



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

---

### 1. Precedence

Where any inconsistency exists between:

- (a) the Special Conditions;
  - (b) this Schedule 2;
  - (c) Schedule 1 (except the Special Conditions); or
  - (d) any other schedules or annexures of this agreement,
- the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.
- 

### 2. Special Conditions

The parties agree to be bound by any Special Conditions.

---

### 3. Recipient's obligations

#### 3.1 Performance of the Activity

The Recipient must:

- (a) commence the Activity by the Activity Commencement Date;
- (b) carry out the Activity in accordance with the Project Management Plan and this agreement and with due care and skill;
- (c) not vary the Activity without obtaining the Department's prior written consent;
- (d) meet each Milestone;
- (e) complete the Activity by the Activity End Date;
- (f) provide the Recipient's Contribution for the purposes of the Activity at the times and for the amounts set out in Schedule 1;
- (g) not do anything or become involved in any situation which, in the reasonable opinion of the Department, reflects unfavourably upon the State of Queensland and/or the Activity;
- (h) comply with:
  - (i) the terms and conditions of this agreement, including the Standards (if any);
  - (ii) applicable laws and regulations (including obtaining and maintaining any licence or authorisation required for the Recipient to carry out the Activity);
  - (iii) standards of professional care and diligence of the industry to which the Recipient belongs; and
  - (iv) the Department's reasonable requests, directions and requirements, to the Department's satisfaction;
- (i) communicate with, report and provide information to the Department's Contact Officer as reasonably required by the Department; and
- (j) ensure that it and the Activities remain eligible according to the eligibility criteria in the Guidelines during the Term.

#### 3.2 General obligations

- (a) The Recipient acknowledges and agrees that all its personnel are the Recipient's responsibility including payment of all employee wages and entitlements.



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

- (b) If the Recipient is aware of an Allegation, then the Recipient must report the Allegation to a relevant authority, including the Queensland Police Service. In this clause **Allegation** means an allegation against the Recipient or its Representatives in connection with the Grant or the provision of the Activity which raises a reasonable suspicion of misconduct, dishonesty or unlawful behaviour of a serious nature.

### **3.3 Notifications**

The Recipient must promptly notify the Department:

- (a) of any matters that the Recipient reasonably considers may affect the Recipient's ability to carry out the Activity or meet any other obligations under this agreement;
- (b) if the Recipient is unable to carry out the Activity within the monetary limit of the Grant or by the Activity End Date;
- (c) of any matter that may affect the Recipient's eligibility to continue receiving the Grant;
- (d) of any allegation of misconduct or dishonesty concerning the Recipient or its Representatives and any report made under clause 3.2(b);
- (e) of any change to its details in Item 1 of Schedule 1; or
- (f) of the amount, source and purpose of any additional funds received from a third party for meeting the costs of the Activity.

---

## **4. Grant**

### **4.1 Department's obligations**

- (a) The Department will pay the Grant to the Recipient in the instalments which the Recipient must claim on or before the dates specified in Item 5 of Schedule 1.
- (b) The Department may in its absolute discretion, withhold payment of an instalment of the Grant to the Recipient until:
  - (i) the Recipient has shown to the Department's satisfaction that it has met all Milestones due on or before the respective Milestone Date;
  - (ii) the Recipient has issued a tax invoice, if applicable, to the Department for the instalment;
  - (iii) the Recipient has submitted to the Department, to the Department's satisfaction, all Reports and Financial Acquittal Reports due on or before the payment date for the instalment;
  - (iv) the Recipient has made the Recipient's Contribution in accordance with Item 5 of Schedule 1; and
  - (v) the Department is reasonably satisfied that the Recipient is not otherwise in breach of this agreement.
- (c) Any payment to the Recipient by the Department is not an admission or acceptance by the Department that the Recipient has complied with this agreement.

### **4.2 Variation to the timing and amount of Grant instalments**

The Department may in its absolute discretion, by giving 20 Business Days' notice to the Recipient, vary the payment dates and the amount for any instalment specified in Item 5 of Schedule 1.



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

### **4.3 No further funding**

- (a) The Department has no obligation to provide the Recipient with funding or assistance of any kind:
  - (i) in excess of the Grant; or
  - (ii) beyond the Term.
- (b) Without limiting clause 4.3(a)(i) and for the avoidance of doubt, the Recipient is responsible for acquiring and/or providing any additional funds, materials or equipment in excess of the Grant required to carry out or complete the Activity.
- (c) For the avoidance of doubt, if the Activity consists of the provision of any infrastructure the Department will not be responsible to fund or maintain such infrastructure after the Expiry Date.

---

### **5. Activity management**

- (a) Each party must nominate a Contact Officer responsible for:
  - (i) receiving communications;
  - (ii) issuing and signing notices; and
  - (iii) responding to requests or directions,on behalf of that party.
- (b) A party may, from time to time, change the Contact Officer by written notice to the other party in accordance with clause 21.
- (c) The Contact Officers will meet to review the performance of the Activity and this agreement upon reasonable written notice given by either party.

---

### **6. Use of the Grant**

#### **6.1 Expenditure of the Grant**

- (a) The Recipient must use the Grant only:
  - (i) for the reimbursement of Eligible Expenses claimed from the Department and in accordance with this agreement; and
  - (ii) until the Activity End Date or earlier termination of this agreement.
- (b) The Recipient must not use any or all of the Grant, without the Department's prior written approval, to:
  - (i) provide security for any purpose;
  - (ii) make a loan or gift for any purpose;
  - (iii) pay sitting fees to directors, management committee members, members of the Recipient's organisation or any other person;
  - (iv) make payments that are inconsistent with the Activity or the Application; or
  - (v) relieve cash flow problems in the delivery of the Recipient's other services or activities funded from other sources.
- (c) The Recipient must only claim for Eligible Expenses from the Department. Unless it is an instalment paid in advance, the Recipient must only claim for reimbursement of Eligible Expenses from the Department. In the case of an instalment paid in advance, the Recipient



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

must acquit the full amount of that instalment on or before the due date set for the following instalment payment.

- (d) The Recipient must keep a record of the date, amount, recipient and purpose of any cash cheque issued or cash advance made using the Grant.
- (e) If the Recipient uses the Grant other than in accordance with this agreement:
  - (i) the Department may, by written notice, require the Recipient to refund the misapplied Grant and any interest on it from the date of the notice until it is paid in full (**Amount**). Interest is calculated on daily balances at the rate per annum determined by the Supreme Court of Queensland on judgments by default as applicable at the date of the notice, and is fully capitalised on the last day of each month if unpaid; and
  - (ii) the Recipient must refund the Amount within 14 days of receiving the notice given under clause 6.1(e)(i); and
  - (iii) if the Recipient fails to refund the Amount in accordance with clause 6.1(e)(ii), the Department may:
    - (A) recover the Amount as a liquidated debt due to the Department; or
    - (B) set the Amount off against any other amount payable by the Department to the Recipient, whether under this agreement or otherwise.
- (f) For the avoidance of doubt, the Department may terminate this agreement in accordance with clause 20.4 for any breach of this clause 6.1.

---

## 7. Reporting

### 7.1 Reporting

- (a) The Recipient must:
  - (i) submit all Reports to the Department in the form provided by the Department, containing the information and on the dates specified in Item 5 of Schedule 1 unless the Department directs otherwise in writing;
  - (ii) complete each Report to the Department's satisfaction and if the Department is not satisfied with any of the Report, it may return the Report to the Recipient for satisfactory completion within a reasonable time;
  - (iii) provide to the Department any other information or material about the Recipient, the Activity, the Grant or any other matter in connection with this agreement as requested in writing by the Department within a reasonable time specified by the Department in its request; and
  - (iv) to the extent that a Report contains Personal Information, the Recipient will obtain all written consents necessary for the Recipient and Department to use and disclose the Reports for purposes related to the Activity and its subject matter, and the Department's internal, non-commercial purposes.
- (b) The Recipient consents to the Department's use and disclosure (including disclosure to third parties) of the Reports and additional documentation provided under clause 7.1(a)(iii), for purposes related to the Activity and its subject matter, and the Department's internal, non-commercial purposes.

### 7.2 Financial accountability

- (a) The Recipient must provide the Department with Financial Acquittal Reports (and any supporting documentation as requested by the Department) in the format provided by the



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

Department, for the reporting periods and by the dates specified in Item 5 of Schedule 1, showing:

- (i) expenditure of the Grant; and
  - (ii) the Recipient's Contributions.
- (b) Where the Activity is funded for only part of a particular reporting period (e.g. if the Commencement Date or the Expiry Date does not coincide with the start or end date of a reporting period), the periodic Financial Acquittal Report should contain information relevant only to that part of the reporting period.
- (c) Upon written request, the Recipient must provide the Department with:
- (i) financial statements that the Recipient is required to lodge under its incorporating legislation, including a declaration from the Recipient's chief executive officer stating that the Grant has been used in the relevant financial year for carrying out the Activity; or
  - (ii) an audited financial statement for each financial year, including a statement by the auditor that the audited financial statement is true and correct and whether in his/her opinion there are any receipts, outgoings and expenditures received or incurred by the Recipient that were not received or incurred in carrying out the Activity.

### 7.3 Eligibility for future grants

The Recipient acknowledges that if it fails to account for expenditure of the Grant in accordance with clause 6.1, the Recipient's eligibility to receive a future grant from the Department may be affected.

---

## 8. Records

The Recipient must:

- (a) keep a separate record of the Grant in the Recipient's ledger, and record all expenditure and income relating directly or indirectly to the Activity separate from all other income and expenditure of the Recipient;
- (b) keep proper and adequate records, accounts and supporting documents in accordance with generally accepted accounting principles and as required by law, about:
  - (i) all aspects of the Activity, including records about the performance of the Activity and whether time frames and performance requirements for the Activity are met; and
  - (ii) its affairs generally,in secure storage for at least 12 years after the Expiry Date; and
- (c) comply with any additional recordkeeping obligations specified in this agreement.

---

## 9. Audit and access

### 9.1 Access to Recipient's premises and records

- (a) The Recipient will give, and will procure that all of its Representatives give, upon reasonable notice and during normal business hours, full and free access and reasonable assistance to the Department, its Representatives and nominated auditors to:
  - (i) speak to the persons associated with the Activity;
  - (ii) examine, inspect and copy any material, including any books and records, in the possession of the Recipient which is relevant to this agreement, including providing all necessary facilities for that purpose;
  - (iii) examine and inspect the performance of the Activity; and



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

- (iv) locate and make copies of any of the Recipient's accounts, records, documents and other material that relate directly or indirectly to the receipt, expenditure, or payment of the Grant or the conduct of the Activity.
- (b) The Department's right of access under clause 9.1(a) may be exercised for any reasonable purpose relating to this agreement, including for financial or compliance audits, or reviews of the Recipient's performance of this agreement.
- (c) When accessing premises and/or records in accordance with clause 9.1(a), the Department will use its best endeavours to minimise interference to the Recipient's employees and the conduct of the Activity.
- (d) For the purposes of this clause 9 the Department's nominated auditor may be a person with suitable qualifications as determined by the Department.

### **9.2 Other information to be provided**

The Recipient must promptly provide any information requested in writing by the Department, its Representatives or its nominated auditors.

---

### **10. Subcontracting**

- (a) The Recipient may subcontract the whole, or any part, of the Recipient's obligations under this agreement provided that:
  - (i) the Recipient ensures the suitability of each subcontractor engaged in relation to the Activity and that any part of the Activity carried out by the subcontractor meets the requirements of this agreement;
  - (ii) each subcontract entered into is consistent with this agreement, and that the terms and conditions of the subcontract, at a minimum, require that the subcontractor must comply with this agreement as if the subcontractor was the Recipient, including (but not limited to) clauses 9, 14 and 15;
  - (iii) each subcontractor complies with its subcontract; and
  - (iv) any subcontractor engaged to provide professional services to the Recipient has appropriate professional indemnity insurance cover for a minimum of \$1,000,000.
- (b) The Recipient is and remains liable under this agreement for the acts or omissions of any subcontractor engaged at any time during the Term in relation to the Activity.

---

### **11. Intellectual Property Rights**

- (a) Nothing in this agreement affects ownership of Background IP.
- (b) Each party warrants that to the best of its knowledge and belief at the Commencement Date, it owns its Background IP, or otherwise has the right to use its Background IP in accordance with this agreement.
- (c) All rights in and title to the Activity Material and Reports will vest, upon creation, in the Recipient.
- (d) The Recipient grants to the Department a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (including a right to sub-license) to use, communicate, reproduce, publish, adapt and modify:
  - (i) the Activity Material;
  - (ii) the Recipient's Background IP;
  - (iii) the Reports; and



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

- (iv) any material developed by a third party, given to or used by the Recipient in the delivery of the Activity
- for the Department's non-commercial purposes.
- (e) The Department grants to the Recipient a non-exclusive, non-transferable, royalty-free licence to use the Department's Background IP solely for the purposes of carrying out the Activity and exercising its rights in the Activity Material (insofar as the Department's Background IP forms part of the Activity Material).
  - (f) The Recipient will do all things necessary (including obtaining consents) to ensure:
    - (i) the vesting of the Activity Material and Reports in accordance with clause 11(c); and
    - (ii) the licensing of the materials referred to in clause 11(d) in accordance with clause 11(d).

---

### 12. Acknowledgement

- (a) The Recipient must include acknowledgement of the Grant:
  - (i) in its annual report (if the Recipient produces an annual report) and other corporate materials such as newsletters, brochures, media releases, public speeches made by the Recipient's employees and multimedia material including websites and videos;
  - (ii) in any public statements and promotional materials about the Activity and any related projects that have been funded wholly or in part by the Department during the Term; and
  - (iii) in accordance with any additional requirements as requested in writing by the Department.
- (b) Any acknowledgment in promotional material about the Activity must include a logo or other branding as required by the Department and recognise the Queensland Government's financial contribution to the Activity.
- (c) Before the Recipient may release a public statement or publish promotional material in any media about the Activity, the Recipient must:
  - (i) at least 10 Business Days before the proposed statement or publication, provide to the Department a copy of the proposed statement or publication; and
  - (ii) comply with all requests, amendments or conditions that the Department may reasonably require by written notice to the Recipient.
- (d) The Recipient will contact the Department for their support and advice by written correspondence, before inviting the responsible Minister administering the Department to:
  - (i) attend ground breaking, opening and other ceremonies and events connected with the Activity; and
  - (ii) speak at opening ceremonies, and all other events connected with the Activity.

---

### 13. Conflict of interest

- (a) The Recipient warrants that, to the best of its knowledge and belief, after making diligent inquiries as at the date of signing this agreement, no Conflict of Interest exists.
- (b) The Recipient must not have, and must take all reasonable measures to ensure its Representatives do not have a Conflict of Interest.
- (c) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Recipient will notify the Department immediately in writing and to take such steps to resolve or otherwise deal with the conflict to the Department's satisfaction.



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

- (d) If the Department is given notice of a Conflict of Interest pursuant to clause 13(c) or if the Department otherwise identifies that a Conflict of Interest exists, the Department may:
    - (i) direct the Recipient as to how to manage the Conflict of Interest and the Recipient must comply with any reasonable direction so given by the Department; or
    - (ii) terminate this agreement in accordance with clause 20.4.
  - (e) The Recipient must keep a record of each Conflict of Interest that arises and how it was managed.
- 

### **14. Confidentiality**

#### **14.1 Confidential Information**

Subject to clause 14.2, a party must not:

- (a) disclose the other party's Confidential Information to a third party; or
- (b) use the other party's Confidential Information other than for the purpose of performing this agreement.

#### **14.2 Exceptions**

A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent (including any consent specified in this agreement);
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to the extent necessary to enforce its rights or defend a claim or action under this agreement; and
- (f) where that party is the Department:
  - (i) to the responsible Minister administering the Department and their personal and departmental advisers;
  - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland; or
  - (iii) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

#### **14.3 Breach of confidentiality**

- (a) If a party becomes aware of a suspected or actual breach of this clause 14, the party will immediately notify the other party and take reasonable steps required to prevent or stop the suspected or actual breach.
- (b) The parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 14.





## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

### 14.4 Return of Confidential Information

The Receiver will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Receiver, or when otherwise directed by the Discloser.

### 14.5 Recipient's undertaking

- (a) The Recipient must make every reasonable effort to ensure that its Representatives and volunteers are aware of and comply with the obligations of confidentiality in this clause 14.
- (b) The Department may, at any time, require the Recipient to arrange for its Representatives and volunteers engaged in the performance of the Activity, to give written undertakings in a form reasonably required by the Department relating to the non-disclosure of Confidential Information under this clause 14.

---

## 15. Privacy and Personal Information

- (a) This clause 15 applies where this agreement amounts to a "service arrangement" under the *Information Privacy Act 2009* (Qld).
- (b) If the Recipient collects or has access to Personal Information in order to undertake the Activity, the Recipient must:
  - (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this agreement (including its obligations regarding Reports), as if the Recipient was the Department;
  - (ii) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
  - (iii) not use Personal Information other than for the purposes of undertaking the Activity, unless required or authorised by law;
  - (iv) not disclose Personal Information without the consent of the Department, unless required or authorised by law;
  - (v) not transfer Personal Information outside of Australia without the consent of the Department;
  - (vi) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
  - (vii) comply with such other privacy and security measures as the Department reasonably advises the Recipient in writing from time to time.
- (c) The Recipient must immediately notify the Department on becoming aware of any breach of clause 15(b).
- (d) On request by the Department, the Recipient must obtain from its Representatives engaged for the purposes of this agreement, an executed agreement of privacy in a form acceptable to the Department.

---

## 16. Insurance

- (a) The Recipient must effect and maintain insurance policies for the types, amounts and for the periods specified in Item 7 of Schedule 1 with an insurer and on terms approved by the Department (such approval not to be unreasonably withheld).
- (b) Upon reasonable request, the Recipient must provide the Department with evidence in a form acceptable to the Department of the terms and currency of the insurance required under



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

clause 16(a), including copies of insurance policies and any endorsements or amendment to such policies.

---

### 17. Liability and indemnity

- (a) The Recipient releases to the full extent permitted by law, the Department and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with the Activity or this agreement.
- (b) The liability of the Department under or in connection with this agreement is limited in aggregate to the amount of the Grant.
- (c) The Department and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation or any indirect or consequential loss whether arising in contract, tort (including negligence) or otherwise, in connection with this agreement.
- (d) The Recipient is liable for and indemnifies the Department and its Representatives against all liability, loss, costs and expenses (including any actions, claims, proceedings or demand brought by any third party, and any legal fees, costs and disbursements on a solicitor and own client basis) arising from or incurred in connection with:
  - (i) the Activity;
  - (ii) any default by the Recipient or the Recipient's Representatives under this agreement;
  - (iii) any unlawful, wilful or negligent act or omission of the Recipient, the Recipient's Representatives or any person for whose conduct the Recipient is liable;
  - (iv) personal injury (including sickness and death) or property damage or loss in connection with the performance (or attempted or purported performance or non-performance) of this agreement or a breach of this agreement by the Recipient; or
  - (v) any infringement or alleged infringement of any Intellectual Property Rights or Moral Rights.
- (e) The Recipient's liability to indemnify the Department under clause 17(d) will be reduced proportionally to the extent that any negligent act or omission or breach of this agreement by the Department caused the loss or liability.
- (f) The indemnity granted in clause 17(d) is in addition to and not exclusive of any other remedies the Department may have against the Recipient at law.
- (g) It is not necessary for the Department to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

---

### 18. GST

- (a) Words defined in the GST Law have the same meaning in this clause 18.
- (b) If a party is required under this agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

- (c) If GST is payable by an entity (**Supplier**) in relation to any supply that it makes under or in connection with this agreement, the parties agree that:
- (i) any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this agreement other than under this clause 18(c) (**Agreed Amount**) is exclusive of GST;
  - (ii) an additional amount will be payable by the party providing consideration for that supply (**Receiver**) equal to the amount of GST payable by the Supplier on that supply;
  - (iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Receiver in respect of that supply, no later than that time; and
  - (iv) to the extent, if any, that any consideration (or part thereof) is specified in this agreement to be inclusive of GST, that consideration (or the relevant part) will be excluded from the Agreed Amount for the purposes of calculating the additional amount under clause 18(c)(ii).
- (d) If the Receiver is not registered for GST and does not have an Australian Business Number, the Receiver must complete the Australian Taxation Office's Statement by a Supplier if it is eligible to do so, and return the completed and signed statement (satisfactory to the Australian Taxation Office) to the Department on or before the Commencement Date.

---

## 19. Dispute resolution

### 19.1 Dispute resolution process

- (a) Subject to clause 19.3, the parties will adhere to the following procedure in relation to disputes arising from this agreement, prior to the commencement of litigation or other external dispute resolution procedure.
- (b) The Contact Officer for a party may notify the other in writing of the occurrence of a dispute (**Dispute Notice**) and the Contact Officers will try to resolve the dispute through negotiation.
- (c) If the Contact Officers are unable to resolve the dispute within 15 Business Days from the receipt of the Dispute Notice, the dispute will be referred to:
- (i) for the Recipient, the person holding the position of Chief Executive Officer (or equivalent); and
  - (ii) for the Department, the Deputy Director General or the Director General of the Department,
- for resolution.
- (d) If the dispute is not resolved within 15 Business Days after its referral to the representatives of each of the parties listed in clause 19.1(c), either party may refer the dispute to a mediator agreed by the parties with costs to be shared equally between the parties.
- (e) If the parties cannot agree upon a mediator, either party may request the President of the Queensland Law Society (QLS) to nominate a mediator.
- (f) Mediation between the parties must occur within 15 Business Days from the date the mediator is appointed by QLS. The parties must co-operate with the mediator in an effort to resolve the dispute.
- (g) If the dispute is resolved, the parties must give effect to and comply with the terms of settlement.



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

### **19.2 Continuity during dispute**

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this agreement.

### **19.3 Urgent interlocutory relief**

Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from this agreement at any time where that party seeks urgent interlocutory relief.

---

## **20. Term, suspension of Grant and termination**

### **20.1 Term**

This agreement binds the parties from the date this agreement is executed by the last party to do so and continues until the Expiry Date, unless terminated earlier in accordance with this clause 20 (**Term**).

### **20.2 Suspension of Grant**

If, in the Department's reasonable opinion, the Recipient has:

- (a) failed to carry out the Activity;
- (b) expended the Grant otherwise than in accordance with clause 6;
- (c) changed any part of the Activity without obtaining the Department's prior approval;
- (d) not provided any information, Reports or Financial Acquittal Reports as required by this agreement or requested by the Department;
- (e) failed to comply with any relevant legislation; or
- (f) otherwise failed to comply with an obligation under this agreement,

then the Department may suspend payment of all or part of the Grant to the Recipient for a period of time and on specified conditions as notified by the Department.

### **20.3 Termination or reduction in Term or Activity for convenience**

The Department may, at any time, by reasonable written notice, terminate this agreement or reduce the Term or scope of the Activity for convenience, including for a Machinery of Government Change.

### **20.4 Termination for breach**

- (a) The Department may terminate this agreement by written notice with immediate effect if the Recipient:
  - (i) notifies the Department that it is unable or unwilling to commence or continue with the Activity;
  - (ii) uses or applies any part of the Grant other than in accordance with this agreement;
  - (iii) fails to carry out the Activity in accordance with this agreement;
  - (iv) otherwise breaches a term of this agreement which is not capable of being remedied;
  - (v) otherwise breaches a term of this agreement (including but not limited to the provision of Reports and Financial Acquittal Reports) which is capable of being remedied and fails to remedy that breach within 30 days after receiving notice requiring it to do so;
  - (vi) makes a report under clause 3.2(b);
  - (vii) is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts;



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

- (viii) amends its constitution or operations in a way that means the Recipient is no longer eligible for the Grant or is no longer able to comply with this agreement;
  - (ix) becomes subject to any form of external administration;
  - (x) enters into an arrangement with the Recipient's creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
  - (xi) is wound up, voluntarily or involuntarily.
- (b) For the avoidance of doubt, clause 17(c) applies to any termination of this agreement under clause 20.4.

### **20.5 Effect of termination or reduction of Term or Activity**

- (a) On receipt of a notice of termination or reduction under clause 20.3:
- (i) each party must take all available steps to minimise any loss resulting from the termination or reduction; and
  - (ii) the Recipient must:
    - (A) immediately stop carrying out its obligations in relation to the Activity as specified in the notice;
    - (B) continue to carry out any part of the Activity not affected by the notice; and
    - (C) provide written evidence to the Department's satisfaction of the amounts (if any) claimed as reasonable costs under clauses 20.5(b) and 20.5(d)(iii).
- (b) If this agreement is terminated by the Department under clause 20.3, the Recipient will be entitled to the reasonable costs (if any) that have been or will be incurred by the Recipient as a direct result of the termination of the agreement and which the Recipient cannot recoup or avoid and which would not otherwise have been incurred by the Recipient if the agreement had continued until the expiry of the Term.
- (c) If the Term or the scope of the Activity is reduced under clause 20.3, the Department may vary the Grant in accordance with the reduced Activity or Term.
- (d) Where the Grant is reduced under clause 20.5(c), the Department will:
- (i) review the scope of the Activity with the Recipient;
  - (ii) pay to the Recipient the Grant instalments that were due up to the date of the reduction; and
  - (iii) pay to the Recipient the reasonable costs (if any) that have been or will be incurred by the Recipient as a direct result of the reduction of the Grant and which the Recipient cannot recoup or avoid and which would not otherwise have been incurred by the Recipient if the Grant amount had continued unaltered until the expiry of the Term.
- (e) For the avoidance of doubt, clauses 17(b) and 17(c) apply to any termination of or change to this agreement under clause 20.

### **20.6 Obligations after termination or expiration**

- (a) The Recipient must, upon termination or expiry of this agreement, provide all assistance requested by the Department to facilitate the smooth transition of any relevant information, knowledge, or systems from the Recipient to the Department or to a third party, including (if requested by the Department) development of and compliance with a transitional plan.
- (b) Within 10 Business Days of the termination or expiry of this agreement, the Recipient must deliver to the Department:



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

- (i) all Reports and documents due under this agreement as at the date of termination or expiration;
- (ii) a cheque or transfer for the amount of any unspent Grant and any accrued interest on the Grant as at the date of termination or expiry of this agreement, less any costs agreed under clause 20.5(a)(ii)(C) (if applicable), which will be a debt due and owing to the Department; and
- (iii) a Final Report in accordance with any requirements specified in Item 5 of Schedule 1, and detailing the present status of the Activity, the extent of achievement of the Activity, the level of success in meeting stated objectives and Milestones and any incidental results and benefits of the Activity.

### **20.7 Pre-existing rights and survival**

- (a) Termination in accordance with this clause 20 is without prejudice to any rights of either party under this agreement existing at the date of termination.
- (b) Clauses 6.1(e), 7, 8, 14, 15, 16, 17, 19, 20.6, 20.7 and 22 survive expiration or termination of this agreement for any reason.

---

## **21. Notices**

Each communication (including each notice, consent, approval, request and demand) in connection with this agreement to be given by either party to the other:

- (a) must be in writing;
- (b) must be signed by the party making it (or by a person duly authorised by that party);
- (c) must be delivered by hand, or posted by pre-paid post, or sent by facsimile transmission or email to the addressee, in accordance with the contact details provided in Item 1 of Schedule 1 or as otherwise notified from time to time ;
- (d) is taken to have been received by the addressee:
  - (i) where sent by pre-paid post – on the fifth day after the date of posting;
  - (ii) where sent by facsimile transmission – at the time in the place to which it is sent equivalent to the time recorded on the transmitting machine from which it was sent;
  - (iii) where hand delivered – on delivery;
  - (iv) where sent by email – at the time of email no delivery failure is notified to the senderbut if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

---

## **22. General**

### **22.1 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

### **22.2 No relationship**

- (a) Nothing contained in this agreement will be taken as giving rise to any employment, agency, partnership or joint venture relationship between the parties.



## **Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21**

- (b) The Recipient (including its Representatives):
  - (i) has no authority or power, and must not purport to have the authority or power, to bind the Department or make representations on behalf of the Department;
  - (ii) must not hold itself out or engage in any conduct or make any representation which may suggest to any person that the Recipient is for any purpose an employee, agent, partner of or joint venturer with the Department; and
  - (iii) must not represent to any person that the Department is a party to the Activity other than as a financial contributor or has guaranteed the performance or fulfilment of the objectives of the Activity.

### **22.3 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

### **22.4 Assignment**

A party must not assign, novate or subcontract the whole or any part of this agreement without the prior written consent of the other party.

### **22.5 Amendments**

This agreement may only be varied by a document signed by or on behalf of each party.

### **22.6 Further acts and documents**

Each party must promptly do all acts and deliver all documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement.

### **22.7 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or any other term of this agreement.

### **22.8 Consents**

A consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

### 22.9 Severance

If at any time a provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any provision of this agreement.

### 22.10 Counterparts

This agreement may be signed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

### 22.11 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

### 22.12 Continuing obligation

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

### 22.13 Governing law

This agreement is governed by and will be construed according to the law applying in Queensland.

### 22.14 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 22.14(a).

### 22.15 Unavoidable delay

A party will not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or pursuant to this agreement) if that default:

- (a) is caused by Force Majeure; and
- (b) continues for less than 7 days.

---

## 23. Definitions and interpretation

### 23.1 Definitions

In this agreement:

**Activity** means the activity or purpose of the Grant specified in Item 3 of Schedule 1.

**Activity Commencement Date** means the commencement date specified in Item 4 of Schedule 1.

**Activity End Date** means the end date specified in Item 4 of Schedule 1.





## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

**Activity Material** means any material including Intellectual Property Rights, created, written or otherwise brought into existence by or on behalf of the Recipient in the course of carrying out the Activity, excluding Reports.

**Application** means the application submitted online via a grant management system by the Recipient to the Department for the Grant, including the Application Form, any supplementary / supporting documents, e.g. architecture design and Project Management Plan, or any amendments to that application approved in writing by the Department.

**Application Form** means the online form provided by the Department for applicants to submit Applications through a grant management system, a copy of it as submitted by the Recipient is annexed to this agreement.

**Background IP** means Intellectual Property Rights which are made available by a party for the purpose of carrying out the Activity and that are:

- (a) in existence at the Commencement Date; or
- (b) brought into existence after the Commencement Date other than as a result of the performance of the Activity.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in Brisbane.

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

**Confidential Information** means all information, trade secrets and knowledge of or disclosed by a party (**Discloser**) to another party (**Receiver**) that:

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

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this agreement or any other confidentiality obligation; or
- (e) is independently developed by a party while having no knowledge of or access to the other party's Confidential Information.

**Conflict of Interest** means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Recipient's ability to perform its obligations under this agreement fairly, objectively and independently.

**Contact Officer** means the contact person for each party specified in Item 1 of Schedule 1.

**Eligible Expenses** means reasonable costs incurred and paid for by the Recipient after the Commencement Date which directly relate to the Activity (but which do not relate to Ineligible Activities) subject to any sub-limits (if applicable) imposed on the types of costs. For the avoidance of doubt, expenses over the relevant sub-limits (if applicable) are not Eligible Expenses even if they were incurred and paid for the purpose of the Activity after the Commencement Date.

**Expiry Date** means the expiry date specified in Item 2 of Schedule 1.

**Final Report** means a report presented in a format notified by the Department to the Recipient from time to time to include:

- (a) a summary of achievements from the Commencement Date to the Activity End Date;
- (b) a brief description of what has been completed and whether the intended outcomes stated in the Application have been achieved, including photographs, where appropriate;



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

- (c) an outline of the benefits to tourism from the Activity with respect to the objective of the Program; and
- (d) any other information and material reasonably requested by the Department and notified to the Recipient in writing from time to time;

such report to be signed by an authorised officer of the Recipient.

**Financial Acquittal Report** means a report, in a format presented by the Department to the Recipient in writing from time to time, of the Recipient's financial performance relating to carrying out the Activity as specified in Item 5 of Schedule 1 and clause 7.2, which should include:

- (a) a statement of the Eligible Expenses for the reporting period and, if required, evidence of the Eligible Expenses in the form of tax invoices, receipts or bank statements;
- (b) the total funding for the Activity (including the matching funding provided by the Recipient or other sources);
- (c) whether the Eligible Expenses are within the amount indicated in the Application, and reasons for over/under spending; and
- (d) measures taken or proposed by the Recipient to meet the excess Eligible Expenses, if applicable.

**Force Majeure** means any event beyond the reasonable control of the party affected which occurs without fault or negligence of the affected party and includes:

- (a) acts of God;
- (b) war, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance; and
- (d) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.

**Grant** means the amount specified in Item 5 of Schedule 1.

**Guidelines** mean the guidelines for stages one and two, dated July 2018 and October 2018 respectively, under the Growing Tourism Infrastructure Fund.

**GST** means a goods and services tax or any similar tax, levy or impost imposed by the Commonwealth of Australia.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Ineligible Activities** are those items listed in the Guidelines towards which the Grant cannot be applied by the Recipient.

**Intellectual Property Rights** means all intellectual property rights, whether created before or after the Commencement Date, including:

- (a) plant breeder's rights, patents, copyright, rights in circuit layouts, trade-marks, registered designs and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

**Machinery of Government Change** means a change to the title, structure, functions or operations of the Department or a part of the Department (including corporatisation) as a result of an order made under the *Constitution of Queensland 2001* (Qld) or other Queensland legislations.

**Milestones** means the milestones specified in Item 5 of Schedule 1.

**Milestone Date** means the dates specified in Item 5 of Schedule 1.

**Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined by and granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws.

**Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld).

**Progress Report** means a report presented in a format notified by the Department to the Recipient from time to time to include:

- (a) information on the overall progress of and continuing viability of the Activity;
- (b) a brief description of what has been completed, including photographs, where appropriate;
- (c) the progress of the Activity in comparison to the Application indicating whether the Activity is progressing on schedule or experiencing any delay, the extent of delay and the reasons for the delay; and
- (d) any other information and material reasonably requested by the Department and notified to the Recipient in writing from time to time;

such report to be signed by an authorised officer of the Recipient.

**Project Management Plan:** means the detailed plan for the Activity (as set out in the Annexure to this agreement) including, but not limited to, description of each component of the Activity, methods of delivery, timelines, deliverables, cost breakdowns including contingent cost, cash-flows and risk management.

**Recipient's Contribution** means the contribution to be provided by the Recipient (whether from its own financial resources or a third party) towards the Eligible Expenses of the Activity specified in Item 5 of Schedule 1.

**Registered Professional Engineer of Queensland** means an engineer currently registered with the Board of Professional Engineers of Queensland.

**Reports** means the reports specified in Item 5 of Schedule 1.

**Representative** means an employee, agent, officer, director, contractor, subcontractor or other authorised representative of a party.

**Special Conditions** means any special conditions specified in Item 8 of Schedule 1.

**Standards** means the standards for the performance of the Activity or other policies and procedures, specified in Item 6 of Schedule 1.

**Term** has the meaning specified in clause 20.1.

### 23.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) if more than one person is identified as the Recipient, then that expression refers to them, and the obligations of the Recipient under this agreement bind them, jointly and severally;



## Indicative Terms and Conditions for the Growing Tourism Infrastructure Fund 2020/21

- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (where incorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, attachments and annexures to it;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency; and
- (l) no rule of construction will apply to a provision of this agreement to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.