

STATE OF QUEENSLAND

Acting through Arts Queensland, Department of the Premier and Cabinet

REGIONAL ARTS FUND [RAF]

TERMS OF FUNDING

Version 1 – 18 July 2016

These Terms of Funding together with the Letter of Offer and the Schedules make up the Funding Agreement between Arts Queensland and You

1. TERMINOLOGY

1.1 In these Terms of Funding, the following definitions apply:

Approved Application means Your application, including any amendments, for funding from the Program Fund, as approved by Arts Queensland;

Arts Queensland means the State of Queensland acting through Arts Queensland, Department of the Premier and Cabinet;

Budget means the budget for the Funded Activities, as specified in:

- the budget forming part of the Approved Application; and
- any updated or supplementary budget required to be provided by You under the Funding Agreement and approved by Arts Queensland;

Commencement Date means the date specified in Item 3 of Schedule 1;

Completion Date means the date specified in Item 4 of Schedule 1 (if any);

Funded Activities means the activities, purposes or projects to be undertaken by You during the term of the Funding Agreement, and in relation to which the Funding is being provided, set out in Item 2 of Schedule 1;

Funding means the dollar (\$) amount of the investment funding to be provided by Arts Queensland to You specified in Item 5 of Schedule 1;

Funding Purpose means the purpose for which Arts Queensland makes funding available from the Program Fund, as specified in Item 6 of Schedule 1;

GST means any tax imposed by or through the GST Legislation;

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

Guidelines means guidelines for the Program Fund, available at <http://www.arts.qld.gov.au>, as amended or replaced from time to time by Arts Queensland;

Instalment means an instalment of the Funding, as specified in the table in Schedule 2;

KPOs means the key performance outcomes specified in Schedule 3;

Letter of Offer means the letter to You from Arts Queensland offering to provide the Funding on the terms of the Funding Agreement;

Payment Milestone means the payment milestones which must be achieved by You by the Scheduled Payment Date in order to receive an Instalment as specified in Schedule 2;

Program Fund means the funding program nominated in the Letter of Offer;

Recipient or You means the recipient of the Funding named in Item 1 of Schedule 1;

Reporting Date means the date by which Reports are to be provided by You, as specified in Schedules 1 and 2;

Schedule means the schedules attached to the Letter of Offer;

Scheduled Payment Date means a scheduled payment date for an Instalment, as specified in the table in Schedule 2;

Special Conditions means the special conditions (if any) specified in Item 10 of Schedule 1;

Terms of Funding means this document.

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2. FUNDING AGREEMENT

- 2.1 The Funding Agreement between You and Arts Queensland will come into existence when you sign the Letter of Offer.
- 2.2 The Funding Agreement is made up of:
- (a) the Letter of Offer and the Schedules; and
 - (b) these Terms of Funding.
- 2.3 In the event of any inconsistency between the Special Conditions and any other term of the Funding Agreement, the Special Conditions will prevail.
- 2.4 The Funding Agreement will commence on the Commencement Date and, unless terminated earlier, will continue until all of Your obligations have been fulfilled to the absolute satisfaction of Arts Queensland.

3. PAYMENT OF FUNDING

- 3.1 Arts Queensland will pay the Funding in the Instalments according to Schedule 2, subject to and conditional upon You:
- (a) satisfying the Payment Milestones relevant to the Instalment, to Arts Queensland's satisfaction, by the Scheduled Payment Date; and
 - (b) providing a compliant invoice to Arts Queensland for the Instalment.
- 3.2 You must hold the Funding in a separate bank account and apply any interest earned on the Funding to the performance of the Funded Activities.
- 3.3 Except for the Funding, Arts Queensland has no obligation to provide any assistance for the Funded Activities and any costs incurred by You in relation to the Funded Activities, in excess of the Funding, will be Your sole responsibility.
- 3.4 Payment of the Funding will not constitute an admission or acceptance by Arts Queensland that the performance of the Funded Activities conforms to this Agreement and will not be deemed to release You from the requirements of this Agreement in any way.

4. USE OF FUNDING

- 4.1 You must use the Funding solely for performing the Funded Activities and in accordance with the Budget.
- 4.2 You may only use the Funding to purchase property or assets if expressly specified as part of the Funded Activities or as otherwise agreed in writing by Arts Queensland.
- 4.3 If You purchase any property or assets with the Funding, You must:
- (a) be the legal owner of the property or assets;
 - (b) not use the property or assets as security for any debt or obligation;

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- (c) take sole responsibility for the purchase, holding, insuring and disposal of the property or assets; and
- (d) make the property or assets available for community use from the end of the Funding Agreement, in a manner acceptable to Arts Queensland.

4.4 If Arts Queensland determines that the actual cost to You of performing the Funded Activities is less than the Funding, Arts Queensland may, by notice to You, require You to repay the difference.

4.5 If Arts Queensland determines that You have not performed all parts of the Funded Activities, Arts Queensland may, by notice to You, require You to repay such part of the Funding as Arts Queensland determines to represent the apportioned cost of the parts of the Funded Activities not performed.

5. PERFORMANCE OF FUNDED ACTIVITIES

5.1 In consideration of Arts Queensland agreeing to pay the Funding, You agree to perform the Funded Activities.

5.2 You must:

- (a) ensure that all persons performing the Funded Activities exercise the degree of skill and competence reasonably expected of persons performing activities of a similar nature;
- (b) achieve all KPOs;
- (c) perform the Funded Activities strictly in accordance with:
 - (i) the specific terms in the Funding Agreement, including the Special Conditions;
 - (ii) the Budget; and
 - (iii) the Guidelines including the Funding Purpose; and
- (d) complete the Funded Activities by the Completion Date; and
- (e) comply with all applicable Commonwealth, State and local government laws, ordinances and regulations.

5.3 The Funded Activities are Your sole responsibility and Arts Queensland takes no responsibility or liability for them.

6. REPORTING

6.1 You must provide the reports in Items 8 and 9 of Schedule 1 and any reports required for the KPOs to Arts Queensland by the relevant Reporting Dates.

6.2 Arts Queensland may, by notice to You, require You to provide such further information or documents as Arts Queensland considers necessary or appropriate in relation to any

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report provided, or required to be provided, by You under clause 6.1, including for the purposes of verifying anything in the report.

- 6.3 If Arts Queensland is not satisfied with a report provided under clause 6.1, it may, by notice to You, require You to resubmit the report. A notice given under this clause 6.3 will contain the reasons why Arts Queensland considers the document or report to be unsatisfactory.
- 6.4 Where a notice is given under clauses 6.2 or 6.3, You must provide the information, documents or resubmitted report within the timeframe specified in the notice.

7. ACCOUNTING RECORDS AND SYSTEMS

7.1 You must:

- (a) record all expenditure directly or indirectly related to and all income directly or indirectly from performing the Funded Activities; and
- (b) maintain true and accurate financial and other records at all times about Your:
 - (i) income, expenditure and financial position;
 - (ii) use of the Funding;
 - (iii) performance of the Funded Activities, including achievement of the KPOs; and
- (c) acknowledge the Funding in any financial statements or accounts that You are required to prepare.

8. REVIEW AND AUDIT

8.1 Arts Queensland may, at any time and by not less than 14 days notice to You, conduct a review of any aspect of Your:

- (a) use of the Funding;
- (b) performance of the Funded Activities, including achievement of the KPOs; or
- (c) compliance with any aspect of the Funding Agreement.

8.2 Arts Queensland may nominate auditors to conduct, or assist it to conduct, a review under clause 8.1 ('Auditors').

8.3 Where a notice is given under clause 8.1, You must comply with the notice and must give Arts Queensland's officers, employees or its Auditors, as the case may be, full and free access to:

- (a) its employees;
- (b) any premises where Funded Activities are performed or its business is conducted; and

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- (c) its accounts, records and documents that relate directly or indirectly to the receipt or expenditure of the Funding or performance of the Funded Activities, copies of which may be made by Arts Queensland or its Auditors.

8.4 Arts Queensland will, and will procure that its Auditors, use best endeavours to minimise interference to Your employees and business when conducting a review.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Intellectual property rights in any material that you create for the purpose of the Funded Activities ('Recipient's Material') vest in You.

9.2 You grant, and must procure that relevant third parties grant, Arts Queensland a perpetual, irrevocable, royalty-free, world-wide and non-exclusive licence, including a right to sub-licence, to use, communicate, reproduce, publish, adapt and modify Recipient's Material, Your existing material and any third party material as part of Recipient's Material.

10. GST

10.1 The Funding is exclusive of GST. If the supply by You under the Funding Agreement is a taxable supply, Arts Queensland will pay You the GST on the taxable amount at the same time as it pays the Funding. You must remit any GST amount that Arts Queensland pays You to the Australian Tax Office as required by the GST Legislation.

10.2 You warrant that You are registered for GST as at the Commencement Date. You must immediately notify Arts Queensland if You cease to be registered for GST.

10.3 If, for any reason, including:

- (a) any amendment to the GST Legislation;
- (b) the issue of a ruling or advice by the Commissioner of Taxation;
- (c) a refund to Arts Queensland or to You in respect of a supply made under the Funding Agreement; or
- (d) a decision of any tribunal or court,

the amount of GST paid by Arts Queensland differs from the amount of GST paid or payable by You to the Commissioner of Taxation, You must issue an appropriate GST adjustment note and any difference must be paid by, or to, Arts Queensland, as the case may be.

11. INSURANCE

11.1 You must take out and maintain:

- (a) workers' compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003*;

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- (b) public liability insurance for a minimum of \$10 million for any one event in respect of accidental death of or accidental bodily injury to persons, or accidental damage to property, arising out of or in connection with the performance of the Funded Activities; and
- (c) other insurance, including professional indemnity insurance, specified in the Letter of Offer.

11.2 You must, upon request by Arts Queensland, provide copies of the certificates of currency for any of the insurances required to be held under clause 11.1.

12. INDEMNITY

12.1 You must indemnify Arts Queensland and each of Arts Queensland's officers, employees, contractors and agents (each 'an Indemnified') against any claim, action, proceeding, demand, liability, obligation, cost, loss, damage, or expense (including legal expenses on a full indemnity basis) made against or brought by any person against the Indemnified arising out of or in connection with:

- (a) You breaching the Funding Agreement; or
- (b) a wilful or negligent act or omission of You or Your officers, employees, contractors or agents,

except to the extent that an unlawful or negligent act or omission of the Indemnified contributed to the claim, action, proceeding, demand, liability, obligation, cost, loss, damage, or expense.

13. CONFIDENTIAL INFORMATION

13.1 You may only disclose confidential information of Arts Queensland:

- (a) to Your professional advisers;
- (b) if required by law;
- (c) if necessary to perform Your obligations under the Funding Agreement; or
- (d) if Arts Queensland consents to the disclosure.

13.2 You must return or destroy, at Arts Queensland's direction, materials containing Arts Queensland's confidential information when it is no longer required for the purposes providing the Funded Activities, or otherwise when directed by Arts Queensland.

14. PRIVACY

14.1 If You collect or have access to personal information, as defined in the *Information Privacy Act 2009*, for the purposes of the Funding Agreement or performance of the Funded Activities, You must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act* as if You are Arts Queensland.

14.2 If requested by Arts Queensland, You must sign and procure Your employees, officers or contractors to sign, a deed of privacy in a form acceptable to Arts Queensland.

15. ACKNOWLEDGEMENT OF FUNDING

15.1 You must:

- (a) observe the requirements of the Arts Queensland 'Acknowledgment Protocol', available on the Arts Queensland website at 'www.arts.qld.gov.au' or from Arts Queensland;
- (b) acknowledge the Funding in all promotional material and publications relating to the Funded Activities, including newspapers, websites, display signage and banners, with the Queensland Government logo being shown prominently; and
- (c) not represent, claim or hold out in any way that Arts Queensland is a party to the delivery of the Funded Activities, other than as a financial contributor.

15.2 The acknowledgement referred to in clause 15.1(b) must be no smaller in size and of no less visual significance than any other acknowledgement of assistance received for the Funded Activities, unless the prior written consent of Arts Queensland is obtained. In cases where Arts Queensland is the major contributor of funds, the acknowledgement should be separate from and precede all other acknowledgements.

16. TERMINATION

16.1 Arts Queensland can, by giving You notice, suspend payment of the Funding or terminate the Funding Agreement if:

- (a) You breach any term of the Funding Agreement and You fail to remedy the breach to Arts Queensland's satisfaction within 30 days of being notified about it;
- (b) You breach any term of this Agreement that is not, in Arts Queensland's opinion, reasonably capable of being remedied;
- (c) You become insolvent, subject to any form of external administration, have execution levied against any of Your assets or enter into an arrangement with Your creditors;
- (d) any part of the Funding is applied other than for performance of the Funded Activities; or
- (e) work on any part of the Funded Activities ceases without Arts Queensland's prior consent.

16.2 Your breach of a term of the Funding Agreement will be deemed to constitute a breach of any other agreement between Arts Queensland and You.

17. REPAYMENT OF FUNDING

- 17.1 If, at the expiration or termination of this Agreement, any part of the Funding remains unspent or uncommitted, Arts Queensland may, by notice to You, require You to repay that part of the Funding.
- 17.2 Nothing in this clause 17 limits or affects any other right conferred on Arts Queensland, whether under the Funding Agreement or otherwise.

18. DISPUTE RESOLUTION

- 18.1 The parties agree that, where a dispute arises between them in relation to the Funding Agreement, they will initiate discussions to attempt to resolve the dispute.
- 18.2 The parties may agree to escalate the dispute to any level at any time, or to attempt to resolve the dispute through mediation.
- 18.3 Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this Agreement.

19. NOTICES

- 19.1 Any notice to be given under the Funding Agreement must be in writing and addressed and provided to the relevant address for the party. The address of Arts Queensland and You is the address for notices set out in the Letter of Offer.
- 19.2 A notice may be delivered by hand, sent by post, facsimile or electronic mail and is taken to be received:
- (i) in the case of prepaid post, on the third day after the date of posting;
 - (ii) in the case of fax, at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
 - (iii) in the case of delivery by electronic mail, at the time when:
 - A. the addressee acknowledges receipt by any means; or
 - B. the sender receives an acknowledgment that it has been properly transmitted; and
 - (iv) in the case of delivery by hand, on delivery.
- 19.3 In relation to notices to be given under clauses 4.4, 4.5 and 17.1:
- (a) the notice will specify the amount to be repaid, which amount may include any interest earned on the amount and any GST component; and
 - (b) the amount specified in the notice must be repaid by You within 30 days of receipt of the notice and will constitute a debt due and owing to Arts Queensland.

20. GENERAL

- 20.1 The Funding Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements between the parties.
- 20.2 The Funding Agreement may only be varied by written agreement of authorised representatives of Arts Queensland and You.
- 20.3 You must ensure that all information and documents made or provided by You (including by Your representatives) in connection with the Approved Application and the Funding Agreement are complete, accurate, up to date and not misleading in any way.
- 20.4 You do not have the authority to bind Arts Queensland by contract or otherwise and must not represent to any person that You are an employee or agent of Arts Queensland.
- 20.5 Arts Queensland may set-off any money due to it from You against money due to You under the Funding Agreement.
- 20.6 A failure by Arts Queensland to exercise, or a delay by Arts Queensland in exercising, any right, power or remedy will not operate as a waiver.
- 20.7 If any part of the Funding Agreement is determined to be invalid, unlawful or unenforceable, then that part will be severed and the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.
- 20.8 You must do all things reasonably required by Arts Queensland to give effect to the Funding Agreement.
- 20.9 You may not assign or novate, or purport to assign or novate, any of Your rights or obligations under the Funding Agreement, except with the prior written consent of Arts Queensland.
- 20.10 You must not subcontract any part of the Funded Activities without Arts Queensland's prior written consent. You will remain responsible to Arts Queensland for the acts and omissions of any subcontractors.
- 20.11 You acknowledge that Arts Queensland is subject to the *Right to Information Act 2009* and any documents held by Arts Queensland are subject to disclosure under that Act.
- 20.12 Clauses 3, 4, 8, 9, 11, 12, 13, 14 and 17 will survive termination or expiration of the Funding Agreement.
- 20.13 The Funding Agreement is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.
- 20.14 The Funding Agreement can be signed in any number of parts, each of which, when read together, will constitute one agreement.