**STATE OF QUEENSLAND**

Represented by Department of Communities, Housing and Digital Economy, acting through Arts Queensland

“Arts Queensland”

**TERMS OF FUNDING Version 8**

2 February 2021

**For**

**QUEENSLAND ARTS SHOWCASE PROGRAM [QASP]**

**And**

**INDIVIDUALS FUND [IF]**

**And**

**PLAYING QUEENSLAND FUND [PQF]**

**And**

**BACKING INDIGENOUS ARTS INITIATIVE CAPACITY BUILDING FUND [BIA]**

**And**

**INDIGENOUS ART CENTRE INFRASTRUCTURE FUND [IACIF]**

**And**

**BIA PERFORMING ARTS FUND [BIA PA]**

**And**

**SPACES AND PLACES**

**And**

**FIRST NIGHT SHOWCASES – BULMBA-JA AND JWAC**

**And**

**OPEN AIR**

**And**

**TOURING QUEENSLAND FUND [TQF] and TOURING QUEENSLAND QUICK RESPONSE FUND [TQF Quick]**

**And**

**FIRST NATIONS COMMISSIONING FUND**

**And**

**INDEPENDENT CREATION FUND**

**These Terms of Funding Version 8 together with the Letter of Offer and the Schedules make up the Funding Agreement between Arts Queensland and You**

**TERMS**

1. DEFINITIONS & INTERPRETATION
   1. In the Funding Agreement, 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 represented by Department of Communities, Housing and Digital Economy, acting through Arts Queensland;

***Arts Minister*** means the Minister responsible for Arts Queensland;

***Author*** has the same meaning as in Part IX of the *Copyright Act 1968* (Cth);

***Budget*** means the budget for the Funded Activities, as specified in Item 6 of Schedule 1 and as attached at Schedule 6:

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

***Bulmba-ja*** means the Bulmba-ja Arts Centre;

***Commencement Date*** means the date specified in Item 2 of Schedule 1;

***Completion Date*** means the date specified in Item 3 of Schedule 1 (if any);

***Confidential Information*** includes:

* + 1. this Funding Agreement;
    2. in relation to a party:
       1. information that is by its nature confidential, is designated by that party as confidential, or the other party knows or ought to know is confidential; and
       2. excludes any information that is in the public domain, other than through a breach of this Funding Agreement by the other party;

***COVID-19 Pandemic*** means the declaration of COVID-19 as a pandemic by the World Health Organisation on 11 March 2020;

***COVID Safe Work Health and Safety Plan***, ***COVID Safe Industry Plan*** and ***COVID Safe Site-specific Plan*** includes any plan required under a Commonwealth or State law, including under a Public Health Direction issued under the *Public Health Act 2005 (Qld)*;

***Cyberbullying*** means the use of information and communication technologies to support deliberate, repeated, and hostile behaviour by an individual or group, that is intended to harm others;

***Existing Material*** means material that exists as at the commencement of the Funding Agreement and which is supplied by a party to the other for the purpose of the Funding Agreement;

***Force Majeure Event*** means an unforeseeable event, act, omission, cause or circumstance outside a party's reasonable control which occurs without fault or negligence of the affected party, including and without limitation:

* + 1. acts of God, natural disasters, accident;
    2. war, riot or insurrection;
    3. illegal acts including vandalism, sabotage and cyber-crime;
    4. pandemic or epidemic;
    5. industrial strike, lockout, ban, limitation of work or other industrial disturbance; and
    6. law, rule or regulation of any government, Government Body or governmental agency and executive or administrative order or act of general or particular application;

***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 5 of Schedule 1 and as attached at Schedule 5 (as applicable);

***Funding*** means the dollar ($) amount of the investment funding to be provided by Arts Queensland to You specified in Item 4 of Schedule 1;

***Funding Agreement*** means:

* + 1. the Letter of Offer and
    2. Schedules attached to the Letter of Offer; and
    3. these Terms of Funding Version 8;

***Funding Purpose*** means the purpose for which Arts Queensland makes funding available from the Program Fund, as specified in Item 7 of Schedule 1;

***Government Body*** means:

* + 1. a Minister, the Parliament of Queensland or a committee of the Parliament of Queensland;
    2. a department, service, agency, authority, commission, corporation, instrumentality, board, office or other entity established for a State government purpose;
    3. a part of an entity mentioned in paragraph (b);

***GST*** has the same meaning as in the GST Act;

***GST Act*** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time;

***GST Amount*** means the amount of GST payable in respect of any Taxable Supply under the Funding Agreement, calculated at the rate of GST applicable at the time;

***Guidelines*** means guidelines for the Program Fund, available at Arts Queensland’s website (at <http://www.arts.qld.gov.au/aq-funding>), as amended or replaced from time to time by Arts Queensland;

***Indigenous Cultural and Intellectual Property*** or ***ICIP*** means First Nations Peoples' interests in their culture, heritage and knowledge and includes the intangible and tangible aspects of cultural practices, cultural expressions, resources and knowledge systems that have been, and continue to be, developed, nurtured and refined by First Nations People as part of expressing their cultural identity. ICIP excludes Intellectual Property Rights and Moral rights;

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

***Intellectual Property Rights*** includes all present and future rights in relation to copyright, trademarks, designs, patents, trade, business or company names, trade secret, confidential or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Funding Agreement, and whether existing in Australia or otherwise, but excludes Moral Rights;

***JWAC*** means the Judith Wright Arts Centre;

***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 for the Program Fund nominated, on the terms of the Funding Agreement and attaching any Schedules;

***Local Government Area*** has the same meaning as in the *Local Government Act 2009*;

***Local Supplier*** means a supplier of goods or services based in Queensland whose place of business is located within a 125 kilometre radius of where any good or service is to be supplied or provided to You;

***Machinery of Government Change*** means a transfer of responsibility, function or operations either wholly or partly, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body;

***Marketing and Communications Plan*** includes:

* + 1. Promotional Material proposed by You regarding the Funded Activities; and
    2. the name, branding and any special acknowledgements for the Funded Activities; and
    3. in a form as required by Arts Queensland;

***Material*** includes New Material, Existing Material and Third Party Material;

***Media Releases*** includes press releases, news releases, press statements, video releases and public announcements;

***Moral Rights*** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Funding Agreement;

***New Material*** means all material that is created, written, developed or otherwise brought into existence by or on behalf of the Recipient in the course of performing its obligations under the Funding Agreement.  New Material excludes Existing Material and Third Party Material;

***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;

***Personal Information*** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion;

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

***Promotional Material*** includes social media, websites, print media, advertising and display signage and banners related to the Funded Activities;

***Queensland Artist*** includes artists who are emerging, established or mid-career and are either:

born in Queensland; or

who have their primary place of residence in Queensland;

***Queensland Creative Business*** means abusiness based in Queensland whose primary business activity is to provide goods or services in or to the creative industries;

***Regional Queensland*** means all of Queensland other than the Local Government Area of the Brisbane City Council;

***Report*** includes any report specified in a Schedule, including Items 8 and 9 of Schedule 1 and Schedule 2, or otherwise as requested by Arts Queensland;

***Reporting Date***means the date by which Reports are to be provided by You, as specified in Items 8 and 9 of Schedule 1 and Schedule 2;

***Schedule*** means any 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 Condition*** means a special condition specified in Schedule 4 (if any);

***Tax Invoice*** has the same meaning as in the GST Act;

***Taxable Supply*** has the same meaning as in the GST Act;

***Terms of Funding*** means this document – Arts Queensland’s Terms of Funding Version 8;

***Third Party Material*** means all material that is created, written, developed or otherwise brought into existence other than by the Recipient;

***Traditional Owners*** includes First Nations People, Aboriginal Peoples and Torres Strait Islander Peoples;

***Venue Hire Agreement*** means an agreement in a form approved by Arts Queensland from time to time entered into with Arts Queensland for hire of (including specified areas of) Arts Queensland’s venues, including JWAC and Bulmba-ja;

***Works*** includes any creative or artistic work, piece or object; and

***You, Your and Recipient*** means the recipient of the Funding named in Item 1 of Schedule 1.

* 1. In the Funding Agreement, unless the context otherwise requires:
     1. a reference to a person includes a reference to individuals and other entities recognised by law;
     2. all monetary amounts refer to Australian currency;
     3. a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
     4. the singular includes the plural and vice versa and words importing one gender include a reference to all other genders;
     5. a covenant or Agreement on the part of two or more persons will be deemed to bind them jointly and severally; and
     6. where the day on or by which any act, matter or thing is to be done is not a Business Day, the act, matter or thing may be done on the next Business Day.

1. COMMENCEMENT AND TERM OF FUNDING AGREEMENT
   1. The Funding Agreement is made up of:
      1. the Letter of Offer and any Schedules; and
      2. these Terms of Funding version 8.
   2. The Funding Agreement between You and Arts Queensland will come into existence when Arts Queensland receives the executed Funding Agreement signed by you.
   3. 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.
2. PAYMENT OF FUNDING
   1. Arts Queensland will pay the Funding in the Instalments according to Schedule 2, subject to and conditional upon You:
      1. satisfying the Payment Milestones relevant to the Instalment, to Arts Queensland’s satisfaction, by the Scheduled Payment Date; and
      2. providing a compliant Tax Invoice to Arts Queensland for the Instalment.
   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. 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.
   4. Payment of the Funding will not constitute an admission or acceptance by Arts Queensland that the performance of the Funded Activities conforms to the Funding Agreement and will not be deemed to release You from the requirements of the Funding Agreement in any way.
3. USE OF FUNDING
   1. You must use the Funding solely for performing the Funded Activities and in accordance with the Budget.
   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.
   3. If You purchase any property or assets with the Funding, You must:
      1. be the legal owner of the property or assets;
      2. not use the property or assets as security for any debt or obligation;
      3. take sole responsibility for the purchase, holding, insuring and disposal of the property or assets; and
      4. make the property or assets available for community use from the end of the Funding Agreement, in a manner approved by Arts Queensland.
4. REPAYMENT OF FUNDING
   1. If Arts Queensland determines that:
      1. the actual cost to You of performing the Funded Activities is less than the Funding; or
      2. You have not performed all parts of the Funded Activities; or
      3. You otherwise terminate the Funding Agreement in accordance with clause 24.4

then Arts Queensland may, by Notice to You, require You to repay all or some of the Funding within 30 days from the date of the Notice. Such amount will be a debt due and owing to Arts Queensland.

* 1. Any repayment under notice given by Arts Queensland in accordance with clause 5.1 may be an amount either:
     1. representing the difference between actual cost of performing the Funded Activities and the Funding, or
     2. an amount apportioned to the Funded Activities that were not performed (as the case may be).
  2. If, at the expiration or earlier termination of the Funding Agreement by Arts Queensland, any part of the Funding has not been expended or committed by the Recipient in accordance with the Funding Agreement, then You must repay that part of the Funding to the Arts Queensland within 30 days.
  3. Nothing in this clause 5 limits or affects any other right conferred on Arts Queensland, whether under the Funding Agreement or otherwise.

1. PERFORMANCE OF FUNDED ACTIVITIES
   1. In consideration of Arts Queensland agreeing to pay the Funding, You must:
      1. perform the Funded Activities in accordance with the Funding Agreement; and
      2. 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; and
      3. achieve all KPOs; and
      4. perform the Funded Activities strictly in accordance with:
         1. the specific terms in the Funding Agreement, including the Special Conditions; and
         2. the Budget; and
         3. the Guidelines for the Program Fund, which include the Funding Purpose; and
      5. complete the Funded Activities by the Completion Date; and
      6. comply with all applicable Commonwealth, State and local government laws, ordinances, regulations and directions; and
      7. obtain and provide to Arts Queensland copies of any permission, licence, permit, authority or approval from any relevant third party that is necessary to perform the Funded Activities; and
      8. comply with any COVID Safe Work Health and Safety Plan, COVID Safe Industry Plan or COVID Safe Site-specific Plan as approved or applicable to performing obligations under the Funding Agreement, including the Funded Activities, and provide a copy of such a plan to Arts Queensland as required or requested; and
      9. implement and maintain, for the duration of this Funding Agreement, an anti-Cyberbullying policy and process for the detection, prevention, intervention and management response of Cyberbullying acts or allegations.
   2. The Funded Activities are Your sole responsibility and Arts Queensland takes no responsibility or liability for them.
2. BUY QUEENSLAND
   1. You warrant to Arts Queensland that in performing the Funded Activities you will use best endeavours to employ, engage and contract with (as the case may be):
      1. Queensland Artists; and
      2. Queensland Creative Businesses in Regional Queensland; and
      3. Local Suppliers.
3. WORKS CREATED
   1. If You create or produce any Works, property or assets in performing the Funded Activities, the parties agree You:
      1. are the legal owner of the Works, property or assets;
      2. will not use the Works, property or assets as security for any debt or obligation; and
      3. take sole responsibility for the holding, maintenance, servicing, repair, insuring and disposal of the property or assets.
4. REPORTING
   1. You must provide the Reports in Items 8 and 9 of Schedule 1 and Schedule 2, and any Reports required for the KPOs in Schedule 3 to Arts Queensland, by the relevant Reporting Dates.
   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 Report provided, or required to be provided, by You, including under clause 9.1 and including for the purposes of verifying anything in a Report.
   3. If Arts Queensland is not satisfied with a Report provided under clause 9.1, it may, by notice to You, require You to resubmit the Report. A notice given under this clause shall provide the reasons why Arts Queensland considers the document or report to be unsatisfactory.
   4. Where a notice is given under clauses 9.2 or 9.3, You must provide the information, documents or resubmitted report within the timeframe specified in the notice.
5. ACCOUNTING RECORDS AND SYSTEMS
   1. You must:
      1. record all income and expenditure directly or indirectly related to the Funding and Funded Activities; and
      2. maintain true and accurate financial and other records at all times about Your:
         1. income, expenditure and financial position; and
         2. use of the Funding; and
         3. performance of the Funded Activities, including achievement of the KPOs; and
      3. acknowledge the Funding in any financial statements or accounts that You are required to prepare.
6. REVIEW AND AUDIT
   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:
      1. use of the Funding;
      2. performance of the Funded Activities, including achievement of the KPOs; or
      3. compliance with any aspect of the Funding Agreement.
   2. Arts Queensland may nominate auditors to conduct, or assist it to conduct, a review under clause 11.1 (‘Auditors’).
   3. You must comply with any notice is given under clause 11.1 and must give Arts Queensland’s officers, employees or its Auditors, as the case may be, full and free access to:
      1. its employees;
      2. any premises where Funded Activities are performed or its business is conducted; and
      3. all accounts, records and documents related to the Funding and Funded Activities, copies of which may be made and taken by Arts Queensland or its Auditors.
   4. Arts Queensland will use best endeavours to minimise disruption to Your employees and business when conducting a review or in engaging Auditors to conduct a review.
7. TITLE AND INTELLECTUAL PROPERTY RIGHTS
   1. This clause is subject to clause 14, namely, Indigenous Cultural and Intellectual Property (ICIP).
   2. Nothing in the Funding Agreement effects a change in ownership of Intellectual Property Rights in Existing Material.
   3. Subject to clause 12.4, title to, and Intellectual Property Rights in, any New Material will, upon its creation, vest in the Recipient.
   4. Where the Recipient is an agent or representative for an individual artist, title to, and Intellectual Property Rights in, any New Material vests in the individual artist who created the New Material upon its creation.
   5. The Recipient grants, and will ensure that relevant third parties grant, Arts Queensland a paid up, perpetual, royalty-free, non-exclusive, irrevocable and worldwide licence to use, copy, crop, publish, communicate and reproduce Existing Material, New Material and Third Party Material for the purpose of Arts Queensland’s:
      1. performance of its obligations under the Funding Agreement and all ancillary purposes; and
      2. marketing, promotional and media requirements, including in accordance with the Terms set out in this Funding Agreement; and
      3. reporting requirements, both internal and external, including in accordance with the Terms set out in this Funding Agreement and as required to be reported to a Government Body; and
      4. record keeping and archival requirements, including as required by law under the *Public Records Act 2002*.
   6. Arts Queensland may sub-licence to third-parties any licence granted to it in accordance with clause 12.5. Any sub-licence granted by Arts Queensland in accordance with this clause is limited in its term to the Term of the Funding Agreement.
   7. The Recipient warrants to Arts Queensland that:
      1. the Recipient has the right to grant the licences under this clause; and
      2. neither the Recipient’s performance of the Funding Agreement or Arts Queensland’s exercise of its rights under a licence will infringe the Intellectual Property Rights or Moral Rights of any person.
8. MORAL RIGHTS
   1. Right of Attribution: Subject to clause 13.2, Arts Queensland must identify the Author of the Material. If the Recipient notifies Arts Queensland of a preferred name for this purpose and that name is recorded in Schedule 4 or otherwise in the Funding Agreement, then Arts Queensland must identify the Author by the preferred name.
   2. A Moral Right is not infringed under clause 13.1 if it was reasonable in all the circumstances not to identify the Author accordingly under clause 13.1, as provided under section 195AR of the *Copyright Act 1968* (Cth).
   3. Right of Integrity: Subject to clause 13.4, Arts Queensland must not, and must not let any other person, alter, crop, change or adapt the Material, or otherwise destroy or subject the New Material to derogatory treatment.
   4. A Moral Right is not infringed under clause 13.3 if it was reasonable in all the circumstances to treat the New Material accordingly under clause 13.3, as provided under section 195AS of the *Copyright Act 1968* (Cth).
9. INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY (ICIP)
   1. Arts Queensland respects the cultural and spiritual significance of First Nations People and acknowledges that:
      1. any ICIP belongs to the Traditional Owners of the ICIP; and
      2. ownership of the ICIP will, at all times, remain with the Traditional Owners of the ICIP.
   2. **Restrictions**: This clause applies if the Recipient notifies Arts Queensland:
      1. that Material incorporates any ICIP; and
      2. of any restrictions on using and dealing with the ICIP in the Material; and
      3. the details as provided by the Recipient under sub-clauses 14.2(a) and 14.2(b) are recorded in Schedule 4 or otherwise in the Funding Agreement.
   3. **Acknowledgement:** This clause applies if the Recipient notifies Arts Queensland:
      1. that Arts Queensland is required to acknowledge the Traditional Owners of the ICIP in the Material; and
      2. the Traditional Owners to be acknowledged in relation to the ICIP; and
      3. the circumstances in which the acknowledgement must be made; and
      4. the form in which the acknowledgement is to be made, which is agreed by Arts Queensland; and
      5. the details as provided by the Recipient under sub-clauses 14.3(b), 14.3(c) and 14.3(d) (as applicable) are recorded in Schedule 4 or otherwise in the Funding Agreement.
   4. Subject to clause 14.5, Arts Queensland must:
      1. comply with any restrictions on using and dealing with the ICIP in the Material as notified and recorded in accordance with clause 14.2; and
      2. comply with any acknowledgement relating to the ICIP in the Material as notified, agreed and recorded in accordance with clause 14.3; and
      3. otherwise comply with clause 13.3.
   5. Arts Queensland does not breach an obligation under clause 14.4 if it was reasonable in all the circumstances not to comply with the obligation.
   6. If the Recipient considers in any case that Arts Queensland has not complied with clause 14.4, the Recipient may notify Arts Queensland in writing of the nature and details of the alleged non-compliance.
   7. If a notice is issued under clause 14.6 by the Recipient, the parties must use reasonable endeavours to cooperatively address the concerns outlined by the Recipient in respect of an alleged non-compliance. Arts Queensland must take reasonable steps to remedy any agreed or proven non-compliance.
10. GST
    1. The Funding is exclusive of GST.
    2. If GST is payable on any Taxable Supply made under the Funding Agreement, Arts Queensland will pay You the GST Amount subject to provision of a Tax Invoice in respect of the supply.
    3. You warrant that You are registered for GST and must immediately notify Arts Queensland if You cease to be registered for GST.
    4. If, for any reason including, without limitation:
       1. an amendment to the GST Act; or
       2. the issue of a ruling or advice by the Commissioner for Taxation; or
       3. a refund of GST to You in respect of any supply made under the Funding Agreement; or
       4. a decision of any tribunal or court,

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

* 1. The parties agree to exchange with each other such information as may be necessary to enable each party to accurately assess its rights and obligations under this clause.

1. INSURANCE
   1. You must effect and maintain for the term of the Funding Agreement:
      1. public liability insurance for an amount of not less than $20 million for any one event in respect of accidental death of or accidental bodily injury to persons or accidental damage to property, arising in connection with performance of the Funded Activities; and
      2. workers' compensation insurance, including liability under statute law and at common law, in relation to any of Your employees, for an unlimited amount; and
      3. other insurance, including professional indemnity insurance, as specified in the Letter of Offer.
   2. The public liability insurance under clause 16.1(a) must be effected with an insurer authorised and licensed to operate in Australia and acceptable to Arts Queensland.
   3. You must, if requested by Arts Queensland from time to time, produce evidence of the currency of the insurances required by this clause.
2. INDEMNITY
   1. You release and indemnify Arts Queensland, its officers, employees, contractors and agents (‘the Indemnified’) from and against claims, liabilities, losses, damages, costs and expenses made against or suffered by the Indemnified as a result of:
      1. a breach of this Funding Agreement by You;
      2. a wilful, unlawful or negligent act or omission of You or Your officers, employees, contractors and agents; or
      3. an infringement, or alleged infringement of a person's Intellectual Property Rights or Moral Rights occurring in relation to the Funded Activities,

except to the extent any unlawful or negligent act or omission of Arts Queensland or its officers, employees and agents contributed to the loss or damage.

* 1. In conducting a claim, suit or action in respect of which You indemnify the Indemnified, You will, at Your expense, comply with Arts Queensland's reasonable directions.

1. CONFIDENTIALITY
   1. A party may only disclose Confidential Information of or about the other party:
      1. to its professional advisers;
      2. if required, or in the case of Arts Queensland, permitted by law or under the Funding Agreement;
      3. if necessary to perform its obligations under the Funding Agreement;
      4. with the other party’s prior written consent; or
      5. in the case of Arts Queensland, to the Parliament of Queensland or any relevant Minister in the Queensland Government.
   2. If a party becomes aware of a suspected or actual breach of this clause, it must immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
   3. You must return or destroy, at Arts Queensland’s direction, materials containing Arts Queensland’s Confidential Information when they are no longer required by You for the purposes of the Funded Activities, or otherwise when directed by Arts Queensland.
2. PRIVACY
   1. To the extent that You receive or collect Personal Information under, or in relation to, 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 2009* (Qld) in relation to the discharge of Your obligations under the Funding Agreement as if You were Arts Queensland.
   2. On request by Arts Queensland, You must obtain from Your employees, officers, agents or sub-contractors engaged for the purposes of the Funding Agreement, an executed deed of privacy in a form acceptable to Arts Queensland.
3. RIGHT TO INFORMATION
   1. Arts Queensland may publish or disclose the Funding Agreement and any information obtained by Arts Queensland in connection with the Funding Agreement.
   2. You acknowledge that Arts Queensland is authorised by law to disclose information under the *Right to Information Act 2009* ('RTI Act') in the following circumstances:
      1. in accordance with Arts Queensland's publication scheme made under the RTI Act insofar as that scheme provides for the disclosure of the information;
      2. when the Director-General of Arts Queensland or their authorised delegate decides that access be given to documents containing the information to a person who has formally applied for access to those documents under the RTI Act; or
      3. by publication on Arts Queensland's disclosure log insofar as a member of the public has been given access to documents containing the information in the circumstances mentioned in paragraph (b).
4. ACKNOWLEDGEMENT OF FUNDING
   1. You must:
      1. observe the requirements of Arts Queensland’s ‘Acknowledgment Protocol’, available on it’s website at ‘[www.arts.qld.gov.au](http://www.arts.qld.gov.au)’ or from Arts Queensland;
      2. acknowledge the Funding in all Promotional Material and publications relating to the Funded Activities, with the Queensland Government logo being shown prominently; and
      3. 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.
   2. The acknowledgement referred to in clause 21.1(b) must be no smaller in font 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 contributes all of the funds or is the highest contributor of funds for the Funded Activities, the acknowledgement should be separate from and precede all other acknowledgements.
5. MARKETING, COMMUNICATIONS AND MEDIA
   1. You must:
      1. provide a schedule of media opportunities in relation to the Funded Activities to Arts Queensland during the Term of the Funding Agreement;
      2. provide copies of any proposed Media Releases relating to the Funded Activities to Arts Queensland for approval, before providing such Media Releases to the media or other third parties;
      3. use best endeavours to provide the Arts Minister or Arts Minister’s representative, the opportunity to be involved in major announcements and high profile activities associated with the Funded Activities, including by delivering a foreword or welcome message; and
      4. allocate Arts Queensland invitations to attend associated events including, official VIP functions and presentations, performances and public program sessions, such as talks or recitals.
6. TERMINATION
   1. If You:
      1. breach a term of the Funding Agreement that, in Arts Queensland’s opinion, is not capable of being remedied; or
      2. breach a term of the Funding Agreement and fail to remedy that breach to Arts Queensland’s satisfaction within 30 days of receiving notification of the breach; or
      3. apply any part of the Funding other than for performance of the Funded Activities; or
      4. cease work on any part of the Funded Activities without Arts Queensland’s prior written consent; or
      5. (where You have notified Arts Queensland under clause 24.1(a)(i) and in the determination of Arts Queensland) You fail to do all things reasonably necessary to remove or mitigate the effects of the Force Majeure Event on the performance of the Your obligations in accordance with clause 24.1(a)(ii); or
      6. become insolvent or enter into any arrangement or composition with Your creditors or have execution levied against any of Your assets; or
      7. have a receiver appointed or become subject to any external form of administration; or
      8. go into liquidation or pass a resolution to go into liquidation, otherwise than for the purposes of reconstruction; or
      9. apply for bankruptcy; or
      10. become subject to an order of a Court for the winding up of the company

Arts Queensland may suspend payment of the Funding or terminate the Funding Agreement by notice in writing to You.

* 1. Upon termination of the Funding Agreement, Arts Queensland may recover from You, as a debt due to it, a proportionate amount, as determined by Arts Queensland, of the Funding paid to You.
  2. In determining the amount of the Funding repayable by You under clause 23.2, Arts Queensland, acting reasonably, may take relevant factors into consideration, including but not limited to:
     + 1. the amount of money expended by You from the Funding prior to the date of termination;
       2. the purposes, services or assets to which the expended money under paragraph 23.3(a) were applied or spent;
       3. whether any and which of the Funded Activities were fully or partially completed by You prior to termination.
  3. Any breach of the Funding Agreement by You is deemed to be a breach of any other agreement between Arts Queensland and You.
  4. A breach by You of any other agreement between Arts Queensland and You is deemed to be a breach of the Funding Agreement.
  5. Termination of this Funding Agreement is without prejudice to any other rights either party may have against the other.

1. FORCE MAJEURE
   1. If the performance by a party of an obligation under this Funding Agreement is prevented or affected by an unavoidable delay due to a Force Majeure Event:
      1. the affected party must:
         1. promptly give written notice of that fact to the other party and, in any event, give the notice within seven (7) days after the performance of the obligation is affected; and
         2. do all things reasonably necessary to remove or mitigate the effects of the Force Majeure Event on the performance of the party’s obligation; and
      2. the obligation is suspended to the extent that the performance of the obligation is affected by the Force Majeure Event, as long as the Force Majeure Event continues; and
      3. to the extent there is an obligation on Arts Queensland to pay Funding to the Recipient with respect to an obligation suspended under clause 24.1(b), the obligation to pay the Funding is suspended for the duration the corresponding obligation on the Recipient is suspended under clause 24.1(b).
   2. Notice of a Force Majeure Event under clause 24.1(a)(i) must include:
      1. the full particulars of the Force Majeure Event; and
      2. the effect of the Force Majeure Event on the affected party’s performance of their obligations under the Funding Agreement; and
      3. the anticipated period for which the Force Majeure Event will continue; and
      4. any action the affected party has taken and intends to take to mitigate or remove the effect of the Force Majeure Event on the performance of the party’s obligation.
   3. If the affected party is the Recipient, the Recipient must report to Arts Queensland in writing an update in relation to all the matters in clause 24.2:
      1. one month from the date of the notice under clause 24.1(a)(i) and every month thereafter for the duration the obligation is suspended under clause 24.1(b); and
      2. within the Reporting obligations otherwise imposed on the Recipient under this Funding Agreement.
   4. Either party may terminate this Funding Agreement if a party is still prevented from or delayed in performing its obligations, because of a Force Majeure Event notified under clause 24.1(a)(i), after six (6) months from the date of that notice.
   5. Nothing in this clause limits the rights of parties:
      1. in accordance with cancellation conditions applicable under a Venue Hire Agreement entered into with Arts Queensland, including as associated with the Funded Activities; or
      2. to vary the Funding Agreement in accordance with clause 30.6; or
      3. to resolve a dispute in accordance with clause 25.
   6. For the sake of clarity, the circumstances of the COVID-19 Pandemic do not constitute a Force Majeure Event.
2. DISPUTE RESOLUTION
   1. The parties agree that, where a dispute arises between them in relation to the Funding Agreement, they will engage in discussions to attempt to resolve the dispute.
   2. If discussions under clause 25.1 do not result in resolving a dispute between the parties, the parties agree to participate in mediation to attempt to resolve the dispute.
   3. Notwithstanding the existence of a dispute, each party will continue to perform its obligations under the Funding Agreement.
   4. Nothing in this clause limits the rights of parties under clauses 14.6 and 14.7.
3. PARLIAMENTARY APPROPRIATION
   1. You acknowledge and agree that:
      1. Arts Queensland is, in each year, reliant upon parliamentary appropriations to enable it to pay the Instalments; and
      2. if insufficient parliamentary appropriation is received by Arts Queensland to enable it to provide the Instalments in any year during the term of the Funding Agreement, Arts Queensland may, by notice to You:
         1. reduce the amount of any Instalment and the total amount of the Funding, in which case the Funding Agreement will be deemed varied accordingly; or
         2. terminate the Funding Agreement by 30 days notice to You.
4. NOVATION OF AGREEMENT IN CASE OF MACHINERY OF GOVERNMENT CHANGE
   1. Notwithstanding any provision of the Funding Agreement, Arts Queensland may freely transfer its rights and responsibilities, either wholly or partly, to a Queensland Government department or agency or Queensland Government Body that is not part of the same legal entity as Arts Queensland, but only as a consequence of a Machinery of Government Change.
   2. If clause 27.1 applies, You must execute a deed of novation, in the form required by Arts Queensland. You must execute and return the deed of novation to Arts Queensland within 5 Business Days from receipt of a notice from Arts Queensland advising of the transfer and requiring You to execute the deed of novation.
5. NOTICES
   1. Notices under the Funding Agreement must be:
      1. in writing;
      2. given by an authorised person on behalf of the party giving the notice; and
      3. delivered by hand or by mail or email to a party’s address as specified in the Letter of Offer, or any substitute address as may have been notified in writing by the relevant party to the other from time to time.
   2. A notice will be deemed to be given:
      1. if posted by express post – three (3) Business Days after the date of posting;
      2. if posted by regular post – four (4) Business Days after the date of posting;
      3. if delivered by hand during a Business Day – on the date of delivery; or
      4. if emailed – on the date the email was received;

except that a delivery received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.

* 1. In relation to any notices to be given under clauses 5.1, 5.2 and 5.3:
     1. the notice will specify the amount to be repaid, which includes any GST component and may include any interest earned on the amount; and
     2. 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.

1. INTENTIONALLY DELETED
2. GENERAL
   1. You must comply with all laws relevant to the performance of Your obligations under the Funding Agreement.
   2. The Funding Agreement constitutes the entire agreement between the parties for the performance of the Funded Activities. Any prior arrangements, agreements, warranties, representations or understandings, whether written or oral, are superseded.
   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.
   4. You must do all things reasonably required by Arts Queensland to give effect to the Funding Agreement.
   5. You are not by virtue of the Funding Agreement the servant, agent or representative of Arts Queensland and You must not represent or allow You to be represented as being an agent of Arts Queensland. You do not have the authority to bind Arts Queensland by contract or otherwise.
   6. The Funding Agreement may only be varied by written agreement of authorised representatives of Arts Queensland and You.
   7. The Funding Agreement may not be assigned, transferred, sub-contracted or novated in whole or in part by You, without the prior written consent of Arts Queensland.
   8. Arts Queensland may set-off any money due to it from You against money due to You under the Funding Agreement.
   9. Payment of any part of the Funding to You will not constitute an admission or acceptance by Arts Queensland that You have complied with the Funding Agreement.
   10. No right under the Funding Agreement will be deemed to be waived except by notice in writing signed by the waiving party.
   11. A failure by a party to enforce at any time any provision of the Funding Agreement will not constitute a waiver of the party's rights in respect of the provision.
   12. A waiver by a party of a breach of any provision of the Funding Agreement will not constitute a waiver of any other provision or any subsequent breach of the same provision.
   13. The Funding Agreement may be executed in one or more counterparts, and any such counterparts taken together shall form one instrument.
   14. Clauses 5, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 23 will survive termination or expiration of the Funding Agreement.
   15. The Funding Agreement will be governed by and construed according to the laws in force in the State of Queensland and each party submits to the jurisdiction of the courts of Queensland.
   16. In the event of any inconsistency between a Special Condition and any other term of the Funding Agreement, the Special Condition will prevail.
   17. If any part of the Funding Agreement is determined to be invalid, unlawful or unenforceable for any reason, then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of this Agreement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.