, a Variation Deed will be executed and attached to your Funding Agreement.

#### **Could a variation change my funding schedule?**

Yes, any variations are directly related to your funding payment schedule. An approved variation to your Project can impact on the timing of your next payment.

#### **Steps for a Variation Request**

1. Contact us to discuss your variation needs on: **Phone (02) XXXXXXXX** or [creative.capital@create.nsw.gov.au](mailto:creative.capital@create.nsw.gov.au).
2. If advised by the Creative Capital Fund, submit a written variation request in the form of the template available on the Smarty Grants website at XXXXX.
3. Assessment of your variation request by us.
4. We will provide an update on your Project variation request within 10 working days of receiving your written request.