



Dated

Funding Agreement

NSW Public Spaces Legacy Program

**Tumbarumba Playground and Skate Park and Rotary
Pioneer Park Tumut**

**Crown in right of the State of New South Wales acting through the
Department of Planning, Industry and Environment (ABN 20 770 707
468)**

Snowy Valleys Council a body politic of the State constituted under the
Local Government Act 1993 (ABN 53 558 891 887)

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This Funding Agreement is dated 2021

Parties:

Department

The Crown in right of the State of New South Wales acting through the Department of Planning, Industry and Environment (ABN 20 770 707 468) of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150.

Recipient

Snowy Valleys Council a body politic of the State constituted under the *Local Government Act 1993* (ABN 53 558 891 887) of 76 Capper St, Tumut NSW 2720.

Introduction:

- A** The NSW Government has established the Program which aims to support local councils to accelerate their assessments of development applications and rezoning applications to create new development capacity and meet demand for housing and employment over the next decade.
- B** By funding new and/or improved high quality public and open spaces, the Program will create long term value beyond the COVID-19 economic recovery period.
- C** The Recipient has nominated the Project for funding through the Program and has made an application to the Department.
- D** The Department has agreed to provide the Funding from the Program to the Recipient to facilitate the carrying out of the Project by the Recipient.
- E** The objective of this Agreement is to document the agreed outcomes for the Project including Milestones and timing for payment of the Funding and completion of the Project, including Project Completion.
- F** The parties acknowledge and agree that provision of the Funding to the Recipient is conditional on the Recipient complying with the Participation Agreement.
- G** The parties also agree that in the event that part of the Funding is not required or used by the Recipient for the Project, those unspent funds will be returned to the Department.
- H** The Department agrees to provide, and the Recipient agrees to accept, the Funding in accordance with the terms of this Agreement.

It is agreed:

In consideration of the mutual promises contained in this Agreement, the parties to this Funding Agreement agree as follows:

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context clearly indicates otherwise:

ABN means (Australian Business Number) as set out in section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth);

Agreement means this document and includes any Schedules and Annexures;

Agreement Details means those details in Schedule 1 of this Agreement;

Annexure means any annexure to a Schedule;

Asset means any item of property, purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funding, but excludes any Intellectual Property Rights;

Australian Accounting Standards refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

Australian Auditing Standards refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

Australian Privacy Principle has the same meaning as it has in the *Privacy Act 1988* (Cth);

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, New South Wales, and concludes at 5 pm on that day;

Capital Works means any part of the Project that comprises construction and building works within the Project Location, and includes the Capital Works listed at Item 6 of the Agreement Details;

Commencement Baseline Report means a report to be provided by the Recipient to the Department following commencement of the Project in accordance with the provisions of Schedule 3;

Confidential Information means:

- (a) terms of this Agreement and all confidential information, Material and technology disclosed or provided in any form by any party to any other party in connection with the subject matter of this Agreement;
- (b) the information (if any) described in Item 7 of the Agreement Details; and
- (c) information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;

Copyright Material has the same meaning as it has in the *Copyright Act 1968* (Cth);

Date of this Agreement means the date written on page 1 of this Agreement, or if no date is written there, then the date on which the Agreement is signed by the last party;

Department where the context permits, includes officers, delegates, employees and agents and successors of the Department of Planning, Industry and Environment (ABN 20 770 707 468);

Department Material means any Material:

- (a) provided by the Department to the Recipient for the purposes of this Agreement; or
- (b) derived at any time from the Material referred to in paragraph (a);

Dispose means to sell, licence, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and “Disposal” means the method of so disposing;

Existing Material means all Material in existence prior to the Date of this Agreement;

- (a) incorporated in;
 - (b) supplied with, or as part of; or
 - (c) required to be supplied with, or as part of,
- the Project Material;

Financial Year means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term;

Funding means the amount or amounts payable by the Department under this Agreement as specified in Item 5 of the Agreement Details;

Funding Acknowledgement Guidelines means the NSW Government Funding Acknowledgement Guidelines for Recipients of NSW Government Infrastructure Grants dated July 2017 and as updated from time to time and available at <https://www.nsw.gov.au/sites/default/files/2020-02/Funding-acknowledgement-guidelines.pdf> or as otherwise notified by the Department;

GST has the meaning that it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Improvement Targets has the meaning given in the Participation Agreement;

Information Privacy Principle has the meaning given in the *Privacy and Personal Information Protection Act 1998* (NSW);

Intellectual Property Rights includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts;
- (c) all other rights resulting from intellectual activity in the industrial, scientific literary or artistic fields; and
- (d) Moral Rights;

Law includes:

- (a) Acts of the Commonwealth and the State(s) and Territory(s) in which the Project will be undertaken, and any other relevant State or Territory;
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph (a);

- (c) directions by any person exercising statutory powers regarding the Recipient or the Project; and
- (d) all the requirements, standard, approvals, licences, registrations or permits of any government (including local government) department, authority, agency or regulatory body that apply to the Project,

whether currently in force or coming into force on or after the Date of this Agreement;

Material means anything in relation to which Intellectual Property Rights arise;

Milestone means a milestone or stage of completion of the Project as set out in Schedule 5;

Monitoring Period 2 has the meaning given in the Participation Agreement;

Monthly Update Report means the report to be provided by the Recipient to the Department on a monthly basis in accordance with the provisions of Schedule 3;

Moral Rights includes the following rights of an author of Copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

Notice has the meaning in clause 20.1;

Participation Agreement means the executed participation agreement between the Department and the Recipient in respect of the NSW Public Spaces Legacy Program;

Personnel means:

- (a) in relation to the Recipient – any natural person who is an officer, employee, agent, or professional advisor of the Recipient or its subcontractors; and
- (b) in relation to the Department – any natural person who is an officer, employee, agent or professional advisor of the Department;

Privacy Law means the *Privacy Act 1988* (Cth), the *Privacy Regulations 2013* (Cth), the Australian Privacy Principles, the Information Privacy Principles, the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy and Personal Information Protection Regulations 2014* (NSW);

Procurement Certificate means a certificate to be provided by the Recipient to the Department following completion of the Project, including Project Completion in accordance with the provisions of Schedule 3;

Project means the Project described in Item 1 of the Agreement Details and includes the provision of the Project Material to the Department;

Project Acquittal Report means a report to be provided by the Recipient to the Department following completion of the Project, including Project Completion in accordance with the provisions of Schedule 3;

Project Commencement Date means the date set out in Item 2 of the Agreement Details;

Project Completion takes its meaning from Schedule 5;

Project Completion Date means the date set out in Item 3 of the Agreement Details as the Project Completion Date;

Project Location means the locations set out in Item 9 of the Agreement Details;

Project Material means any Material:

- (a) created by the Recipient for the purpose of this Agreement;
 - (b) provided or required to be provided to the Department under the Agreement; or
 - (c) derived at any time from the Material referred to in paragraphs (a) or (b),
- and includes
- (d) any Existing Material incorporated in the Material referred to in paragraphs (a) or (b) above;
 - (e) any Promotional Material;
 - (f) any Monthly Update Report;
 - (g) the Commencement Baseline Report;
 - (h) the Project Acquittal Report; and
 - (i) the Procurement Certificate;

Project Objectives means the objectives of the Project described in Item 4 of the Agreement Details;

Project Period means the period specified in Item 3 of the Agreement Details during which the Project must be completed;

Project Plan means the project plan referred to in clause 4.5 as amended from time to time;

Program means the program under which the Department is able to provide Funding to the Recipient as further described at Item 8 of the Agreement Details;

Promotional Material means any photo, artist impression, video or any other promotional material relating to the Project reasonably required by the Department;

Recipient includes, where the context permits, the officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;

Records includes documents, information and data stored by any means and all copies and extracts of the same;

Schedule means a schedule to this Agreement and may include Annexures and incorporate other documents by reference;

Standard Condition means a standard condition of the Project as set out in Schedule 4;

Term refers to the period described in clause 2 of this Agreement;

Third Party Interest means any legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Recipient in connection with this Agreement, including any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest; and

Unexpended Funding means any part of the Funding that is unspent or uncommitted.

1.2 Interpretation

In this Agreement, unless the context clearly indicates otherwise:

- (a) a reference to **this Agreement** or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this agreement;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this agreement;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this agreement;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (m) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (n) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (o) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (p) **including** and **includes** are not words of limitation;
- (q) the words **at any time** mean at any time and from time to time;

- (r) a reference to a time is to that time in New South Wales;
- (s) a word that is derived from a defined word has a corresponding meaning;
- (t) **monetary amounts** are expressed in Australian dollars;
- (u) the singular includes the plural and vice-versa;
- (v) words importing one gender include all other genders; and
- (w) a reference to a thing includes each part of that thing.

1.3 Construction

Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Term

The Term of this Agreement commences on the Date of the Agreement and, unless terminated earlier, it expires on the day on which the Recipient provides the Project Acquittal Report and the Procurement Certificate to the Department.

3. Provision of Funding

3.1 Payment of Funding

- (a) Subject to sufficient funds being available, and compliance by the Recipient with this Agreement, the Department agrees to provide the Recipient with the Funding at the times and in the manner specified in Schedule 2 and Schedule 5.
- (b) The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.

4. Project

4.1 Project Requirements

The Recipient must:

- (a) use the Funding to complete the Project and for no other purpose;
- (b) commence the Project no later than the Project Commencement Date;
- (c) complete the Project Completion by the Project Completion Date; and
- (d) make the works comprised in the Project available to the community by 31 January 2023.

4.2 Conduct of Project

The Recipient agrees to carry out the Project:

- (a) to achieve the Project Objectives and for no other purpose;
- (b) to meet the Milestones in accordance with clause 4.3;
- (c) to meet the Standard Conditions in accordance with clause 4.4;
- (d) in an efficient, effective, economical and ethical manner;

- (e) diligently and to a high standard;
- (f) in accordance with this Agreement, including the Project Plan; and
- (g) in accordance with all applicable Laws.

4.3 Milestones

The Recipient must complete, to the satisfaction of the Department:

- (a) each Milestone (including Milestone 3); and
 - (b) each obligation or requirement imposed by each Milestone,
- on or before the date specified for the completion of that Milestone in Schedule 5.

4.4 Standard Conditions

The Recipient must complete, to the satisfaction of the Department:

- (a) each Standard Condition; and
 - (b) each action, obligation or requirement imposed by each Standard Condition,
- on or before the date specified for the completion of that action, obligation or requirement imposed by the Standard Condition in Schedule 4.

4.5 Project Plan

- (a) The Recipient must provide the Project Plan to the Department by 30 June 2021.
- (b) The Project Plan must be jointly agreed between the Department and the Recipient. If for any reason the parties do not jointly agree on the terms or form of the Project Plan, the Recipient must comply with a Project Plan as reasonably required by the Department.
- (c) The Recipient must carry out the Project in accordance with the Project Plan.
- (d) The Department and the Recipient acknowledge that the Project Plan may be varied in accordance with clause 22.3.

4.6 Recipient Obligations

- (a) The Recipient agrees to:
 - (i) liaise with and provide information, any reports or other documents to the Department as reasonably requested by the Department, including at any Milestones; and
 - (ii) comply with all of the Department's reasonable requests, directions, monitoring or reporting requirements.
- (b) In relation to conducting a review and final evaluation of the Program, the Recipient agrees to:
 - (i) respond to all of the Department's reasonable requests; and
 - (ii) provide any information the Department reasonably requires.

- (c) The Recipient agrees to provide to the Department written Monthly Update Reports, a Commencement Baseline Report, a Project Acquittal Report and a Procurement Certificate in the manner specified in Schedule 3.
- (d) Each of the parties may nominate, from time to time, a person who has authority to receive and sign Notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Project.

4.7 Responsibility of the Recipient

The Recipient is fully responsible for the performance of the Project and for ensuring compliance with the requirements of this Agreement (including obtaining the necessary approvals), and will not be relieved of that responsibility because of any:

- (a) involvement by the Department in the performance of the Project;
- (b) subcontracting of the Project; or
- (c) payment of any amount of Funding to the Recipient.

4.8 Records

The Recipient agree to comply with all obligations under, and reasonable directions from the Department in respect of, the *State Records Act 1998* (NSW) and the *State Records Regulation 2015* (NSW).

5. Subcontractors

5.1 Recipient may subcontract

- (a) The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement and may subcontract any part of its obligations under this Agreement.
- (b) The Recipient must have a written contract with each of the Recipient's subcontractors (**subcontract**) and ensure that each subcontract is consistent with, and allows the Recipient to give effect to, the Recipient's obligations under this Agreement.
- (c) The Recipient is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out.
- (d) The Recipient must ensure that its subcontractors comply with the relevant terms of this Agreement and do not do anything, or omit to do anything, which if done or omitted to be done by the Recipient would be a breach of the Recipient's obligations under this Agreement.
- (e) The Recipient shall be deemed to be responsible for any and all breaches of this Agreement committed by its subcontractors as if the Recipient had breached the Agreement itself.

6. Taxes, duties and government charges

- (a) The Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

7. Debt and Interest

- (a) In this clause 7, 'Interest' means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
- (b) The Recipient agrees, upon request of the Department, to pay any amount owed or payable to the Department or which the Department is entitled to recover from the Recipient under this Agreement, including if demanded by the Department any Interest, as a debt due by the Recipient without further proof of the debt by the Department being necessary. Such payment is without prejudice to any other rights available to the Department under the Agreement, under statute, at law or in equity.
- (c) If the Department notifies the Recipient that an amount is to be refunded or otherwise paid to the Department and the amount is not refunded or paid within 20 Business Days, or as otherwise notified by the Department, the Recipient agrees to pay Interest, unless the Department notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- (d) In respect to any obligation the Recipient may have under this Agreement to pay the Department any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Department.

8. GST

8.1 Definitions

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

8.2 Consideration is GST-exclusive

Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated with regard to GST.

8.3 GST payable on taxable supply

- (a) If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (c) If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.
- (d) The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

9. Management of Funding

9.1 Account and financial records

- (a) The Recipient agrees to ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia and that is an account that complies with any other reasonable requirements of the Department.
- (b) The Recipient agrees to:
 - (i) keep financial accounts and Records relating to the Funding and Project that identify:
 - (A) all receipts and payments related to the Funding and Project; and
 - (B) all interest earned on the Funding.
 - (ii) unless otherwise notified by the Department, prepare financial statements for the Project in accordance with Australian Accounting Standards including:
 - (A) a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date; and
 - (B) arrange for the audit of those accounts and Records in accordance with Australian Auditing Standards.

9.2 Refunds of unexpended and misspent Funds

- (a) Without limiting the Department's rights under this Agreement, the Department may by Notice in writing recover all or part of the Funding from the Recipient (as a debt due and payable on demand) in any of the circumstances set out below in Column A in the table below, but only to the extent set out in the Column B in the table below:

	Column A: Circumstance in which some or all of the Funding may be recovered by the Department	Column B: Extent to which some or all of the Funding may be recovered by the Department
1.	The Recipient is paid more than the Funding as specified in this Agreement.	Only to the extent of the amount of overpayment.
2.	The Recipient has incorrectly claimed some or all of the Funding.	Only to the extent which the Funding has been incorrectly paid to the Recipient.
3.	The Recipient abandons the Project.	Only to the extent of any Unexpended Funding.
4.	There is Unexpended Funding at the Project Completion Date.	Only to the extent of any Unexpended Funding.
5.	The Recipient breaches this Agreement (including, without limitation, not achieving any or all of the Milestones in accordance with Schedule 5) and fails to	Only to the extent that any part of the Funding has been spent by the

	remedy that breach within a reasonable time following receipt of a written request from the Department.	Recipient in breach of this Agreement.
6.	If this Agreement is terminated for any other reason not listed above.	Only to the extent of any Unexpended Funding.
7.	The Department, in its discretion, determines that the Project carried out ceases to be viable during the Project Period.	Only to the extent of any Unexpended Funding.
8.	The Department, in its discretion, determines that the Project completed, including Project Completion did not achieve the scope of the Project.	Only to the extent of any Unexpended Funding.

- (b) If the Department exercises the right to require the refund of all or part of the Funding in accordance with clause 9.2(a), the Recipient must refund:
- (i) the full amount of the Funding; or
 - (ii) the part of the Funding that is the subject of the Notice, within the period (which must be reasonable in the circumstances) specified in the written Notice.
- (c) In addition to the Department's right under clause 9.2(a)4 above, if the cost of the completed Project, including Project Completion is less than the Funding, the Department may by a Notice require the Recipient to otherwise deal with the Unexpended Funding in accordance with any conditions that the Department considers appropriate, including conditions relating to the ongoing use and expenditure by the Recipient of that amount for particular goals or objectives associated with the Project.
- (d) Despite clause 9.2(a)5, the Department agrees that the Recipient may retain the part of the Funding that is associated with Milestone 1.
- (e) In addition to the Department's right under clause 9.2(a)7, if the Department, in its discretion, determines that the Project carried out ceases to be viable during the Project Period, the Department may by a Notice require the Recipient to otherwise deal with the Unexpended Funding in accordance with any conditions that the Department considers appropriate, including conditions relating to the use and expenditure by the Recipient of that amount for another project nominated by the Recipient.
- (f) This clause survives termination or expiry of this Agreement.

10. Statutory Approvals

- (a) The Recipient must obtain all necessary statutory approvals in relation to the Project, and the Recipient must give the Department, within six months after the Date of this

Agreement, satisfactory written evidence that these statutory approvals have been obtained.

- (b) If the Recipient does not comply with the requirement in subclause 10(a), the Department may at the Department's sole discretion terminate this Agreement in accordance with clause 17.1.

11. Records & Audit

11.1 Keeping Records

The Recipient must create and maintain full and accurate accounts and Records of the conduct of the Project including, without limitation, all:

- (a) progress against the Milestones; and
- (b) receipt and use of Funding.

11.2 Retention of Records

The Recipient agrees to create and maintain Records and accounts under clause 11.1 and retain them for a period of no less than seven years after the end of the Term.

11.3 Audit

- (a) The Department may at its expense and in its discretion conduct an audit of the Recipient's compliance with this Agreement.
- (b) The Department or a person commissioned by the Department will give the Recipient prior notice of its requirements in relation to an audit and endeavour to minimise disruption and interference to the Recipient's performance of its obligations under this Agreement.
- (c) The Recipient must co-operate fully with the audit, including permitting the person conducting the audit to inspect and make copies of the Recipient's Records and materials relevant to the Project and the performance of this Agreement.
- (d) Except where otherwise determined by the Department, the Recipient is responsible for its own costs of participating in or conducting an audit and such costs are not to be paid out of the Funding.
- (e) The Recipient must promptly take any reasonable action required by the Department to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project or the Recipient's performance of this Agreement.
- (f) The Recipient is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.
- (g) Where the Department directs, the Recipient must not further spend nor make any further commitment to spend any amount of Funding until such time as the audit has been completed and the Department has confirmed in writing that any action required under clause 11(e) has been taken.

12. Confidential information**12.1 Obligation**

- (a) Subject to this clause 12, each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential.
- (b) The Recipient agrees to secure all of the Department's Confidential Information against loss and unauthorised access, use, modification or disclosure.

12.2 Written Undertakings

The Recipient must, on request by the Department at any time, arrange for:

- (a) its Personnel; or
- (b) any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of the Department's Confidential Information.

12.3 Exceptions to confidentiality

The obligations on the parties under this clause 12 will not be taken to have been breached to the extent that the Confidential Information:

- (a) is required to be disclosed by Law to disclose, in which case the disclosing party must immediately notify the other party of the requirement and must take lawful steps and permit the opposition or restriction of the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
- (b) is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (c) is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- (d) is disclosed by the Department to the responsible Minister;
- (e) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of New South Wales or the Commonwealth of Australia;
- (f) is shared by the Department (including other agencies), where this serves the Department's, the Crown in right of the State of New South Wales, or the Commonwealth of Australia's legitimate interests;
- (g) is in or enters the public domain for reasons other than a breach of this Agreement; or
- (h) is disclosed to its professional advisers to obtain professional advice.

12.4 Obligation to notify

Where a party discloses Confidential Information to another person pursuant to clause 12.3 the disclosing party must notify the receiving person that the information is confidential.

12.5 Period of Confidentiality

The obligations under this clause 12 will continue, notwithstanding the expiry or termination of this Agreement until the Confidential Information is in the public domain.

12.6 Survival of clause

This clause 12 will survive the termination of this Agreement.

13. Privacy**13.1 Privacy Obligations**

- (a) The Recipient agrees, in conducting the Project:
 - (i) not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of a Privacy Law;
 - (ii) to comply with the Privacy Law; and
 - (iii) to comply with any directions, guidelines, determinations or recommendations of the Department, to the extent that they are consistent with the Privacy Law.
- (b) The Recipient agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 13.1.
- (c) The provisions of this clause 13.1 survive the termination or expiration of this Agreement.

13.2 No reduction in Privacy Obligations

The obligations in clause 12 do not detract from any of the Recipient's obligations under the Privacy Law or under clause 13.1.

14. Acknowledgement and publicity**14.1 Acknowledgement of support**

- (a) Unless otherwise notified by the Department, the Recipient agrees, in all publications, promotional and advertising Materials, public announcements, promotional plaques and activities by the Recipient or on the Recipient's behalf in relation to the Project, or any products, processes or inventions developed as a result of it, to acknowledge the financial and other support the Recipient has received from the New South Wales Government in accordance with the Funding Acknowledgement Guidelines, or as otherwise approved by the Department prior to its use.
- (b) Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must, on request, be provided to the Department.
- (c) The Recipient must provide the Department with no less than 30 Business Days' Notice of any proposed publications, promotional and advertising Materials or public announcements and activities by the Recipient in connection to the Project and must not publicise, promote or report on the Project and/or awarding of Funding to the Recipient for the Project without the prior written approval of the Department.
- (d) If a Notice is issued under subclause (c) above, the recipient must:

- (i) provide the Department with all such information as reasonably required by the Department regarding the time and date of the proposed publications, promotional and advertising Materials or public announcements and activities; and
- (ii) do such things as required to allow a representative of the Department to attend or participate in (including making an announcement at any public announcement or activity) which the Department may choose to do so in its absolute discretion.

14.2 Right to publicise Funding and the Project

- (a) The Recipient will provide to the Department Promotional Material to enable the Department to publicise, promote and report on the Project. The Recipient shall be solely responsible for obtaining all necessary Intellectual Property Rights for the Department's use of the Promotional Material.
- (b) The Department reserves the right to use the Promotional Material to publicise, promote and report on the Project and/or awarding of Funding to the Recipient. The Department may do (but is not limited to doing) this by including the Recipient's name, the amount of the Funding given to the Recipient, the date the Agreement commences and its term, and the title, location, purpose and a brief description of the Project in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Department.
- (c) The Recipient agrees to grant to (or will procure for) the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive, transferable licence (including a right of sublicence) to use, reproduce, exploit, communicate, adapt and distribute the Promotional Material for the purpose provided in subclause (a).
- (d) The Department may in its discretion and where it is practicable to do so, give a Notice to the Recipient of any such publication under subclause (b).
- (e) This clause survives termination or expiry of this Agreement.

14.3 Removal of promotional material

- (a) If the Department:
 - (i) terminates this Agreement under clause 17.1; or
 - (ii) otherwise determines in its absolute discretion that the Project is not consistent with the Project Objectives,

the Department may, by a Notice to the Recipient, request the Recipient to remove any promotional Material and the Recipient must immediately comply with such request.

15. Liability and Insurance

15.1 Insurance

- (a) The Recipient must take out and maintain during the Term all appropriate insurance policies including, but not limited to:
 - (i) workers compensation insurance as required by Law for all persons involved in the delivery of the Project.

- (ii) public liability insurance to the value of not less than \$20 million in respect of each and every occurrence and unlimited in the aggregate for any one period of cover.
- (iii) insurance over all Assets used in connection with the Project funded or partly funded by the Funding, for their full replacement value.
- (b) On request by the Department, the Recipient must provide a copy of valid and current certificates of currency for the insurance and/or a warranty from its insurer that the policy extends to the Department and covers potential liability arising under this Agreement.
- (c) The Recipient must not do, permit or suffer any act, matter or thing or omission whereby the policy referred to in this clause may be vitiated, rendered void or voidable.

15.2 Proportionate liability regime

To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Recipient under or in connection with this Agreement.

15.3 Indemnity

- (a) The Recipient indemnifies the Department from and against any:
 - (i) cost or liability incurred by the Department;
 - (ii) loss of or damage to property of the Department; or
 - (iii) loss or expense incurred by the Department in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department,arising from:
 - (iv) any breach by the Recipient of the Agreement;
 - (v) any act or omission involving fault by the Recipient in connection with this Agreement;
 - (vi) the use of Assets; or
 - (vii) the use by the Department of the Project Material, including any claims by third parties about the ownership or right to use the Intellectual Property Rights in the Project Material.
- (b) The Recipient's liability to indemnify the Department under subclause (a) above will be reduced proportionately to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- (c) The right of the Department to be indemnified under this clause 15.3 is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- (d) In this clause 15.3, "fault" means any negligent or unlawful act or omission or wilful misconduct.

16. Dispute Resolution**16.1 Procedure for dispute resolution**

The parties agree that a dispute arising under this Agreement will be dealt with as follows, and that, subject to clause 16.4, neither party will commence legal proceedings in relation to that dispute until this procedure is completed:

- (a) the party claiming that there is a dispute will give the other party a Notice setting out the nature of the dispute;
- (b) within five Business Days (or such other period as agreed by the parties in writing) each party will nominate a senior representative not having any prior involvement in the dispute;
- (c) the senior representatives will try to settle the dispute in good faith by direct negotiation between them;
- (d) failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a senior representative within the period set out in subclause (b) above), the parties may agree to refer the dispute to an independent third person with power:
 - (i) to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - (ii) to mediate and recommend some form of non-binding resolution;
- (e) the parties will co-operate fully with any process instigated under subclause (d) in order to achieve a speedy resolution; and
- (f) if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as the parties may agree in writing), either party may commence legal proceedings.

16.2 Costs

Each party will bear its own costs of complying with this clause 16, and the parties will bear equally the cost of any third person engaged under subclause 16.1(d).

16.3 Continued performance

Despite the existence of a dispute, the Recipient will (unless requested in writing by the Department not to do so) continue to perform the Recipient's obligations under this Agreement.

16.4 Application of clause

This clause 16 does not apply to:

- (a) legal proceedings by either party for urgent interlocutory relief; or
- (b) action by the Department under or purportedly under clauses 3, 9 or 17.

17. Termination

17.1 Termination for fault

- (a) If the Recipient does not comply with any of its obligations under this Agreement, then the Department:
 - (i) if it considers that the non-compliance is not capable of remedy – may by a Notice terminate this Agreement immediately;
 - (ii) if it considers that the non-compliance is capable of remedy – may, by a Notice require that the non-compliance be remedied within the time specified in the Notice, and if not remedied within that time, may terminate this Agreement immediately by giving a second Notice.
- (b) The Department may also by a Notice terminate this Agreement immediately if:
 - (i) in relation to this Agreement, the Recipient breaches any Law of the Commonwealth of Australia, or of a State or Territory;
 - (ii) another clause of this Agreement allows for termination under this clause 17.1; or
 - (iii) the Department is satisfied that any statement made in the Recipient's application for Funding is false or misleading in a way which would have affected the original decision to approve the Funding.

17.2 Preservation of other rights

Clause 17.1 does not limit or exclude any of the Department's other rights under this Agreement.

18. Assignment

This Agreement is personal to each party and neither party may assign the rights or benefits of this Agreement to any person.

19. General Warranties

Each party warrants to each other party that this Agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms.

20. Notices

20.1 Notices

Any notice, demand, consent, approval, request or other communication to be given under this Agreement (**Notice**) must be:

- (a) in writing;
- (b) given to the following contact person:
 - (i) in the case of the Department, that person specified in Item 12 of the Agreement Details, or other person as notified by the Department; or
 - (ii) in the case of the Recipient, that person specified in Item 13 of the Agreement Details, or other person as notified by the Recipient;

- (c) served in accordance with clause 20.2; and
- (d) unless this Agreement provides otherwise, in English.

20.2 Service of Notices

- (a) A Notice under this Agreement is only effective if it is in writing, and addressed as follows:
 - (i) if given by the Recipient to the Department – addressed to the Department at the Address for Service specified in Item 10 of the Agreement Details, or other address as notified by the Department; or
 - (ii) if given by the Department to the Recipient – given by the Department and addressed as specified in Item 11 of the Agreement Details, or other address as notified by the Recipient.
- (b) A Notice must be given at the recipient's Address for Service by being:
 - (i) hand delivered;
 - (ii) sent by electronic mail; or
 - (iii) sent by prepaid mail within Australia.
- (c) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by electronic mail, on the date of delivery unless an automated response is received by the receiver advising that the email has not been received by the recipient;
 - (iii) sent by prepaid mail within Australia, on the date that is 2 Business Days after the date of posting.
- (d) If a Notice is received:
 - (i) after 5:00 pm on any Business Day; or
 - (ii) on a day that is not a Business Day,

it is deemed to be received at 9:00 am on the next Business Day for the purposes of this clause 20.

21. Work Health and Safety

21.1 Compliance with Work Health and Safety Law

Where required, the Recipient agrees to comply with:

- (a) all Laws relating to work health and safety including (but not limited to), the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all reasonable directions from the Department or its Personnel in relation to work health and safety.

22. General provisions

22.1 Inconsistency

If there is any inconsistency between provisions of this Agreement then the order of precedence will be:

- (a) **clause 1 to clause 22**; then
- (b) any **Schedules**; then
- (c) any **Annexures**.

22.2 Entire agreement

This Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

22.3 Variation

Unless provided in Schedule 6, this Agreement or any of the matters outlined in the Schedules or Annexures to this Agreement must not be varied except by a later written document executed by all parties.

22.4 Waiver

A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

22.5 Conflicts of Interest

- (a) The Recipient must not do anything to bring itself into a situation where it has a conflict of interest with the Department.
- (b) Where the Recipient identifies that there is a conflict of interest between itself and the Department (whether actual, perceived or potential) it must:
 - (i) immediately notify the Department;
 - (ii) take proactive steps to mitigate the impact of the conflict of interest;
 - (iii) take steps to remove or manage the conflict of interest; and
 - (iv) do whatever the Department reasonably requests of it to remove or manage the conflict.
- (c) Where the conflict of interest is unable to be managed to the satisfaction of the Department then the Department may terminate this Agreement, such termination to be treated as it if were a termination for cause under clause 17.1 of this Agreement.

22.6 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Agreement.

22.7 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a Notice period specified in this Agreement,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that Notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

22.8 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

22.9 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

22.10 Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

22.11 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

22.12 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

22.13 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

22.14 Legal expenses

Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.

Execution page**Executed** as a deed

Signed, sealed and delivered for and on behalf of **the Crown in right of the State of New South Wales acting through the Department of Planning, Industry and Environment** (ABN 20 770 707 468) by its Authorised Officer but not so as to incur any personal liability in the presence of:

.....
Signature of Witness.....
Signature of Authorised Officer.....
Name of Witness.....
Name and position of Authorised Officer

Signed, sealed and delivered for and on behalf of Snowy Valleys Council (ABN 53 558 891 887) by its Authorised Officer:

.....
Signature of Witness.....
Signature of Authorised Officer.....
Name of Witness.....
Name of Authorised Officer

Schedule 1 Agreement Details

	Item	Detail
1.	Project and Description	<p>Tumbarumba Playground and Skate Park and Rotary Pioneer Park Tumut</p> <p>Upgrade of Tumbarumba Playground and Skate Park and Rotary Pioneer Park to provide nature-based playspaces, additional green infrastructure, better amenities, improved pathways, picnic areas and seating.</p>
2.	Project Commencement Date	The Date of this Agreement.
3.	Project Period	Commencing on the Date of this Agreement and ending on the Project Completion Date.
	Project Completion Date	<p>31 December 2022</p> <p>The works comprised in the Project made available to the community by 31 January 2023.</p>
4.	Program Objectives	<p>The objectives of the NSW Public Spaces Legacy Program are to:</p> <ul style="list-style-type: none"> • improve development assessment speeds and planning proposals (rezoning); • bring forward construction and the opportunity for jobs and economic activity in the short to medium term; • support investment in the creation of high-quality public and open spaces to create a lasting community benefit; and • address critical open space shortfalls and improve the quality of existing public and open spaces.
5.	Funding	\$1,980,000
6.	Capital Works	The capital works to be carried out in accordance with Project Plan.
7.	Confidential Information	
8.	Program	NSW Public Spaces Legacy Program
9.	Project Location	<p>Elm Dr, Tumut NSW 2720</p> <p>24 Albury St, Tumbarumba NSW 2653</p>
10.	Department Address for Service	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

	Item	Detail
11.	Recipient Address for Service	76 Capper St, Tumut NSW 2720
12.	Department Contact Person	Hanna Shalbaf Director, Infrastructure Grants and Delivery
13.	Recipient Contact Person	Mrs Trudy Crawford

Schedule 2 Funding

1. The Department will provide, or enable the provision of, the Funding to the Recipient in multiple payments for the Project in accordance with Schedule 5.
2. The Recipient agrees to receive the Funding in accordance with, and subject to the terms of this Agreement.
3. Prior to the Department making any payment of the Funding to the Recipient, the Recipient agrees to provide the Department with:
 - (a) a valid tax invoice (including itemisation of the GST component) in accordance with the following requirements:
 - (i) be addressed to the Department;
 - (ii) prominently be identified as "Tax Invoice"; and
 - (iii) contain:
 - (A) the Recipient's name;
 - (B) the Recipient's ABN;
 - (C) the name of Project;
 - (D) the amount of Funding requested;
 - (E) the GST component (listed separately to the amount requested); and
 - (F) the total amount of Funding requested.

Schedule 3 Reporting Requirements

Monthly Update Report

1. The Recipient must provide a Monthly Update Report to the Department. The Monthly Update Report must be provided, regardless of progress in carrying out the Project.
2. Each Monthly Update Report for the purposes of this Schedule 3 must be in a format agreed to by both parties to this Agreement, including the extent to which (and the times at which) Milestones described in Schedule 5 have been completed, and whether the relevant outputs or outcomes in the table have been realised. Any major changes to the Project and any major issues arising out of the Project are to be outlined.
3. Each Monthly Update Report must be endorsed by an appropriate representative of the Recipient before being provided to the Department.
4. The Recipient must provide the Department with any additional reports it requests.

Commencement Baseline Report

1. The Recipient must provide to the Department by 30 June 2021 a Commencement Baseline Report in the form required by the Department.

Project Acquittal Report

1. The Recipient must provide to the Department within 2 months after the actual completion of Project Completion, a Project Acquittal Report in the form required by the Department.
2. The Project Acquittal Report must include:
 - (a) when the Project, including Project Completion was completed;
 - (b) photographic records of the Project Location at different stages of the Project – before the Project Commencement Date, during the Project Period and after Project Completion;
 - (c) an itemised breakdown and details of the actual cost of the Project, including a tabulated and indexed folder of tax invoices for, and documentary evidence of the payment of, each component of the Project and a statement of expenditure;
 - (d) the date the works comprised in the Project were made available for use by the local community,
 - (e) information on the benefits realised and alignment with NSW Government public spaces policyand any other information required by the Department.
3. The Project Acquittal Report must be endorsed by the Recipient's Authorised Officer before being provided to the Department.

Procurement Certificate

1. The Recipient must provide to the Department within 3 months after actual completion of Project Completion, a Procurement Certificate.
2. The Procurement Certificate must include a statement that the Recipient in carrying out the Project, has complied with the *Local Government Act 1993*, the *Local Government (General) Regulation 2005* and the Recipient's procurement policy.

3. The Procurement Certificate must be signed by the Recipient's chief procurement officer or any person performing this function before being provided to the Department.

Schedule 4 – Standard Conditions

Condition Number	Condition	Action
1	<p>Recipient to incorporate in the Project Everyone Can Play design principles, which are available at</p> <p>https://everyonecanplay.nsw.gov.au/resources</p>	<p>If the Project comprises playspace components, the Recipient is to submit designs of the Project to the Department for review by the time required in the Project Plan.</p>
2	<p>Recipient to demonstrate how the Project contributes to realising Premier's Priority: Greener public spaces:</p> <ul style="list-style-type: none"> ▪ Increase the proportion of homes in urban areas within 10 minutes' walk of quality green, open and public space by 10 per cent by 2023. <p>https://www.nsw.gov.au/premiers-priorities/greener-public-paces</p>	<p>Recipient to include in the Project Acquittal Report the number of homes within 10 minutes' walk of the Project Location and how carrying out the Project improves the provision of green, open and public space.</p>
3	<p>Recipient to demonstrate how the Project contributes to realising Premier's Priority: Greening our city:</p> <ul style="list-style-type: none"> ▪ Increase the tree canopy and green cover across Greater Sydney by planting one million trees by 2022. <p><i>*Applicable where the Recipient is located within Greater Sydney</i></p> <p>https://www.nsw.gov.au/premiers-priorities/greening-our-city</p>	<p>Recipient to include in the Project Acquittal Report the number of trees planted as part of the Project.</p>

4	Recipient to undertake community engagement throughout design and construction of the Project in accordance with IAP2 community engagement principles which are outlined here: https://iap2.org.au/wp-content/uploads/2019/07/GlenorchyCC_Community_Engagement_Procedure.pdf	
5	Recipient to incorporate principles outlined in the NSW Government Architect's Designing with Country https://www.governmentarchitect.nsw.gov.au/resources/ga/media/files/ga/discussion-papers/discussion-paper-designing-with-country-2020-06-02.pdf and Connecting with Country documents, which are available at https://www.governmentarchitect.nsw.gov.au/resources/ga/media/files/ga/discussion-papers/draft-connecting-with-country-framework-2020-11-12.pdf	
6	Recipient must engage a registered landscape architect to prepare concept plan and detailed documentation of the Project.	Recipient to notify the Department in writing of its nominated registered landscape architect by the time required in the Project Plan
7	Recipient to prepare the design of Project in accordance with the Delivery Methodology Guideline,	Recipient to specify in the Project Plan how the Project complies with Delivery Methodology Guideline.
8	To acknowledge the financial support the Recipient has received from the New South Wales Government.	The Recipient to, at its costs, install a plaque in accordance with the Funding Acknowledgement Guidelines by January 2023

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9	Recipient to incorporate principles outlined in accordance with the NSW Public Spaces Charter https://www.dpie.nsw.gov.au/premiers-priorities/great-public-spaces/festival-of-place/public-space-charter	Recipient to specify in the Project Plan how the Project incorporates the principles of the NSW Public Spaces Charter and include the outcomes in the Project Acquittal Report.
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Schedule 5 Project Milestones

Date of completion	Milestone	Amount of Funding
Date of this Agreement	Milestone 1 Execution of this Agreement by the Department and the Recipient Planning and design starts	\$297,000
30 June 2021	Milestone 2 Completion of Project Plan by the Recipient and provision of a copy to the Department in accordance with clause 4.5	Not applicable.
30 July 2021	Milestone 3 Written confirmation from the Department that the Recipient has met the Improvement Targets for Monitoring Period 2 (30 June 2021) as prescribed in the Participation Agreement	\$990,000
TBA by Councils	Milestone 4 Commencement of construction works/land acquisitions comprised in the Project	Not applicable.
31 December 2022	Milestone 5 Completion of construction works comprised in the Project (Project Completion)	\$693,000

Schedule 6 Variation Schedule

Both parties acknowledge and agree that:

- the following clauses of this Agreement may be varied by completing the schedule below:
 - Schedule 1 Agreement Details
 - Schedule 5 Project Milestones
- on and from the relevant Effective Date, the Clause is varied to as shown in the second column, 'Amended Clause':

Clause	Amended Clause	Effective Date	Department's Authorised Officer	Recipient's Authorised Officer