

INSTRUCTIONS FOR USING THIS DOCUMENT (TO BE DELETED BEFORE SENDING TO ORGANISATION)

This Letter of Agreement must only be used for sponsorships with a value of \$10 000 (GST exclusive) or less.

The relevant Department is to refer to the *Queensland Government Sponsorship Policy* and the *Guidelines for Incoming Sponsorship* to determine whether this Letter of Agreement is appropriate for the circumstances.

The Department must fill out all **yellow highlighted sections** with details of the sponsorship. For your assistance, guidance notes and examples are included in *blue italics*. Before sending the Letter of Agreement to the organisation, the Department needs to delete these instructions, all yellow highlighting and the notes and examples in blue italics.

The organisation should be provided with two (2) physical copies of the Letter of Agreement, or one copy via email. The organisation must either sign both physical copies of the Letter of Agreement and return one (1) via post, or sign and scan the Letter of Agreement and return it by email to the State's delegate. In circumstances where it is not possible for the Organisation to scan the signed Letter of Agreement within the required timeframe, the Organisation may accept the terms and conditions of the Letter of Agreement by emailing the State's Delegate advising of the Organisation's unconditional acceptance of the Letter of Agreement, including the Conditions of Sponsorship.

It is preferable that a signed (electronic) copy of the Letter of Agreement is obtained; the direct email option should only be used where a scanned copy of the document is not possible. If an email is obtained from the organisation, the email must be unconditional (i.e. it must not include any qualifications or provisos or attempt to change the terms of this Letter of Agreement in any way). The email acceptance must be kept with a copy of the Letter of Agreement as these two (2) documents will comprise the contract between the State and the organisation at first instance.

The Department should refer any queries to their Queensland Government sponsorship network representative in the first instance, and then their legal unit.

NOTE: Terminating where the Organisation is or becomes Insolvent

Clause 16 of the Terms and Conditions provides that the State may terminate where the organisation is or becomes Insolvent.

Section 415D of the Corporations Act 2001 (Cth) (which will commence on 1 July 2018 unless proclaimed earlier) prevents a party from enforcing rights under a contract against a Corporation for specified insolvency events. Section 415D(1) of the Act operates as a stay of enforcement of the relevant contractual provisions, so that a party cannot enforce a right to terminate for the specified insolvency events while the stay is in force. Other subsections in s 415D prescribe circumstances where s 415D(1) will not apply. Those circumstances include where a right is prescribed in a regulation or other legislative instrument.

A Department considering terminating the Agreement on the ground of insolvency should seek legal advice before taking any action purporting to terminate the agreement.

Please quote: Mail Number/Author Code/Work Area

Space for Date Stamp

Name

Address 1

Address 2

Address 3

And/or Email address

Dear Salutation

Letter of Agreement

On [dates, times] the State of Queensland acting through [department or agency] ABN [ABN], (“the State”) will host the [event name] at [location] (“Initiative”). The Initiative is aimed at [details of the audience] (“Relevant Target Audience”) and will conclude on [date] (“Completion Date”).

For example: On 6 June 2018 the State of Queensland through the Department of the Premier and Cabinet, ABN 65 959 415 158 (“the State”) will host the Queensland Government Awards at the State Library of Queensland (“Initiative”). The Initiative is aimed at Queensland public sector employees (“Relevant Target Audience”) and will conclude on 6 July 2018, on s,ubmission of the State’s final report (“Completion Date”).

[Optional: The State’s officer can insert further details of the Initiative here if appropriate.]

The State confirms acceptance of sponsorship offered by [correct legal name of the Organisation] ABN [ABN] (“Organisation”) for the Initiative, subject to your acceptance of the terms and conditions of this Letter of Agreement, including the attached Conditions of Sponsorship.

Particulars of Sponsorship

The Organisation agrees to provide the following sponsorship in relation to the Initiative:

Item 1 - Sponsorship Fee: [Amount plus GST or Not applicable]

Option 1: Milestone payments

Within fourteen (14) days of each of the Milestones being achieved, the State will submit a valid tax invoice to the Organisation for the relevant portion of the Sponsorship Fee specified below. The Organisation is required to pay the relevant portion of the Sponsorship Fee by bank cheque or electronic funds transfer (EFT) within fourteen days (14) of receiving the tax invoice from the State.

Milestone	Final date of State’s obligations	Amount of Sponsorship Fee payable (excluding GST)	Amount of GST payable (if applicable under cl 10.2)	Total payable
<<Milestone details>>	<<date>>	<<\${amount}>>	<<\${amount}>>	<<\${amount}>>
<i>For example:</i>				

Milestone	Final date of State's obligations	Amount of Sponsorship Fee payable (excluding GST)	Amount of GST payable (if applicable under cl 10.2)	Total payable
<i>Signing of Agreement</i>	<i>1 January 2018</i>			
<i>Initiative held</i> <i>Final report received by the Organisation detailing how Sponsorship Entitlements were delivered</i>	<i>Final report delivered by the State by [date] ([insert number]) weeks after the Completion Date]</i>			
TOTAL		<<\${amount}>>	<<\${amount}>>	<<\${amount}>>

Option 2: Lump sum payment at commencement

Within fourteen (14) days of the Commencement Date, the State will submit a tax invoice to the Organisation for the Sponsorship Fee. The Organisation is required to pay the Sponsorship Fee by bank cheque or electronic funds transfer (EFT) within fourteen days (14) of receiving the tax invoice from the State.

Option 3: Lump sum payment at completion

Within fourteen (14) days of the Completion Date, the State will submit a tax invoice to the Organisation for the Sponsorship Fee. The Organisation is required to pay the Sponsorship Fee by bank cheque or electronic funds transfer (EFT) within fourteen days (14) of receiving the tax invoice from the State.

Item 2 - In-Kind Support: **[Insert details or Not applicable]**

For example:

Product

The Organisation will provide thirty (30) cartons, each containing twenty-four (24) cans of soft drink from its Sunny Delicious range of beverages (ten (10) cartons of lemonade, ten (10) cartons of orange drink and ten (10) cartons of ginger ale) (Product), for use by the State at the conference to be held as part of the Initiative at Parliament House at 10 am on 5 August 2018. The Product will be delivered by the Organisation to the State in merchantable condition, at the Sponsor's cost, to the function room at Parliament House, 1 George Street, Brisbane by 4 pm on 3 August 2018.

Tickets

The Organisation will provide ten (10) adult in season passes to its Queensland Adventureland theme park (Tickets) to be used by another sponsor of the Initiative, Brisbane 103.9 FM Pty Ltd, as prizes in its competition being run in the promotion of the Initiative between 1 June 2018 and 30 June 2018. The Tickets will be delivered by the Organisation to the State by 15 May 2018.

Media

Production of four (4) x 30-second Community Service Announcements (CSAs) promoting the Initiative and a schedule of the programming of the CSAs to be provided two (2) weeks prior to the Initiative.

Use the following text when there is In-Kind Support:

The Parties agree that the reasonable market value of the In-Kind Support is **\$[amount]** (plus GST) (reasonable market value).

In providing the In-Kind Support, the Organisation is required to hold the insurances set out in clause 12 of the Conditions of Sponsorship. For the purpose of clause 12.2, the Public liability insurance is required for a sum of not less than **[insert amount, for example, \$20 million]** per claim.

Public liability insurance covers liability for personal injury and property damage in the course of providing the In-Kind Support. Typically the amount is \$20 million per claim depending upon a risk assessment.

Item 3 – Sponsorship Entitlements:

In consideration, the Organisation will receive the following:

- **[Insert details]**

For example:

Naming rights

The Organisation will be acknowledged as the naming rights sponsor of the award in the Innovation category. This acknowledgement includes acknowledgement in the Initiative program, verbal acknowledgement at the awards, and the Organisation’s Logo screened during the relevant award presentation.

Official acknowledgement

The Organisation will be acknowledged in all media announcements or speeches made by the State between 10 March 2018 and 5 June 2018 as an official sponsor/partner of the Initiative. The Organisation acknowledges this is not an exclusive right and that there will be other official sponsors/partners of the Initiative.

The following statement will be included in all media announcements, speeches and Advertising Materials made or produced by the State between the Commencement Date and 5 June 2018:

“Queensland Government Awards proudly presented by the University of Brisbane”

Organisation’s Logo

The Organisation’s Logo will appear at the bottom right-hand side of the final page of all Advertising Materials distributed by the State for the Initiative between 10 March 2018 and 5 June 2018, subject to the Organisation providing the State with electronic copies of the Organisation’s Logo by 20 February 2018. The Organisation’s Logo will be no larger in size than 3cm x 2cm and will appear in black and white only; no colour will be used.

The Organisation’s Logo will appear on the Initiative webpage at [URL] produced by the State for the Initiative between 10 March 2018 and 5 June 2018, subject to the Organisation providing the State with electronic copies of the Organisation’s Logo by 20 February 2018. The Organisation’s Logo will

be no larger in size than 3cm x 2cm and will appear in black and white only; no colour will be used. The Organisation acknowledges this right is non-exclusive.

Signage

The Organisation has the right to display two (2) signs (with maximum dimensions of 6m x 3m) on the Queensland Terrace at the State Library of Queensland between 2 and 5 June 2018, subject to the consent of the positioning and the content of the signs by the State.

Merchandise

The Organisation has the right to distribute its merchandise (limited to flyers, brochures and key rings) at the parade to be held as part of the Initiative at South Bank Parklands, Brisbane between 10 am and 1 pm on 5 July 2018, subject to the consent of South Bank Corporation.

This right is exclusive.

Tickets

The Organisation is entitled to three (3) complimentary tickets to the award ceremony to be held as part of the Initiative at the Queensland Performing Arts Complex, Brisbane between 2 pm and 4 pm on 10 August 2019.

Evaluation Report

The Organisation will be provided with a comprehensive evaluation report post event.

Item 4 - Initiative Artwork:

Option 1: No Initiative Artwork

[Not applicable]

OR

Option 2: No licence to use the Initiative Artwork

[Nothing in this Agreement permits the Organisation to use the Initiative Artwork for any purpose, including in its Advertising Materials.]

OR

Option 3: Licence to use the Initiative Artwork

[The initiative Artwork is shown at Annexure 1.]

Subject to the Conditions of Agreement, the State grants to the Organisation a non-exclusive, royalty free, non-transferable licence to use the Initiative Artwork in its Advertising Materials for the Term solely for the purpose of promoting the Organisation's support of the State's Initiative.

Note that all Advertising Materials are to be approved by the State prior to publication. Please email: [Contact Person]@[Department].qld.gov.au

Item 5 - Organisation's Logo:

Please provide us with the details of the logo (and relevant style guide) the Organisation wishes the State to use to promote the Organisation's association with the Initiative (Organisation's Logo) by **[date]**. The Organisation acknowledges that if the Organisation's Logo is not provided to the State by this date the State may be unable to provide part or parts of the Sponsorship Entitlements.

Item 6 - Organisation's Acknowledgment

Please choose one option from below and delete the other, depending on whether the State requires the Organisation to acknowledge its support of the State's Initiative.

Option 1: Acknowledgement Not Required

<<Not applicable.>>

OR

Option 2: Acknowledgement Required

<<Insert >>

Note that all Advertising Materials are to be approved by the State prior to publication. Please email: [Contact Person]@[Department].qld.gov.au

The State may require the Organisation to acknowledge its support of the State's Initiative, in addition to the use of the Initiative Artwork and Coat of Arms.

You must insert clear details of any written or verbal acknowledgement which the State requires (i.e. when, where and how the Sponsorship Acknowledgement is to be made). You must be clear on the form of acknowledgement that is permitted: sponsorship or partnership.

For example:

The following text should appear in all Advertising Materials:

"Proud [sponsor or partner] of the [Queensland Government's Initiative Name]".

Item 7 – Coat of Arms

Option 1:

[The Organisation is not permitted to use the Coat of Arms for any purpose, including in its Advertising Materials].

Option 2:



[Subject to the Conditions of Sponsorship, the State grants to the Organisation a non-exclusive, royalty free, non-transferrable licence to use the Coat of Arms in its Advertising Materials for the Term solely for the purpose of promoting the Organisation's support of the State's Initiative.

Note that all Advertising Materials are to be approved by the State prior to production / publication. Please email: [insert]@[department].qld.gov.au.]

Item 8 - Address for Notices:

The Organisation and the State will contact each other using the following details:

Organisation

Delegate:
Address:
Phone:
Facsimile:
Email:

State

Delegate:
Address:
Phone:
Facsimile:
Email:

Item 9 - Conditions of Sponsorship:

Option 1:

Please indicate your acceptance of the terms and conditions of this Letter of Agreement including the Conditions of Sponsorship by signing both copies of this Letter of Agreement, and returning one (1) copy to the State's Delegate within fourteen (14) days.

Option 2:

Please indicate the Organisation's acceptance of the terms and conditions of this Letter of Agreement including the Conditions of Sponsorship by signing, scanning and emailing a copy of this Letter of Agreement to the State's Delegate within fourteen (14) days.

If it is not possible for the Organisation to return a copy of this Letter of Agreement within fourteen (14) days, the Organisation may indicate its acceptance of the terms and conditions of this Letter of Agreement including the Conditions of Sponsorship by emailing the State's Delegate advising of the Organisation's unconditional acceptance of the Letter of Agreement including the Conditions of Sponsorship within fourteen (14) days.

Should you require any further information, please contact [name] on [telephone] or at [email].

Yours sincerely

[Name]

[Title]

Signed for and on behalf of the Organisation by a person duly authorised to act on its behalf:

Name:

Signature:

This day of 20XX

Annexure 1 – Initiative Artwork

[Write the words “not applicable” if not applicable or insert details of Initiative Artwork]

CONDITIONS OF SPONSORSHIP

The State is the host of the Initiative. The Organisation has agreed to sponsor the Initiative on the terms and conditions of the Letter of Agreement and the following Conditions of Sponsorship.

1. Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires:

Address for Notices means the parties' addresses and email addresses set out in Item 8 of the Letter of Agreement.

Advertising Materials includes any materials used by the Organisation to promote, advertise or report on the Initiative including Publicity, advertisements (cinema, online, outdoor, print, radio and television), audio visual aids, brochures/newsletters/flyers, CDs and DVDs, displays, forms, invitations, merchandise, online activities, point of sale materials, publications, signage and social media.

Agreement means the Letter of Agreement, these Conditions of Sponsorship and any of the documents referred to in clause 1.3.

Business Day means any day except Saturday, Sunday and a public holiday in Brisbane, Queensland.

Claims means all liabilities, expenses, losses, damages, costs (including legal costs) of any kind whatsoever.

Coat of Arms means the logo version of the Queensland Coat of Arms specified in Item 7 of the Letter of Agreement, if applicable.

Commencement Date means the date that the Organisation signs the Letter of Agreement.

Completion Date means the date specified in the Letter of Agreement.

Confidential Information means in relation to a party, information that:

- (a) is by its nature confidential;
- (b) is designated by that party as confidential; or
- (c) the other party knows or ought to know is confidential;

and includes:

- (d) information comprised in or relating to any Intellectual Property of the party;
- (e) information relating to the internal management and structure of the party or the personnel, policies and strategies of the party;
- (f) information of the party to which the other party has access that has any actual or potential commercial value to the first party or to the person or corporation which supplied that information;
- (g) in the case of the State, information relating to the policies, strategies, practices and procedures of the State;
- (h) information in the party's possession relating to the other party's clients or suppliers and like information; and
- (i) the terms of this Agreement and any negotiations in connection with or amendments to this Agreement;

but excludes information:

- (j) in the public domain at the Commencement Date;
- (k) that is or becomes generally available to the public other than as a result of a disclosure by the receiving party; or
- (l) that becomes available to the recipient on a non-confidential basis from a source other than the discloser which has represented to the recipient that it is entitled to such information.

Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

COVID-19 Impact means an event or circumstance arising after the Commencement Date which impacts the Initiative, where the event or circumstance arises as a result of the World Health Organisation declared pandemic called COVID-19 and or any laws made or issued to contain the COVID-19 pandemic.

Delegate means the person described in Item 8 of the Letter of Agreement as the Organisation's and the State's delegate respectively.

Force Majeure means an act, omission, cause or circumstance outside a party's reasonable control including inclement weather, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, sabotage, labour dispute, riot or civil commotion and an act or omission of a third party.

GST means any tax, levy, charge or impost implemented under the GST Act.

GST Act means *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and any amendments to that Act.

Initiative means the event or activity described in the Letter of Agreement.

Initiative Artwork means the branding and words appearing in Annexure 1 to the Letter of Agreement.

In-Kind Support means the provision by the Organisation to the State of goods or services other than the Sponsorship Fee (if any) as set out in Item 2 of the Letter of Agreement.

Insolvent means the situation where:

- (a) a person or entity is insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)); or
- (b) a person or entity is in liquidation, in provisional liquidation, under administration or wound up or had a controller appointed to its property; or
- (c) a person or entity is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by other parties to this Agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

- (e) an entity is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or
 - (f) an entity is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
 - (g) a person or entity is otherwise unable to pay its debts when they fall due; or
- something having a substantially similar effect to (a) to (g) which happens in connection with that person or entity under the laws of any jurisdiction.

Intellectual Property includes all copyright, trademark, design, patents or any other proprietary rights, or any rights to registration of such rights existing in Australia or elsewhere or as protected by legislation from time to time, whether created before, on or after the Commencement Date, but excludes Moral Rights.

Milestone means the milestone events or occurrences (if any) identified in the table in Item 1 of the Letter of Agreement.

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

Organisation means the entity supporting the State's Initiative specified in the Letter of Agreement.

Organisation's Acknowledgement means recognition of the Organisation's support of the State's Initiative in the form specified in Item 6 of the Letter of Agreement.

Organisation's Logo means the trademark or logo used by the Organisation as set out in Item 5 of the Letter of Agreement.

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

Publicity includes any media release, statement, announcement or the like.

Relevant Target Audience means the relevant target audience for the Initiative as specified in the Letter of Agreement.

Sponsorship Entitlements means the benefits the Organisation is to receive in consideration for its support of the Initiative as set out in Item 3 of the Letter of Agreement.

Sponsorship Fee means the total amount (if any) set out in Item 1 of the Letter of Agreement.

State means the State of Queensland acting through the State department or agency specified in the Letter of Agreement.

Term means the period from the Commencement Date to the Completion Date.

1.2 In this Agreement unless the context otherwise requires:

- (a) words importing the singular will include the plural and vice versa;
- (b) all currency amounts are in Australian dollars;
- (c) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law. For the avoidance of doubt, a reference to a law includes Public Health Directions issued under the *Public Health Act 2005* (Qld).
- (e) a party includes its executors, administrators, successors, novatees and assignees;
- (f) "consent" means prior written consent;
- (g) "in writing" means either by letter or email;
- (h) "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (i) if the due date for any obligation is not a Business Day, the due date will be the next Business Day; and
- (j) a reference to an infringement by the Organisation will include an actual or threatened infringement.

1.3 This Agreement is comprised of the following documents which, in the event of an inconsistency, will rank in the following order of precedence:

- (a) the Letter of Agreement;
- (b) any annexures or attachments referred to in the Letter of Agreement; and
- (c) these Conditions of Sponsorship.

2. Term

2.1 This Agreement commences on the Commencement Date and, unless lawfully terminated, continues for the Term.

3. Sponsorship

3.1 The Organisation will pay the Sponsorship Fee or provide the In-Kind Support (or both) to the State in accordance with this Agreement.

3.2 In consideration of the Organisation paying the Sponsorship Fee or providing the In-Kind Support (or both), the State will provide the Organisation with the Sponsorship Entitlements.

4. The State's obligations

4.1 During the Term, the State will:

- (a) comply with Public Health Directions issued from time to time under the *Public Health Act 2005* (Qld) and take these into account in planning and delivering the Initiative, including when considering whether cancellation or rearrangement might be necessary under clause 14A of this Agreement;
- (b) host or procure the hosting of the Initiative;

- (c) provide the Organisation with the Sponsorship Entitlements;
- (d) deliver any reports to the Organisation in accordance with the Milestones; and
- (e) use reasonable endeavours to market the Initiative to the Relevant Target Audience in an attempt to attract public interest and participation in the Initiative.

5. The State's warranties

5.1 The State acknowledges and warrants to the Organisation that the State will obtain and hold (or at the relevant times will hold) all required licences, permits and other authorisations from private, local, State or Commonwealth authorities necessary to host the Initiative.

6. Initiative Artwork, Coat of Arms and Organisation's Acknowledgment

6.1 Subject to clause 6.2, the Organisation will, if applicable:

- (a) use the Initiative Artwork in its Advertising Materials on the terms set out in Item 4 of the Letter of Agreement;
- (b) use the Coat of Arms in its Advertising Materials on the terms set out in Item 7 of the Letter of Agreement; and
- (c) provide the Organisation's Acknowledgment and obtain the State's approval prior to the publication of any Advertising Material containing the Organisation's Acknowledgment in accordance with Item 6 of the Letter of Agreement.

6.2 The Organisation must:

- (a) submit all of its Advertising Materials containing the Coat of Arms and/or the Initiative Artwork to the State at a reasonable time prior to their publication for consent, such consent to be given promptly and not to be unreasonably withheld;
- (b) not modify the Coat of Arms and/or the Initiative Artwork in any way without the consent of the State;
- (c) not sub-licence or assign the use of or transfer the Intellectual Property in the Coat of Arms and/or the Initiative Artwork without the consent of the State; and
- (d) use the Coat of Arms and/or the Initiative Artwork in accordance with any style guides and guidelines for use provided by the State.

6.3 Nothing in this Agreement affects in any way the State's ownership of Intellectual Property in the Initiative Artwork or the Coat of Arms.

7. The Organisation's obligations

7.1 During the Term, the Organisation will:

- (a) pay the Sponsorship Fee to the State in accordance with clause 9;
- (b) provide the In-Kind Support to the State (if applicable);
- (c) licence, at no extra cost to the State, the right to use and the right to grant to third parties the right to use the Organisation's Logo for the Term to assist the State to promote the Organisation's association with the Initiative; and
- (d) provide to the State or its nominee, at the request of the State or its nominee, copies of the Organisation's Logo for the purpose of clause (c) in any reasonable medium requested by the State or its nominee.

8. The Organisation's warranties

8.1 The Organisation acknowledges and warrants to the State that:

- (a) as at the date of this Agreement, the Organisation is free to, and has the authority to, enter into this Agreement;
- (b) the Organisation will not use, or authorise the use of, the Coat of Arms or Initiative Artwork at any time except where, and in the manner, expressly authorised by this Agreement;
- (c) the Organisation will not represent to any third parties that the Organisation has the ability to compel the State to undertake any activities beyond the terms and scope of this Agreement;
- (d) the use of the Organisation's Logo by the State will not infringe the rights of the Organisation or any third party or infringe law in Australia;
- (e) the Organisation will provide the In-Kind Support:
 - (i) in a timely, conscientious, expeditious and professional manner;
 - (ii) in compliance with all applicable laws, regulations and policies; and
 - (iii) in accordance with the reasonable directions of the State;
- (f) the Organisation will not do anything or become involved in any situation which, in the reasonable opinion of the State, brings the State and/or the Initiative into public disrepute, contempt, scandal or ridicule, offends public opinion or reflects unfavourably upon the State and/or the Initiative's reputation and the State will be the sole arbiter in this regard; and
- (g) the Organisation and its personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under this Agreement.

9. Payment of Sponsorship Fee and provision of In-Kind Support and Sponsorship Entitlements

9.1 The Organisation will pay the Sponsorship Fee to the State in the manner outlined in Item 1 of the Letter of Agreement.

9.2 The parties agree that:

- (a) the reasonable market value of the Sponsorship Entitlements is equal to:
 - (i) the reasonable market value of the In-Kind Support; and
 - (ii) the Sponsorship Fee; and
- (b) the reasonable market value of In-Kind Support is the amount stated in Item 2 of the Letter of Agreement.

- 9.3 Within fourteen (14) days of the date of expiry of the Term (if applicable), the State will provide a tax invoice for the reasonable market value of the In-Kind Support and the Organisation will provide a tax invoice for that part of the Sponsorship Entitlements equal to the reasonable market value of the In-Kind Support unless otherwise agreed by the parties.
- 10. Goods and Services Tax (GST)**
- 10.1 The parties agree that unless otherwise expressly provided:
- (a) the Sponsorship Fee payable under this Agreement is exclusive of GST; and
 - (b) for the purposes of Item 2 of the Letter of Agreement, the value of the In-Kind Support and Sponsorship Entitlements payable under this Agreement are exclusive of GST.
- 10.2 If under the GST Act, the State is, or becomes, liable to pay GST in respect of the Sponsorship Fee and/or the In-Kind Support, then the State will provide a tax invoice to the Organisation for the amount of GST and the Organisation will pay the amount outlined in the tax invoice to the State within fourteen (14) days of receiving the tax invoice.
- 11. Indemnity**
- 11.1 The Organisation releases, discharges and indemnifies the State and its officers and employees ("Indemnified Persons") from and against any Claim in relation to the Initiative or arising in any way out of the Organisation's support of the Initiative which may be brought against or made upon any of them in connection with any:
- (a) negligent or unlawful act or omission of the Organisation, its employees, officers, agents or contractors;
 - (b) breach of this Agreement by the Organisation;
 - (c) contravention of any laws by the Organisation, its employees, officers, agents or contractors;
 - (d) infringement by the Organisation, its officers, employees, agents or contractors of any Intellectual Property of any third party;
 - (e) use by the State of the Organisation's Logo;
- except to the extent that the Claim is due to the negligent or unlawful act or omission of the Indemnified Persons.
- 11.2 The Organisation agrees that the State is not under any liability to the Organisation for any Claims against or incurred by the Organisation, or in which the Organisation may be involved, resulting from or in connection with any use of the Initiative Artwork by the Organisation otherwise than in accordance with this Agreement.
- 12. Insurance**
- 12.1 The Organisation will maintain a workers' compensation policy in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (Qld) for any staff provided by the Organisation by way of In-Kind Support.
- 12.2 If providing In-Kind Support the Organisation will have, and maintain during the Term, a public liability insurance policy for a sum referred to in Item 2 of the Letter of Agreement per claim arising from any one event in respect of accidental death of, or accidental bodily injury to persons, or accidental damage to property, arising out of or in the course of providing the In-Kind Support.
- 12.3 The Organisation will, upon request in writing at any time by the State, produce evidence (in the form of certificates of currency) to the State's satisfaction that the insurances required by this clause have been effected and maintained.
- 13. Confidentiality and Privacy**
- 13.1 Each party agrees not to disclose any Confidential Information under any circumstances without the consent of the other party, except:
- (a) to its staff and officers requiring that information for the conduct of their duties pursuant to this Agreement;
 - (b) to its accountants and legal advisors;
 - (c) in respect of the State, to its Ministers and Parliament and otherwise for State government purposes; or
 - (d) as required or permitted by law.
- 13.2 Except as permitted under this Agreement, the Organisation will not issue any statement or release any information relating to this Agreement without the consent of the State.
- 13.3 Nothing in this Agreement prevents the State disclosing the identity of the Organisation and the amount or nature of the Sponsorship Fee or In-Kind Support by way of a statement of a policy or governmental nature including a statement in Parliament.
- 13.4 If the Organisation collects or has access to Personal Information in order to perform its obligations under this Agreement, the Organisation must:
- (a) comply with Parts 1 and 3 of Chapter 2 of the Information Privacy Act 2009 (Qld) ("IP Act") in relation to the discharge of its obligations under this Agreement as if the Organisation was the State;
 - (b) subject to clause (a), not use, disclose or transfer outside of Australia, Personal Information obtained under this Agreement except for the purpose of performing this Agreement, unless required or authorised by law;
 - (c) immediately notify the State if the Organisation becomes aware that a disclosure of Personal Information obtained under this Agreement is, or may be, required or authorised by law;
 - (d) ensure that access to Personal Information is restricted to its employees and officers who require access in order to perform their duties under this Agreement;
 - (e) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under this Agreement;
 - (f) ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Organisation under this clause and ensure that any of its sub-contracts include an equivalent clause binding its sub-contractors to this clause;
 - (g) fully cooperate with the State to enable the State to respond to applications for access to, or amendment of, a document containing Personal Information and privacy complaints; and

- (h) comply with such other privacy and security measures as the State reasonably advises the Organisation in writing from time to time.
- 13.5 If the Organisation is an Agency as defined by the IP Act, the Organisation acknowledges that, in addition to the obligations under this clause, the Organisation is otherwise bound to comply with the Act.
- 13.6 On request by the State, the Organisation must obtain from its employees, officers, agents or sub-contractors engaged for the purposes of this Agreement, an executed deed of privacy in a form acceptable to the State.
- 13.7 The Organisation must immediately notify the State on becoming aware of any breach of this clause.
- 13.8 The Organisation acknowledges that the State, its officers, employees, agents and sub-contractors may use and disclose any of the information provided by the Organisation, about the Organisation and this Agreement to Queensland Government departments or agencies, Queensland Government Bodies, Non-Government Organisations and/or Commonwealth, States or Territories for any purpose in connection with the administration of this Agreement.
- 13.9 The Organisation acknowledges that information provided by the Organisation to the State may be subject to an access application under the *Right to Information Act 2009* (Qld) ("RTI Act") and the RTI Act requires documents to be disclosed subject to specified exemptions under the RTI Act.

14. Force Majeure

- 14.1 Neither party will be liable for any delay or failure to perform its obligations other than payment of monetary sums owing to the other party under this Agreement if such failure or delay is due to Force Majeure.
- 14.2 A party must notify the other party as soon as practicable of any anticipated delay due to Force Majeure. The performance of a party's obligations under this Agreement will be suspended for the period of the delay due to Force Majeure.
- 14.3 If a delay due to Force Majeure exceeds thirty (30) Business Days, either party may terminate this Agreement immediately on providing notice to the other party.
- 14.4 If this Agreement is terminated pursuant to clause 14.3, the Organisation will not be entitled to a refund of the paid Sponsorship Fee or the return of any of the In-Kind Support, nor will the State be liable to the Organisation for any other Claims.

14A Rearrangement or cancellation of the Initiative

14A.1 The Initiative is subject to rearrangement, including cancellation (in whole or part) at the sole discretion of the State in the event of a COVID-19 Impact. Any such rearrangement or cancellation is to be notified by the State to the Organisation as soon as possible following the State's decision to rearrange or cancel the Initiative.

14A.2 If the Initiative:

- (a) is cancelled completely:
 - (i) this Agreement will terminate on the date of the notice of the cancellation by the State under clause 14A.1; and
 - (ii) the Organisation will be entitled to recover a proportionate amount of the Sponsorship Fee attributable to the cancellation as a debt due to it or, where possible, be entitled to the return of a portion of the In-Kind Support attributable to the cancellation; or
- (b) cancelled in part or a rearrangement of the Initiative reduces the Sponsorship Entitlements, from the date of the notice given by the State under clause 14A.1, the Organisation will be entitled to:
 - (i) recover a proportionate amount of the Sponsorship Fee or, where possible, the In-Kind Support attributable to the cancellation or rearrangement of the Initiative from the State as a debt due to it;
 - (ii) reduce the amount of the Sponsorship Fee or In-Kind Support to be provided by the Organisation proportionately to reflect the rearrangement of the Initiative and any reduction in the Sponsorship Entitlements.

14A.3 The particulars of any refund or reduction of the Sponsorship Fee or In-Kind Support under clause 14A.2 are to be agreed in writing by the parties, both acting reasonably and in good faith. When considering the amount of the Sponsorship Fee or In-Kind Support that is "attributable to the cancellation", the parties must have regard to the amount of the Sponsorship Entitlements already provided by the State to the Organisation.

14A.4 If the parties do not agree to the particulars to be determined under clause 14A.3 within a period of fourteen (14) days of notification by the State to the Organisation, the parties are to use the process set out in clause 15 (Dispute Resolution) to settle the dispute.

15. Dispute Resolution

- 15.1 The parties will, in the first instance, seek to settle any dispute arising in connection with this Agreement by negotiation and mediation before instituting legal proceedings.
- 15.2 For the purpose of this clause, a dispute will have arisen between the parties when a party gives notice to that effect to the other party.
- 15.3 Once a party receives a notice under clause 15.2, the parties must meet within fourteen (14) days to attempt to resolve the dispute by negotiation. Both parties must act in good faith to resolve the dispute by negotiation.
- 15.4 If the dispute has not been resolved in accordance with clause 15.3, within fourteen (14) days of the last day on which the parties have under clause 15.3 to resolve the dispute, the parties will attend mediation in Brisbane.
- 15.5 If the parties cannot agree on a mediator, a mediator will be appointed by the Australian Disputes Centre (Queensland) ("ADC"). The rules of the ADC will apply to the mediation.
- 15.6 Any mediation costs will be borne equally by both parties and both parties must act in good faith to resolve the dispute by mediation.
- 15.7 Each party will continue to perform this Agreement despite the existence of a dispute or any proceedings under this clause.
- 15.8 For the avoidance or settlement of disputes and for the better management of this Agreement, the parties nominate the Delegates to negotiate and resolve the dispute on behalf of the parties.

16. Termination

- 16.1 In the event that either party commits a breach of any of its obligations under this Agreement:
- (a) the other party may give notice to that party to remedy the default;
 - (b) if the defaulting party has not remedied the default at the expiration of fourteen (14) days from the date of receipt of the notice, this Agreement will terminate on the expiration of that fourteen (14) day period; and
 - (c) if the default is a breach of either parties obligation under clause 10.2, and the default has not been remedied within fourteen (14) days after providing notice in accordance with clause (a), the defaulting party must pay to the aggrieved party an amount equivalent to the amount of input tax credit that the party would otherwise be entitled, had it been provided with a tax invoice. The input tax credit amount will be recoverable against the defaulting party as a liquidated debt.
- 16.2 The Organisation must notify the State immediately if:
- (a) there is any change in the direct or indirect beneficial ownership or control of the Organisation;
 - (b) the organisation disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
 - (c) the Organisation ceases to carry on business;
 - (d) the Organisation commits an act of bankruptcy, becomes insolvent or is unable to pay its debts as and when they become due;
 - (e) any step is taken by a mortgagee to take possession or dispose of the whole or part of the Organisation's assets, operations or business;
 - (f) the organisation is wound up, voluntarily or involuntarily;
 - (g) the organisation enters into any arrangement or composition with its creditors or has a controller, receiver, receiver and manager or administrator appointed; or
 - (h) the Organisation goes into liquidation or passes a resolution to go into liquidation otherwise than for the purposes of reconstruction.
- 16.3 Notwithstanding clause 16.1, the State may immediately terminate this Agreement by notice to the Organisation if:
- (a) notice is given by the Organisation pursuant to clause 16.2;
 - (b) the State is satisfied that any of the warranties provided by the Organisation were inaccurate, incomplete, out-of-date or misleading in any way when made, or become inaccurate, incomplete, out-of-date or misleading in any way;
 - (c) a Conflict of Interest arises and has not been, or in the State's view, cannot be appropriately managed to the State's satisfaction;
 - (d) the Organisation ceases its operations or indicates that it is unable or unwilling to complete this Agreement;
 - (e) the Organisation is or becomes Insolvent;
 - (f) the Organisation breaches clauses 3.1, 6.1, 6.2, 9.1, 9.3, 8.1(b), 8.1(f), 8.1(g) or 12;
 - (g) the State, in its sole discretion, cancels the Initiative (other than a cancellation of the Initiative pursuant to clause 14A of this Agreement); or
 - (h) in the opinion of the State, termination becomes necessary due to a change of a Minister or government, government policy or government funding arrangements.
- 16.4 If this Agreement is terminated pursuant to:
- (a) clauses 16.3(a) to 16.3(f) the State will not be under any obligation to refund the Sponsorship Fee (or any part thereof) or return the unused In-Kind Support to the Organisation;
 - (b) clause 16.3(g) the State will refund to the Organisation the Sponsorship Fee and return, if possible, any unused benefits of the In-Kind Support to the Organisation but will not be liable for any other Claims suffered or incurred by the Organisation arising from or in connection to the cancellation; and
 - (c) clause 16.3(h) the State will refund to the Organisation part of the Sponsorship Fee on a pro rata basis, and, if possible, any unused benefits of the In-Kind Support based on what the State considers reasonable in its sole discretion, having regard to the value of Sponsorship Fee, the reasonable market value of the In-Kind Support and the Sponsorship Entitlements received (or to be received) by the Organisation.
- 16.5 Termination of this Agreement will not prejudice any rights of the State under this Agreement, at common law, under statute, in equity or otherwise.
- 16.6 Upon termination of this Agreement, the Organisation must immediately cease:
- (a) producing, distributing and publishing all Advertising Materials containing the Initiative Artwork, Coat of Arms or Organisation's Acknowledgement; and
 - (b) using or deriving any benefit from the Sponsorship Entitlements.

17. Notices and Communications

- 17.1 All notices relating to this Agreement must be in writing and must be delivered to the party's Delegate at the party's Address for Notice by hand, prepaid post or email.
- 17.2 A notice will be deemed to be given:
- (a) if posted, two (2) Business Days after the date of posting ;
 - (b) in the case of delivery by hand on a Business Day, on the date of delivery;
 - (c) if e-mailed, subject to clause 17.3 below, on the date recorded on the device from which the party sent the email, unless the sending party received an automated message that the email has not been delivered,

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

17.3 A notice of termination of this Agreement which is sent via email must also be sent by post or hand delivery, and will not be deemed to be given until the notice is deemed to be delivered by post or hand delivery.

17.4 The parties may from time to time change their respective Delegate and Address for Notices by providing the other party with notice of the change.

17.5 All communications, other than notices, will be directed to the other party's Delegate nominated in the Letter of Agreement, or to another person if the other party directs.

18. Relationship of the parties

18.1 This Agreement does not create any partnership, contract of employment or employment relationship, joint venture or relationship of principal and agent between the parties.

18.2 Neither party will incur any expenditure on behalf of the other party.

18.3 Neither party has the power to bind the other party whatsoever or pledge the credit of the other party, without specific consent of the other party.

19. Machinery of government

19.1 The State may, at any time by notice to the Organisation, transfer the management of this Agreement from the State agency or department named in the Letter of Agreement to another department or agency of the State of Queensland.

19.2 If the State gives notice to the Organisation under clause 19.1:

(a) the State will provide the Organisation with an updated Delegate and Address for Notices; and

(b) from the date of that notice the other department or agency of the State will assume the responsibilities and rights of the State of Queensland as if it were a party to this Agreement.

20. Joint and several liability

20.1 If the Organisation is comprised of two (2) or more parties, those parties comprising the Organisation agree that they will be jointly and severally liable:

(a) for the performance of the Organisation's obligations under this Agreement; and

(b) to the State for any Claims suffered or incurred by the State in connection with this Agreement including the Initiative, the Sponsorship Fee and the In-Kind Support.

21. Governing law

21.1 The laws of Queensland apply to this Agreement. Each party submits to the jurisdiction of the courts of Queensland.

22. Entire Agreement

22.1 This Agreement sets out all the parties' rights and obligations relating to the subject matter of the Agreement, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Agreement. No other terms apply.

23. Variation of Agreement

23.1 This Agreement may only be varied by written agreement of authorised representatives of the parties.

24. Severability

24.1 If any part of this Agreement is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Agreement (and any parts of the Agreement which are dependent on those parts) will not apply but the other parts of the Agreement will not be affected.

25. Waiver

25.1 Clauses and rights in this Agreement can only be waived in writing signed by the waiving party.

25.2 Failure or delay of a party in exercising a right under this Agreement does not waive the party's rights.

25.3 A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights or the same rights in other circumstances.

26. Assignment and novation

26.1 The Organisation must not assign or novate any of its rights or obligations under this Agreement without the consent of the State.

27. Costs

27.1 Each party will bear its own costs in relation to the preparation, negotiation and execution of this Agreement and any variations.

28. Clauses to survive termination

28.1 In addition to this clause, the following clauses will survive termination or expiration of this Agreement:

(a) clauses 8.1(b), 8.1(d) and 8.1(f) (Organisation's warranties);

(b) clause 9 (Payment of Sponsorship Fee and provision of In-Kind Support and Sponsorship Entitlements);

(c) clause 11 (Indemnity);

(d) clause 12 (Insurance);

(e) clause 13 (Confidentiality and Privacy);

(f) clause 14.4 (Force Majeure);

(g) clauses 14A.2 – 14A.4 (Rearrangement or cancellation of the Initiative);

(h) clause 15 (Dispute resolution);

(i) clauses 16.4 – 16.6(Termination);

- (j) clause 17 (Notices);
- (k) clause 19 (Machinery of government); and
- (l) clause 20 (Joint and several liability).

29. Counterparts and electronic signing

- 29.1 This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterparty were on the same document.
- 29.2 This Agreement may be signed electronically and its execution may be communication by electronic transmission.