

# Local Community Support Grants - Terms and Conditions

## Background

- A The Organisation has requested support from Council to help purchase the Equipment and perform the Activities (as applicable to the Organisations request) for the Purpose.
- B Council has agreed to provide a grant of funding to the Organisation for the sole purpose of purchasing the Equipment and performing the Activities (as applicable) on the terms of this Agreement.

## Agreed terms

### 1 Term

This Agreement commences on the Commencement Date and continues until the Equipment has been purchased and the Activities are completed (as applicable), unless terminated in accordance with clause 15.

### 2 Application

- (a) Provisions and obligations within this Agreement which relate to Equipment will only apply to the extent the Funds are being provided for the purchase of Equipment.
- (b) Provisions and obligations within this Agreement which relate to Activities will only apply to the extent the Funds are being provided for the carrying out and completing of Activities.

### 3 Obligations of the Organisation

#### 3.1 General Obligations

The Organisation must:

- (a) use the Funds only for:
- (i) the purchase of the Equipment in accordance with any relevant Guidelines; and
  - (ii) carrying out and completing the Activities, and not materially vary the Activities without Council's prior written approval;
- (b) purchase, own and use the Equipment solely for the Purpose;
- (c) contribute or obtain all other monies and resources necessary to purchase the Equipment and carry out and complete the Activities (as applicable);
- (d) purchase the Equipment and carry out and complete the Activities in accordance with this Agreement, any relevant Guidelines Laws and the Particulars with due care and skill;
- (e) have an Australian Business Number and maintain it during the term of the Agreement;
- (f) not perform any act or omission which damages or is likely to damage the goodwill or reputation of Council or which, in the reasonable opinion of Council, offends public opinion or reflects unfavourably on Council or the Activities; and
- (g) immediately notify Council in writing (and provide any information requested by Council) if there is any delay in performing any part of the Activities.

#### 3.2 Organisation Warranties

- (a) The Organisation represents and warrants that:
- (i) the Purpose, use of the Equipment and the performance of the Activities will not infringe any Laws,

Intellectual Property Rights or other rights of any third party;

- (ii) it will not use the Funds for any purpose other than as permitted under this Agreement;
  - (iii) the Organisation Contributions stated in the Particulars are accurate and it will disclose any changes to such details;
  - (iv) all information given by the Organisation or on the Organisation's behalf to Council is complete and accurate and is not misleading; and
  - (v) the Organisation has not withheld from Council any document, information or other fact material to the decision of Council to enter into this Agreement.
- (b) The Organisation acknowledges and agrees that Council, in entering into this Agreement, is relying on the warranties and representations made in or under this Agreement.

### 4 Funds

#### 4.1 Payment and Conditions of Funding

Council:

- (a) will, subject to the Organisation complying with this Agreement, pay the Funds to the Organisation by way of electronic funds transfer to the Nominated Account in accordance with the Particulars;
- (b) may withhold or suspend the payment of the whole or any part of the Funds if the Organisation is not compliant with any of its obligations under this Agreement; and
- (c) will not incur any liability for any loss that the Organisation may suffer which arises in any way from Council's exercise of its rights under this clause 4.1.

#### 4.2 Fund Handling Obligations

The Organisation must ensure that

- (a) appropriate controls are maintained over expenses and liabilities incurred by the Organisation in connection with the purchase of the Equipment and performance of the Activities;
- (b) there is no misappropriation of, or dishonest dealings with, the Funds; and
- (c) any payments that it makes with the Funds are correctly authorised, made and recorded.

#### 4.3 Set-Off

Council may by notice reduce any Funds payable under this Agreement by any amount which is payable by the Organisation to Council, including any amount which is due and payable to Council under an indemnity granted in Council's favour.

### 5 Repayment of Funds

#### 5.1 Unspent Funds

If:

- (a) on the expiry or earlier termination of this Agreement, any Funds that:
  - (i) remain unspent; or
  - (ii) cannot be shown by the Organisation to have been spent in accordance with this Agreement;

- (b) at any time Council determines that it has paid the Organisation an amount that exceeds the Funds; or
- (c) at any time Council considers that any Funds have not been used, spent or committed by the Organisation in accordance with this Agreement,

Council may by notice require the Organisation to repay to Council that part of the Funds within 10 Business Days of receipt of the notice and that amount will be a debt due and owing by the Organisation.

## 5.2 Sale of Equipment

- (a) The Organisation must:
  - (i) not sell or otherwise dispose of the Equipment purchased without Council's prior written consent unless otherwise permitted by this Agreement or relevant Guidelines;
  - (ii) securely hold and put in reasonable safeguards against loss, damage or unauthorised use of the Equipment; and
  - (iii) be fully responsible for, and bear all risks relating to, the Equipment.
- (b) If the Organisation sells or otherwise disposes of any Equipment purchased using Funds (other than as permitted by Council, this Agreement or relevant Guidelines), Council may, in its discretion:
  - (i) reduce the Funds still payable (if any) by the value of the disposed Equipment; or
  - (ii) by notice require the Organisation to repay to Council that part of the Funds within 10 Business Days of receipt of the notice and that amount will be a debt due and owing by the Organisation.

## 6 Records and Auditing

### 6.1 Records

The Organisation must:

- (a) keep complete and accurate records in relation to the Activities (if any);
- (b) keep full and proper books and accounts relating to its receipt, holding and expenditure of the Funds;
- (c) ensure that all income and expenditure relating to the Funds, is separately identifiable in the Organisation's accounts; and
- (d) maintain the records referred to in this clause for 7 years after the expiry or termination of the Agreement.

### 6.2 Access and audit

At the times required by Council and from time to time, the Organisation must allow Council or its nominated representatives to inspect, audit and copy the Organisation's relevant records, documents and equipment in connection with the Purpose to verify the Organisation's compliance with this Agreement and claims or statements which the Organisation provides regarding the Funds or the Purpose.

### 6.3 Assistance

The Organisation must promptly give Council any assistance Council reasonably requires in connection with the inspection or audit contemplated by clause 6.2.

## 7 Insurance

The Organisation must:

- (a) effect and maintain from a reputable insurance company approved by Council:

- (i) the policy of public liability insurance evidenced as part of the Application for at least the duration of the Agreement;
- (ii) workers' compensation insurance as required by law; and
- (iii) such other insurance as is required by Council from time to time in respect of any liability of the Organisation that may arise in connection with this Agreement.

- (b) maintain the insurance policies referred to in clause 7(a):

- (i) in a form acceptable to Council; and
- (ii) for the term of the Agreement, other than any claims-made policy or professional indemnity policy which is to be maintained for 6 years after the expiry or termination of the Agreement; and

- (c) provide Council with a copy of the insurance policies referred to in clause 7(a) and certificates of currency on the Commencement Date and within 7 days after:

- (i) a renewal or amendment of a policy; or
- (ii) a request by Council.

## 8 Third Party and Organisation Contributions

- (a) For the purpose of this clause 'Third Party Contributions' means, in respect of the Equipment and Activities, the financial contributions from third parties including the intended contributions from third parties set out in the Particulars.
- (b) The parties acknowledge and agree that if the Organisation receives any additional contribution to the cost of the Equipment and Activities above that which was notified to Council (including any increase in Third Party Contributions), then Council may, in its discretion, reduce the Funds by the equivalent value.
- (c) Allocation of cost savings
  - (i) This subclause applies if the Particulars identify that there are Organisation Contributions or Third Party Contributions for the Equipment and Activities.
  - (ii) If after the purchase of the Equipment or completion of the Activities (as applicable):
    - (A) the actual total cost of the Equipment or Activities is less than the amount received by the Organisation from all sources for the Equipment or Activities; and
    - (B) the proportion of the Funds spent by the Organisation is greater than the proportion of the Organisation Contributions and Third Party Contributions spent for the Equipment or Activities,

unless Council agrees otherwise, the Organisation must repay to Council an amount of the Funds calculated in accordance with the following formula:

*P x Savings*

Where:

- (C) **P** is the percentage by which the proportion of Funds spent by the Organisation exceeds the proportion of the Organisation Contributions and Third Party Contributions spent for the Equipment or Activities; and
- (D) **Savings** is the actual cost of the Equipment and Activities incurred by the Organisation less the

amount received by the Organisation for the Equipment or Activities.

## **9 Work Health and Safety**

### 9.1 General obligations

The Organisation must ensure:

- (a) that it, its employees, agents, consultants and contractors, comply with their work health and safety duties and obligations including compliance with the WHS Legislation in connection with use of the Equipment;
- (b) the health and safety of Council's personnel or the public are not put at risk or affected by the Organisation, those undertaking the Activities, or the use of the Equipment; and
- (c) that it, its employees, agents, consultants and contractors do not do anything or fail to do anything that causes Council to be in breach of the WHS Legislation or obstructs, hinders or interferes with any action Council believes is reasonably required to comply with the WHS Legislation.

## **10 Privacy**

- (a) If the Organisation collects or has access to Personal Information in connection with this Agreement, the Organisation must, and ensure that its sub-officers, subcontractors and employees:
  - (i) comply:
    - (A) with Parts 1 and 3 of Chapter 2 of the Information Privacy Act in relation to the discharge of its obligations under this Agreement, as if the Organisation was Council;
    - (B) any privacy or security measures required by Council;
  - (ii) not use, disclose or transfer from Australia Personal Information other than for the purposes of the Activities or this Agreement without Council's consent unless required or authorised by law;
  - (iii) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties; and
  - (iv) fully co-operate with Council to enable Council to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints.
- (b) The Organisation must immediately notify Council on becoming aware of any breach or potential breach of this clause 10.

## **11 Intellectual Property**

### 11.1 Licence

The Organisation grants Council a non-exclusive, royalty-free licence to use the Organisation's name, trade marks and logo for marketing and publicity purposes in connection with this Agreement and the Activities (where applicable).

### 11.2 Infringement

The Organisation must notify Council of and take all steps required by Council in connection with any suspected or actual infringement of a third party's Intellectual Property Rights in the performance of this Agreement.

### 11.3 Council Material and Trademarks

- (a) The Organisation must only use material provided by Council as directed by Council, and only to the extent necessary to perform the Organisation's obligations under this Agreement.
- (b) The Organisation is responsible for the safe keeping and maintenance of any material given by Council to the Organisation.
- (c) Subject to clause 12, the Organisation must:
  - (i) not apply to any materials (in any form) or publish or distribute any materials (in any form), containing Council's names, trade marks or logos without Council's prior written approval; and
  - (ii) comply with any reasonable directions given by Council in relation to access to or use of Council's names, trade marks or logos.

### 11.4 Footage and images

The Organisation grants Council the right and permission to take photographs, electronic and digital images and video footage of the Equipment (including its use) and the Activities for marketing and publicity purposes.

## **12 Funding Acknowledgment**

### 12.1 Organisation obligations

At least 10 Business Days before releasing a public statement or publishing promotional material about the Purpose, the Organisation must obtain Council's written approval of the wording of the release which must include an acknowledgment of Council's contribution of the funds.

### 12.2 Council press releases

Council may make press releases in relation to the Purpose and the purchase of the Equipment, and use the name of the Organisation to acknowledge their contribution to the purchase.

### 12.3 Events

If the Funds are being provided for Activities that include an event, the Organisation must provide Council with the opportunity for:

- (a) the Mayor or Mayor's delegate to attend and speak at the event; and
- (b) Council to occupy a space at any event, provided that Council will supply at its cost any equipment or personnel for the space.

## **13 Confidential information**

### 13.1 Obligations of confidence

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party provided to or obtained by that party prior to or after entry into this Agreement except for Confidential Information that is:

- (a) required to be disclosed by law, by the rules of any relevant stock exchange or regulator, or to accountants and legal advisers of the parties;
- (b) required to be disclosed by applicable Law (including the *Local Government Act 2009* (Qld) and *Local Government Regulations 2012* (Qld)), or under compulsion of Law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
  - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
  - (ii) before disclosing any information, gives reasonable notice to the other party and takes reasonable steps to maintain such Confidential Information in confidence;

- (c) in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence; or
- (d) already known, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

## 14 Right to Information

- (a) The Organisation must at its own expense, within 7 days of receiving a written request by Council, provide Council with access to and copies of the information held by the Organisation:
  - (i) relating directly to the Purpose and Funding pursuant to this Agreement;
  - (ii) collected by the Organisation from members of the public in connection with the Purpose; and
  - (iii) received by the Organisation from Council pursuant to this Agreement.
- (b) If within five Business Days of providing the information the Organisation objects to the disclosure of some or all of the information:
  - (i) Council will take such objection into account in determining whether there is an overriding public interest against disclosure of the information; and
  - (ii) if Council nonetheless decides to release the information, Council must not provide such access until it has given the Organisation notice of Council's decision and notice of the Organisation's right to have that decision reviewed.
- (c) Where Council has given notice to the Organisation in accordance with clause 14(b)(ii), Council must not provide access to the information:
  - (i) before the period for applying for review of the decision has expired; or
  - (ii) where any review of the decision duly applied for is pending.
- (d) The reference in clause 14(c)(i) to the period for applying for review of the decision does not include the period that may be available by way of extension of time to apply for review.
- (e) The Organisation must familiarise itself with the relevant provisions of the *Right to Information Act 2009* (Qld). Council accepts no responsibility for the accuracy or adequacy of any information it provides to the Organisation concerning the content or effect of the *Right to Information Act 2009* (Qld).

## 15 Termination

### 15.1 Options to terminate

This Agreement may be terminated:

- (a) by a written agreement between the parties;
- (b) in accordance with this clause 15; or
- (c) by the parties under clause 20 (Force Majeure).

### 15.2 Termination for Convenience

Council may terminate this Agreement at any time and for any reason by written notice to the Organisation, in which case this document terminates on the date specified in that notice or, if no date is specified, immediately on giving of the notice to terminate.

### 15.3 Termination for Default

- (a) Council may terminate this Agreement at any time with immediate effect on the giving of notice to the Organisation

where any Default Event of the Organisation under clauses 15.4(a), 15.4(b), 15.4(c) or 15.4(e) to 15.4(i) occurs.

- (b) Either party may terminate this Agreement at any time with immediate effect on the giving of notice where the other party materially breaches any term of this Agreement, including a Default Event, and fails to remedy such breach within 7 days after receiving a notice requiring it to do so.

### 15.4 Default Events

Each of the following are Default Events for the purposes of clause 15.3:

- (a) **(Change of Control)**. If:
  - (i) there is any material change in the direct or indirect beneficial ownership or control of the Organisation;
  - (ii) the Organisation merges or amalgamates with or takes over another entity; or
  - (iii) the Organisation disposes of the whole or a material part of its assets, operations or business other than in the ordinary course of business,
 without the prior written approval of Council.
- (b) **(Insolvency)**. Where:
  - (i) a controller as defined in the Corporations Act is appointed to the Organisation, or over any of the property of the Organisation;
  - (ii) the Organisation enters into, or any step is taken that could result in the Organisation entering into, provisional liquidation, liquidation or administration (as defined in section 9 of the Corporations Act);
  - (iii) the Organisation becomes an insolvent under administration (as defined in section 9 of the Corporations Act) or takes steps that could result in the party becoming so;
  - (iv) the Organisation is unable to pay its debts when they become due and payable; or
  - (v) the Organisation ceases to carry on business;

excluding any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by Council beforehand and in compliance with those terms;

- (c) **(Approvals)**. The Organisation ceases to have the approvals, permits and compliance certifications required to carry out the Purpose;
- (d) **(Failure to purchase)**. The Organisation, in the opinion of Council in its sole discretion, has failed to purchase the Equipment in a timely and competent manner;
- (e) **(Review)**. Council conducts a review and is not reasonably satisfied that the Purpose is being undertaken in compliance with this Agreement;
- (f) **(Information)** The Organisation breaches its obligations under clause 14;
- (g) **(Breach of warranty or representation)**. The Organisation breaches any of the warranties or representations in clause 3.2;
- (h) **(Reputational damage)**. The Organisation does any act or omits to do any act that Council reasonably considers is likely to bring Council into disrepute, reflect unfavourably on Council or Council's reputation, including engaging in any business dealings, practices or partnerships Council determines are not consistent with Council's values; and
- (i) **(Breach of Confidential Information)**. The Organisation breaches its obligations of confidence in accordance with

clause 13.

#### 15.5 Effect of termination

If this Agreement is terminated for any reason:

- (a) each party shall negotiate in good faith to complete any post-termination obligations on equitable and reasonable terms;
- (b) Council will not be obliged to provide any further Funds to the Organisation under the Agreement;
- (c) the Organisation must return any Confidential Information or other property of Council in the Organisation's care, custody or control to Council; and
- (d) accrued rights or remedies of a party are not affected.

#### 15.6 Council refunds

- (a) Upon termination of this Agreement under clause 15.3(a), the Organisation must refund to Council within 14 days of request:
  - (i) all Funds paid by Council which have not been spent by the Organisation; and
  - (ii) any other part of the Funds which Council requires the Organisation to repay as stated in the termination notice.
- (b) Upon termination of this Agreement under clause 15.2 or for a Force Majeure Event under clause 20, the Organisation agrees to refund any unexpended Funds other than Funds which have been allocated for items or materials already ordered prior to the date of the termination notice and which the Organisation is unable to cancel.

#### 15.7 Survival

Termination of this Agreement will not affect clauses 5.1, 5.2, 6, 10, 11, 13, 15.5, 15.6, 15.7, 16, 19, 21 or any provision of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination.

### 16 Liability

#### 16.1 Indemnities

- (a) The Organisation is liable for, and indemnifies Council from and against, all loss or damage (including legal costs) incurred or suffered by Council however caused in connection with:
  - (i) any breach of Law or this Agreement by the Organisation including costs of discovering a breach under clause 6.2;
  - (ii) personal injury or death of any person in connection with the Purpose, the Equipment or the Activities;
  - (iii) the Organisation's fraud, wilful misconduct or negligence; and
  - (iv) any claim or allegation that Council's use of any materials provided by the Organisation or the Organisation's trade marks and logos (as permitted under clause 11.1) infringes the Intellectual Property Rights or other rights of a third party.
- (b) Each indemnity contained in this Agreement is a continuing obligation notwithstanding any settlement of account or the occurrence of any other thing, and it is not necessary for Council to incur expense or make payment before enforcing or making a claim under an indemnity.

#### 16.2 Release

To the full extent permitted by law, the Organisation releases and discharges Council and its personnel from any liability (whether

claimed or incurred by the Organisation) arising from this Agreement, the Equipment, the Activities or the Purpose.

### 17 GST

- (a) Any words capitalised in clause 17 have the meaning given to those words in the GST Act.
- (b) Except under clauses 17(c) to 17(g), the consideration for a Supply made under or in connection with this Agreement does not include GST.
- (c) If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
  - (i) the Recipient must pay the Supplier an amount equal to the total GST for the Supply (in addition to and in the same manner as the consideration otherwise payable under this Agreement for that Supply); and
  - (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) For clarity, the GST payable under clause 17(c) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- (e) If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (f) Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- (g) Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 17(c) applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

### 18 Notice

#### 18.1 Method of giving notice

A notice, consent or communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
  - (i) delivered by hand to that person's address; or
  - (ii) sent by email to that person's email address; or
  - (iii) sent by post to that person's address.

#### 18.2 When is notice given

A notice, consent or communication given under clause 18.1 is given and received on the corresponding day set out below. The time expressed in the table is the local time in the place of receipt.

| If a notice is    | It is given and received on                         |
|-------------------|---|
| Delivered by hand | That day, if delivered by 5.00pm on a Business Day. |

|               |  |
|---------------|--|
| Sent by email | The date and time the electronic mail indicates it was sent. |
| Sent by post  | Three Business Days after posting, if sent within Australia. |

### 18.3 Some notices may not be emailed

Despite clause 18.1, a person may not use email to give a notice, consent or communication under clause 15.

## 19 Dispute resolution

- (a) If either Council or the Organisation considers that a dispute in connection with this Agreement (**Dispute**) has arisen, it may send a notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (b) Council and the Organisation must hold discussions between the Council Representative and the Organisation Representative within 14 days after the issue of a Dispute Notice to attempt to resolve the Dispute.
- (c) Subject to clause 19(d), Council and the Organisation must not commence legal or arbitration proceedings in relation to any dispute unless the party has complied with the procedures set out in this clause 19, and the parties have been unable to resolve the Dispute within 90 days of the date the applicable Dispute Notice was received.
- (d) Notwithstanding anything in clause 19, a party may at any time commence court proceedings in relation to a dispute or claim arising in connection with this Agreement where that party seeks urgent interlocutory relief.

## 20 Force Majeure

### 20.1 Force Majeure Event

- (a) If the Organisation reasonably considers a Force Majeure Event may inhibit the Organisation's ability to carry out the Activities or otherwise comply with the Agreement, the Organisation must immediately notify Council in writing.
- (b) Where the Organisation notifies Council under clause 20.1(a), the parties agree to negotiate in good faith and use all reasonable endeavours to remedy, mitigate or minimise the effect of the Force Majeure Event.
- (c) If, notwithstanding negotiations outlined in clause 20.1(b), Council reasonably considers a Force Majeure Event will continue to inhibit the Organisation's ability to complete the Activities or comply with the Agreement, Council may terminate this Agreement immediately on written notice.

## 21 General

- (a) The laws of Queensland, Australia govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- (c) This Agreement may only be varied by written agreement by the parties.
- (d) The Organisation must not assign, in whole or in part, or novate the Organisation's rights and obligations under this Agreement without the prior written consent of Council.
- (e) This Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (f) A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.

- (g) This Agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (h) Other than as permitted under the Agreement, the Organisation must not subcontract the performance of all or any part of its obligations under this Agreement without the prior written consent of Council.
- (i) If the Organisation subcontracts the performance of all or any part of its obligations under this Agreement as specified in clause 21(h), then the Organisation will be liable for the acts and omissions of the subcontractor as though they were acts and omissions of the Organisation.
- (j) A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- (k) This Agreement may be signed in any number of counterparts. All counterparts together make one instrument.

## 22 Definitions and interpretation

In this Agreement terms have the following meaning:

| Term                            | Definition   |
|---------------------------------|--|
| <b>Activities</b>               | means the activities, events or approved items stated in the Particulars.  |
| <b>Agreement</b>                | means these terms and conditions, the Particulars and any Special Conditions.  |
| <b>Application</b>              | means the application the Organisation submitted for the Funds by way of Council's website: <a href="#">Home Page - City of Moreton Bay (through the SmartyGrants portal)</a> .  |
| <b>Business Day</b>             | means a day that is not a Saturday, Sunday or public holiday in Council's local government area.   |
| <b>Commencement Date</b>        | means the date on which: <ol style="list-style-type: none"> <li>(a) Council awards the Organisation the Funds; or</li> <li>(b) if Council issues a letter of award to the Organisation, the date identified on such letter.</li> </ol>   |
| <b>Confidential Information</b> | of a party means the terms of this Agreement and any information: <ol style="list-style-type: none"> <li>(a) in relation to dealings and negotiations associated with this Agreement;</li> <li>(b) about the business and affairs of that party, including customers, clients, employees, sub-contractors or other persons doing business with that party;</li> <li>(c) which is by its nature is confidential;</li> <li>(d) which is designated as confidential by that party; or</li> <li>(e) which the other party knows or ought to know, is confidential,</li> </ol> and includes all trade secrets, know how, financial information and other commercially valuable information of that party. |
| <b>Corporations Act</b>         | means the <i>Corporations Act 2001</i> (Cth).  |
| <b>Default Event</b>            | means any of the default events set out in clause 15.4.  |
| <b>Equipment</b>                | means the items described in the Particulars.  |

| <b>Term</b>                         | <b>Definition</b>  |
|-------------------------------------|--|
| <b>Force Majeure Event</b>          | means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement.   |
| <b>Funds</b>                        | means the amount approved by Councils which will not be exceeded in any circumstances.   |
| <b>Guidelines</b>                   | means the instructions and guidelines published by Council from time to time regarding the Funds, including any relevant funding program policies.   |
| <b>Information Privacy Act</b>      | means the <i>Information Privacy Act 2009</i> (Qld).   |
| <b>Intellectual Property Rights</b> | means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, patent, trade mark, design, domain name, registered or unregistered plant breeder's right, moral right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights. |
| <b>Law</b>                          | means any laws, acts, ordinances, rules, regulations, other delegated legislation, codes any requirement or direction of any relevant Commonwealth, State or Local Government Department, bodies and public authorities.   |
| <b>Organisation Contributions</b>   | means, in respect of the Equipment or the Activities, the financial contributions from the Organisation including the intended contributions from the Organisation set out in the Particulars.   |
| <b>Particulars</b>                  | means the details contained in the funding agreement document issued by Council for the Organisation's acceptance.   |
| <b>Personal Information</b>         | has the meaning given to that term in the Information Privacy Act.   |
| <b>Purpose</b>                      | means the reason for acquisition and use of the Equipment and performance of the Activities (as applicable) described in the Particulars.  |
| <b>Special Conditions</b>           | means the additional funding conditions contained in the Particulars (if any).   |

## 22.1 Interpretation

In this Agreement:

- (a) no rule of construction applies in the interpretation of this Agreement to the disadvantage of the party preparing the Agreement on the basis that it put forward this Agreement or any part of it;
- (b) a reference to '\$' or 'dollar' is to Australian currency;
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (d) words denoting the singular will include the plural and vice versa;
- (e) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (f) use of the term "includes" in any form is not a word of limitations; and

- (g) a reference to a party is a reference to Council or the Organisation, and a reference to the parties is a reference to both Council and the Organisation.

## 22.2 Precedence

If there is any inconsistency between the provisions of this Agreement a descending order of precedence will be accorded to:

- (a) the Special Conditions (if any);
- (b) the Particulars; and
- (c) these terms and conditions,

so that the provision in the higher ranked document, to the extent of the inconsistency, will prevail.

